



中華人民共和國香港特別行政區
Hong Kong Special Administrative Region
of the People's Republic of China

《基本法》第二十三條立法： 維護國家安全條例

Basic Law Article 23 Legislation:
Safeguarding National Security Ordinance

Foreword

- During the public consultation period, the Hong Kong Special Administrative Region (HKSAR) Government received a total of over 13 000 submissions of opinions. Among them, 98.6% showed support and gave positive comments, indicating that the legislation has received overwhelming support from the public.
- Having duly considered the public responses, the legislative proposals were refined and improved. The Safeguarding National Security Bill was published in the gazette and introduced into the Legislative Council for first reading on 8 March 2024.
- The Safeguarding National Security Ordinance (the Ordinance) was passed by the Legislative Council (LegCo) on 19 March 2024. The Ordinance was published in the gazette and came into effect on 23 March 2024.

Legislative Purpose of the Ordinance

- To resolutely, fully and faithfully implement the policy of “one country, two systems” under which the people of Hong Kong administer Hong Kong with a high degree of autonomy.
- To establish and improve the legal system and enforcement mechanisms for the HKSAR to safeguard national security.
- To prevent, suppress and punish acts and activities endangering national security in accordance with the law, to protect the lawful rights and interests of the residents of the HKSAR and other people in the HKSAR, to ensure the property and investment in the HKSAR are protected by the law, to maintain prosperity and stability of the HKSAR.



Features of the Ordinance

- Stipulated that two of the basic principles in legislating are to respect and protect human rights, and to adhere to the principle of the rule of law.
- Respects and protects human rights, and adhering to the principle of the rule of law:
 - ◆ detailed and clear legal provisions, including clear definitions
 - ◆ clear elements of offences, and target and scope of application; members of the public will not unwittingly violate the law
 - ◆ provision of suitable exceptions and defences
 - ◆ clear extra-territorial effect (if any)
 - ◆ penalties proportionate to culpability
 - ◆ clearly stipulated conditions for and restrictions on the exercise of relevant law enforcement powers, and the authorities and procedures for granting such powers, so as to ensure that such powers are no more than necessary for safeguarding national security
 - ◆ no retrospective effect for offences
 - ◆ protecting the exercise of independent judicial power free from any interference
- Making reference to legislative experience of common law jurisdictions to align with international practice.

- Incorporating the provisions of existing local laws to meet Hong Kong's actual circumstances.
- Protecting the fundamental well-being and lawful rights and interests of the residents of the HKSAR and other persons in Hong Kong.
- Protecting the properties and investments in the HKSAR.

Main content of the Ordinance

Apart from interpretation provisions, it also stipulates the principles of the Ordinance:

- ▶ The highest principle of the policy of “one country, two systems” is to safeguard national sovereignty, security and development interests.
- ▶ Human rights are to be respected and protected, and fundamental rights and freedoms are to be protected in accordance with the law.
- ▶ Acts and activities endangering national security are to be prevented, suppressed and punished in accordance with the principle of the rule of law.



Main offences under the Ordinance (Parts 2 to 6)

Treason etc. : improve the offence of “treason” (「叛逆」) under the existing Crimes Ordinance and related offences

Part 2

- ▶ Introduce the **offence of “treason”** (「叛國」罪) by modelling on the existing offence of “treason” (「叛國」罪), covering acts such as the use or threat of force with intent to endanger national sovereignty, unity or territorial integrity.
- ▶ Retain and amend the existing “reasonable offences” (i.e. **the offence to “publicly manifest intention to commit offence of treason”**).
- ▶ Provide for the **offence of “misprision of treason”** under common law as a statutory provision with appropriate improvements (i.e. “requirement on disclosure of commission by others of offence of treason”).
- ▶ Improve the existing **offence of “unlawful drilling”** to cover unlawful drilling involving an external force (with exceptions and transitional provisions provided).

Insurrection, Incitement to Mutiny and Disaffection, and Acts with Seditious Intention, etc. : improve the relevant offences under the existing Crimes Ordinance

Part 3

- ▶ Introduce the **offence of “insurrection”**.
- ▶ Improve the provisions relating to **“incitement to mutiny”** and **“incitement to disaffection”** under the existing Crimes Ordinance.
- ▶ Improve the **offences in connection with “seditious intention”**.

Offences in connection with State Secrets and Espionage : improve the relevant offences under the existing Official Secrets Ordinance

Part 4

- ▶ Improve the existing offences and provisions relating to protection of state secrets:
 - ◆ With reference to the relevant national laws, provide a detailed definition of **“state secret”**.
 - ◆ Introduce **offences in connection with “unlawful acquisition”, “unlawful possession” and “unlawful disclosure”**.
 - ◆ Introduce the **offence of “unlawful disclosure of information etc. that appears to be confidential matter”** to prohibit improper acts of disclosure by public officers or government contractors with intent to endanger national security.
 - ◆ Provide for a **defence for making a “specified disclosure”**.
- ▶ Improve the existing offences in connection with “espionage”, so as to curb espionage and other acts and activities endangering national security involving collusion with an external force:
 - ◆ Improve the existing offences in connection with **“espionage”**.
 - ◆ Improve the existing provisions on **“prohibited place”**.
 - ◆ Introduce the **offence of “participating in or supporting external intelligence organizations, or accepting advantages offered by them, etc.”**.

Sabotage Endangering National Security etc. : introduce new offences with reference to the laws of foreign countries

Part 5

- ▶ Introduce the **offence of “sabotage endangering national security”**: To prohibit any person from damaging or weakening a public infrastructure with intent to endanger national security or being reckless as to whether national security would be endangered (with reference to similar offences in foreign countries such as the United Kingdom and Australia).
- ▶ Introduce the **offence of “doing acts endangering national security in relation to computers or electronic systems”**: To prohibit any person from doing an act or activity endangering national security in relation to a computer or electronic system without lawful authority and with intent to endanger national security (with reference to similar offences in the United Kingdom).

