



# 維護國家安全： 《基本法》第二十三條立法

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**Safeguarding National Security:  
Basic Law Article 23 Legislation**

**公眾諮詢**

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**Public Consultation**

1. 2024

# 1

## Necessity for legislation

- Hong Kong Special Administrative Region (HKSAR) has a constitutional duty to :
  - safeguard national security;
  - complete enactment of local legislation to implement Article 23 of the Basic Law (Article 23);
  - improve legal system and enforcement mechanisms for safeguarding national security in accordance with the 5.28 Decision of the National People’s Congress<sup>1</sup> and the Hong Kong National Security Law (HKNSL).
- While Hong Kong version of “colour revolution” in 2019 subsided, substantial risks remain. In addition, international landscape is ever-changing, and risks endangering national security exist every day. To cope with constantly arising national security risks and threats, we must seize the opportunity to legislate as soon as possible.
- There are solid legal bases and practical needs for the legislation.

# 2

## Legislative principles

- To safeguard national sovereignty, security and development interests is the top priority of the principle of “one country, two systems”.
- Human rights are to be respected and protected, and fundamental rights and freedoms should be protected in accordance with the law.
- The principle of the rule of law in preventing, suppressing and imposing punishment for acts and activities endangering national security should be adhered to.

# 3

## Legislative approach

- We recommend that a comprehensive and effective new legislation – “**Safeguarding National Security Ordinance**” (the proposed Ordinance) – be introduced.
- The proposed Ordinance should provide for targeted measures that can address past and present national security risks and threats, and should also be sufficiently forward-looking.
- The proposed Ordinance should achieve convergence, compatibility and complementarity with HKNSL.

<sup>1</sup> “Decision of the National People’s Congress on Establishing and Improving the Legal System and Enforcement Mechanisms for the Hong Kong Special Administrative Region to Safeguard National Security” adopted by the National People’s Congress on 28 May 2020.

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# 4

## Scope of the legislation

- Complete the enactment of local legislation to implement Article 23 to deal with offences not covered by HKNSL.
- Implement the requirements on improving the legal system and enforcement mechanisms for safeguarding national security in HKSAR under the 5.28 Decision and HKNSL.

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# 5

## Rights and freedoms of citizens remain protected

- Purpose of this local legislation is to effectively prevent, suppress and impose punishment for acts and activities endangering national security, thereby better safeguarding the fundamental rights and freedoms (including personal safety) of individuals, and ensuring that the properties and investments in HKSAR are protected.
- HKNSL Article 4 states clearly that human rights shall be respected and protected in safeguarding national security in HKSAR. Rights and freedoms which HKSAR residents enjoy under the Basic Law, and the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong shall be protected in accordance with the law. These principles are equally applicable under the proposed Ordinance.
- HKNSL Article 5 states clearly that the principle of the rule of law shall be adhered to in preventing, suppressing, and imposing punishment for offences endangering national security. The principle is equally applicable in dealing with offences under the proposed Ordinance.
- Legislation is enacted to target a very small minority of people who seriously endanger national security, not the general public, with the aim to protect the lives, properties, freedoms and rights of the people of HKSAR. Law-abiding people will not be caught by the law unwittingly.

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# 6

## International practice to enact legislation for safeguarding national security

- Every country enacts laws to safeguard national security to prevent, suppress, and impose punishment for acts and activities endangering national security according to its own needs. To enact the proposed Ordinance is consistent with such international practice.
- On the number of relevant national security-related legislation, the United States has at least 21 pieces, the United Kingdom at least 14, Australia at least 4, Canada at least 9, and New Zealand at least 2. An example among Asian countries is Singapore, which has at least 6 pieces. And national security laws of various countries have provisions with extra-territorial effect.

# 7

## Specific proposals in the Consultation Document on which public views are sought

### Legislative principles (Chapters 1 to 2)

- ◆ Considering that 5.28 Decision and HKNSL clearly provide for HKSAR's constitutional duty and system for safeguarding national security, we recommend that the legislation for Article 23 should fully implement relevant requirements and seek convergence, compatibility and complementarity with HKNSL, so as to form an improved and effective legal system for safeguarding national security. We propose **to introduce a new "Safeguarding National Security Ordinance"** to comprehensively address national security risks HKSAR is facing and may face in future, and to fully implement the constitutional duty and obligation of HKSAR under 5.28 Decision and HKNSL.
- ◆ Considering that HKNSL has created offences providing for two types of acts, namely secession and subversion, we recommend that it is not necessary for HKSAR to further legislate on these two types of offences.

