

**Legislative Council Panel on Security**

**Categorization of views of organizations and individuals on specific proposals to implement Article 23 of the Basic Law**

**Introduction**

This note seeks Members' views on the way forward regarding the request raised at the joint meeting of the Panel on Security and Panel on Administration of Justice and Legal Services on 15 February 2003. The Administration has been asked to provide information regarding the categorization of views of organizations and individuals relating to specific proposals to implement Article 23 of the Basic Law as set out in the Consultation Document published in September 2002, namely the proscription mechanism, unauthorized disclosure of protected information obtained by unauthorized access, and "public interest" defence for offences relating to unauthorized disclosure of protected information. The request is listed in Part B at item 1(b)(i) to (iii) in Appendix I of the background brief prepared by the Legislative Council (LC Paper No. CB(2)1378/02-03(03)).

**Proposals**

2. In response to the request, which requires a re-examination of all the submissions received during the consultation period, the Administration proposes to adopt the following schemes of categorization for the respective issues -

(a) **Proscription mechanism**

Category A - Identifiable as supporting the inclusion of proscription mechanism in the proposals to implement Article 23 of the Basic Law.

Category B - Identifiable as opposing the inclusion of proscription mechanism in the proposals to implement Article 23 of the Basic Law.

Category C - Not identifiable as Category A or Category B above, or had not expressed any views on the issue.

(b) The offence of unlawful disclosure of protected information obtained by unauthorized access

Category A - Identifiable as supporting the inclusion of the offence of unlawful disclosure of protected information obtained by unauthorized access in the proposals to implement Article 23 of the Basic Law.

Category B - Identifiable as opposing the inclusion of the offence of unlawful disclosure of protected information obtained by unauthorized access in the proposals to implement Article 23 of the Basic Law.

Category C - Not identifiable as Category A or Category B above, or had not expressed any views on the issue.

(c) “Public interest” defence for offences relating to unlawful disclosure of protected information

Category A - Identifiable as supporting the inclusion of the “public interest” defence for the offences of unlawful disclosure in the proposals to implement Article 23 of the Basic Law.

Category B - Identifiable as opposing the inclusion of the “public interest” defence for the offences of unlawful disclosure in the proposals to implement Article 23 of the Basic Law.

Category C - Not identifiable as Category A or Category B above, or had not expressed any views on the issue.

3. As with the categorization of whether a submission can be identified as generally supportive or opposing the proposals to implement Article 23 of the Basic Law, categorization of submissions on the above issues would frequently involve subjective judgements, since organizations and individuals can freely express their views in their submissions without limitation on the form of presentation.

4. A list of expressions excerpted from sample submissions with their corresponding categorization according to the proposed scheme of categorization is attached at Annex. The list reflects the proposed standards which would be adopted in the forthcoming exercise.

## **Way Forward**

5. Subject to Members' views, we would proceed with the proposed scheme of categorization. The task is expected to take four weeks, after which the categorization will be announced in this Panel and also via the Government web site on the implementation of Article 23 of the Basic Law. As with the categorization of the views on the overall proposals, those who disagree with the categorization will be invited to raise their objections, with justifications and explanations with a view to removing the initial ambiguities. A finalized categorization will be published in due course.

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[/dosc/bl23/Panel-paper1.doc]