External Interference Endangering National Security and Organizations Engaging in Activities Endangering National Security : introduce a new offence with reference to the laws of foreign countries and improve the regulatory mechanism under the Societies Ordinance

Part 6

- Introduce the **offence of “external interference endangering national security”**: It is an offence to collaborate with an external force to do an act using improper means with intent to bring about an interference effect (with reference to similar offences in foreign countries such as the United Kingdom and Australia).
- **Improve** and incorporate into the Ordinance the **mechanism for prohibiting the operation of organizations endangering national security under the existing Societies Ordinance, as well as covering organizations which have a nexus with the HKSAR, irrespective of whether they are established in the HKSAR or have their chief place of business in the HKSAR.**

Other Provisions for Improving the Legal System and Enforcement Mechanisms for Safeguarding National Security under the Ordinance (Parts 7 to 9)

Enforcement Powers and Other Matters in connection with Investigation : with reference to relevant measures under the National Security Act 2023 of the United Kingdom

Part 7-1

- **Extension of detention period for investigations to be completed as soon as possible**
 - A magistrate may authorise the police to extend the period of detention of an arrested person without charge, with the period of extended detention not exceeding 14 days.
- **Imposition of appropriate restrictions on consultation with legal representatives by an arrested person to avoid prejudicing investigations or endangering national security**
 - A magistrate may authorise the police to, during an arrested person’s detention, restrict the person’s consultation with a particular legal representative or particular legal representatives (but the person may choose any other legal representative), or consultation with any legal representative during the period of the first 48 hours after the person’s arrest.
- **Movement restriction order to avoid prejudicing investigations or endangering national security**
 - A magistrate may direct that a suspect released pending further investigation must comply with requirements, including that the person:
 - ◆ must reside in a specified place
 - ◆ must not, by any means, associate or communicate with a specified person, etc.
 - ◆ must not enter a specified area or place

Absconders in respect of Offences Endangering National Security : address, combat, deter and prevent acts of abscondment

Part 7-2

- ▶ Empower the Secretary for Security to specify a person who has **absconded** and specify applicable measures (depending on the situation and subject to certain conditions being met) by gazette, including:
 - ◆ Prohibition against making available funds to, or dealing with funds of, an absconder.
 - ◆ Temporary removal of absconder from holding office of director of a company.
 - ◆ Suspension of qualification to practise, or permission or registration required for carrying on business or for employment.
 - ◆ Cancellation of HKSAR passport etc..
- ▶ Empower the Secretary for Security to grant licences for doing certain prohibited acts under the satisfaction of certain specified conditions.

Criminal Procedure for Cases in connection with Offences Endangering National Security : ensure that cases in connection with offences endangering national security are handled in a fair and timely manner

Part 7-3, 7-4

- ▶ Improve the criminal procedure for cases in connection with offences endangering national security.
- ▶ Dispense with requirements that are rigid, prone to abuse or causing delay.
- ▶ On the premise of maintaining a fair trial, ensure that cases can be scheduled for trial as soon as possible, thereby better achieving the goal of handling national security cases in a timely manner, which is in line with protecting a defendant's right to a fair trial without delay.

Mechanisms for Safeguarding National Security and Relevant Protections

Part 8

- ▶ With reference to other legislation Chief Executive in Council is authorized to make subsidiary legislation for safeguarding national security for the better carrying into effect of the Hong Kong National Security Law (HKNSL) and the relevant interpretation of the Standing Committee of the National People's Congress (NPCSC) and the Ordinance. Subsidiary legislation is subject to scrutiny of the LegCo by way of the "negative vetting" procedure.
- ▶ The Chief Executive may issue an administrative instruction to any department or agency of the Government or any public servant in connection with safeguarding national security.

- ▶ Any person, in making a decision in the performance of any function conferred by the law of the HKSAR, must respect, and implement in accordance with the law, the judgements and decisions of the National Security Committee.
- ▶ The Chief Secretary for Administration may provide advice, or give directions, in relation to national security education etc..
- ▶ A public servant must provide all such assistance that is necessary for the work on safeguarding national security.
- ▶ Apart from the circumstances mentioned in Article 47 of the HKNSL, the Chief Executive may also, in circumstances that the Chief Executive considers appropriate, issue a certificate in relation to the question of whether national security or state secret is involved.
- ▶ Measures to protect specified persons and informers/witnesses, including prohibition of unlawful disclosure of personal data or unlawful harassment (involving intimidating, abusive or offensive words or acts).
- ▶ A specified court may on application take certain measures to protect the identity of specified person (including public servant and judicial officer, etc.) from disclosure, and provide for the offence of contravening order prohibiting disclosure of identity.



Related Amendments

Part 9

- ▶ Make necessary adaptations and other consequential amendments to relevant existing legislation.
- ▶ Make consequential amendments to the Crimes Ordinance, the Societies Ordinance and the Official Secrets Ordinance.
- ▶ Other major related amendments include:
 - ◆ If a prisoner serves a sentence in respect of the prisoner's conviction of an offence endangering national security, the prisoner must not be granted an early release unless the Commissioner of Correctional Services is satisfied that early release of the prisoner will not be contrary to the interests of national security.
 - ◆ Customs officers can exercise their enforcement powers of arrest and search, etc. under the Customs and Excise Service Ordinance when handling offences endangering national security.



For full version of the Ordinance,
please refer to the Hong Kong e-Legislation website
www.elegislation.gov.hk/hk/capA305