### Legislation against acts and activities endangering national security (Chapters 3 to 8)

Having taken into account relevant laws of foreign countries cited in the Consultation Document, existing laws applicable to HKSAR and its actual situation, we have the following recommendations :

- ◆ Improve "treason" (「叛逆」) and related offences under the existing Crimes Ordinance to effectively prevent acts in the nature of treason and to protect the territory of our country from invasion, including :
    - 1 provide for the "treason" offence (「叛國」罪), covering use or threat of force with intention to endanger national sovereignty, unity or territorial integrity;
    - 2 codify existing common law offence of "misprision of treason";
    - 3 retain existing "treasonable offences" to deal with the overt manifestation of intention to commit "treason";
    - 4 improve existing offence of "unlawful drilling" to prohibit receipt of or participation in training involving external forces in the use of arms or practice of military exercises or evolutions, and prohibit provision of the same in collaboration with external forces.
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◆ Improve offences relating to “sedition” under the existing Crimes Ordinance, including :

- 1 improve existing offence of “incitement to mutiny”, including providing clear definition of the term “mutiny”;
- 2 adjust coverage of existing offence of “incitement to disaffection” such that any person who knowingly incites a public officer to abandon upholding the Basic Law or allegiance to HKSAR, or incites members of the offices of the Central People’s Government in HKSAR (other than the Hong Kong Garrison) to abandon their duties or allegiance to the People’s Republic of China, is guilty of an offence;
- 3 improve existing offences relating to “seditious intention” to deal with incitement of hatred against the fundamental system of the State, Central Authorities and executive authorities, legislature and judiciary of HKSAR.

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◆ Introduce offence of “insurrection” to effectively prevent insurrectionist acts, and protect the public from violent attacks and coercions that endanger national security.

◆ Improve offences and provisions relating to “protection of state secrets” under the existing Official Secrets Ordinance, so as to protect secrets relating to our country or HKSAR from theft or unlawful disclosure, including :

- 1 provide detailed definition of “state secrets” in view of the scope of “state secrets” in relevant national laws;
- 2 replace the term “public servant” with “public officer”, and suitably adjust the scope of the definition to cover officers who are more likely to have access to or possession of state secrets;
- 3 consolidate and improve offences relating to “state secrets” under the existing Official Secrets Ordinance.

- ◆ Improve offences and provisions relating to “espionage” under the existing Official Secrets Ordinance, so as to curb acts of espionage and collusion with external forces with intent to endanger national security, including :

- 1 improve existing offences and relevant terms relating to “espionage” in order to cover acts and activities of modern-day espionage;
- 2 prohibit participation in, support to or receipt of benefits from foreign intelligence organisations.

- ◆ Introduce new offence to protect public infrastructure from malicious damage or impairment, and combat acts endangering national security that are done in relation to a computer or electronic system, including :

- 1 prohibit acts and activities of sabotage endangering national security;
- 2 prohibit unauthorised acts in relation to a computer or electronic system endangering national security.

- ◆ Legislate to prohibit any person from collaborating with external forces to influence the formulation or implementation of policies or measures by the Central People’s Government and HKSAR Government, performance of duties by the Legislative Council and the courts, or to interfere in elections of HKSAR, etc., through improper means, so as to prevent external forces from improperly interfering in the affairs of our country or HKSAR.

- ◆ Based on provisions in the existing Societies Ordinance and with improvements thereto, prohibit all organisations endangering national security (including organisations which are established outside, but actually have a nexus with HKSAR) from operating in HKSAR, in order to effectively prevent and suppress the operation in HKSAR of organisations that engage in activities endangering national security.

- ◆ Taking into account the principles of international law and international practices cited in the Consultation Document, provisions on the extra-territorial effect of offences under HKNSL, existing laws of HKSAR, as well as the current practices of other countries, we recommend to provide proportionate extra-territorial effect for some of the offences under the proposed Ordinance.

## Improving the legal system and enforcement mechanisms for safeguarding national security (Chapter 9)

- ◆ Chapter 9 sets out the shortcomings and inadequacies revealed by the experience in handling cases concerning national security. Members of the public may consider the relevant foreign laws cited in the document, existing laws applicable to HKSAR, and situation in HKSAR, and provide their views on these shortcomings and inadequacies, with a view to improving the legal system and enforcement mechanisms for safeguarding national security, in particular those mentioned in Chapter 9, including :

- 1 measures that can allow sufficient time for law enforcement agencies to investigate complex cases concerning offence endangering national security, prevent circumstances that would jeopardise the investigation such as tipping off accomplices, and avoid risks of persons on bail from further endangering national security;
- 2 measures that can cope with, combat, deter and prevent acts of absconding, and cause the return of absconded persons to Hong Kong for law enforcement and judicial proceedings;
- 3 measures that can better achieve the objective of handling cases concerning national security in a fair and timely manner, so as to improve legal proceedings of national security cases;
- 4 measures that will allow early release of prisoners convicted of offences endangering national security only when the relevant authority has sufficient grounds to believe that the prisoners no longer pose national security threats;
- 5 measures that can effectively protect persons handling work concerning national security from being “doxxed” or harassed.

**Members of the public are welcome to provide views on the areas above as well as the content of the Consultation Document on or before 28 February 2024.**

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For details of the recommendations above,  
please refer to the full version of  
the Consultation Document  
[www.sb.gov.hk/eng/bl23/consultation.html](http://www.sb.gov.hk/eng/bl23/consultation.html)