**Categorization examples based on excerpts from submissions**

**A. Proscription mechanism**

Category	Excerpts*
“A”	<ul style="list-style-type: none"> <li data-bbox="395 488 1394 577">▶ 支持特區政府緊依《公民權利和政治權利國際公約》的標準行使禁制組織的權力。(A000844)</li> <li data-bbox="395 589 1394 857">▶ 有關外國政治性組織不當地干預本地的政治事務而被定為非法組織的條文，只是現有《社團條例》的條文，條文中的定義亦非常明確，而且諮詢文件中亦列明被禁制的組織可有上訴的機制。我們認為一般的社團組織並不需要過份憂慮，因為大家仍可與外國組織保持正當和合法的關係，如經貿合作、學術文化交流活動及其他方面的合作等。(A001021)</li> <li data-bbox="395 869 1394 1182">▶ 當內地組織因違反國家安全罪行而被取締時，有關聯的本港組織，是否同時觸犯違反國家安全的法例，必須經嚴格的檢定程序，由保安局局長作決定。若證明本港及內地組織具從屬關係，得由局長按香港普通法來證明禁制該本港組織是維護國家安全所必須。即使保安局局長作出決定，得由特區法院審議，再按特區法律作出核實，確證其為有組織性進行對國家安全構成威脅的活動。(A000757)</li> <li data-bbox="395 1193 1394 1417">▶ 另外，政府將來制訂有關法例時，可考慮加入機制，香港的某些組織，若與一些被中央政府定性為危害國家安全的組織存在連繫，必須符合一定條件，又或經由本港的一些司法程序，有關的本港組織才能被確定是否屬於非法組織。(A000975)</li> <li data-bbox="395 1429 1394 1619">▶ 諮詢文件中所提及的上訴程序分為兩個層次：有關事實的論點可向一個獨立(由行政長官委任)的審裁處提出上訴；有關法律的論點可向法院提出上訴。我們建議，應保留法院處理事實論點上訴的權力。(A001080)</li> </ul>
“B”	<ul style="list-style-type: none"> <li data-bbox="395 1659 1394 1738">▶ Drop the proposal to create the “proscription mechanism”. (A000003)</li> <li data-bbox="395 1749 1394 1951">▶ The intention to proscribe any organization in the community that has been banned on national security grounds by the central government thereby absolves the government of Hong Kong SAR from having either any responsibility or authority under such matters. (A000005)</li> </ul>

Category	Excerpts*
	<ul style="list-style-type: none"> <li>▶ This proposal could open a “connecting door” between Mainland and Hong Kong concepts of national security that is potentially wider than that required by Article 23. (A000012)</li> <li>▶ The Government should drop completely the proposals contained in the Consultation document for proscription of organizations, which are clearly outside the ambit of Article 23. (A000035)</li> <li>▶ 立法建議將附予保安局局長權力去禁制任何「從屬」於因國家安全理由被禁制中國組織的香港組織，這無疑將國內的國家安全法例引進香港。這將附予局長任意和過大的權力而打壓中國工人和香港工人的聯繫自由，尤其現時中國政府一直剝奪了中國工人組織獨立自由工會的權利。(A000840)</li> </ul>
“C”	<ul style="list-style-type: none"> <li>▶ It is widely believed that Falun Gong is a key target of this proposed legislation. (A000023)</li> <li>▶ 對「政治性組織或團體」的界定必須清晰，以免侵犯人民結社的自由和權利，及造成迫害工會的藉口。(A000921)</li> <li>▶ 吾人認為，如果北京當局及香港政府用一國之立法，傾囊針對全球都頗受好評的法輪功為鎮壓之目的，此非智者之所為！(B001020)</li> <li>▶ The terms “Affiliation” and “Connection” are vague. (B000249)</li> <li>▶ 我們都知道，這件事情(23 條立法)並不是偶然的，主要就是針對法輪功和法輪功修煉者而來的。(C402)</li> </ul>

**B. Unlawful disclosure of protected information obtained by unauthorized access**

Category	Excerpts*
“A”	<ul style="list-style-type: none"> <li>▶ 但另一方面，我們亦不能忽視《官方機密條例》內的漏洞(文件第 6.22 段提及現時《官方機密條例》並無對未經授權而取得、轉傳和處理受保護資料施加制裁)，我們建議將規管「未經授權取得」受保護資料的立法建議，改為「以非法手段取得」，如賄賂、竊取及非法入侵電腦(黑客)等行爲。(A000277)</li> <li>▶ 將禁止「未獲授權」取得及披露官方機密建議收窄，只針對以偷竊，擅闖政府電腦等等非法手段取得的政府機密。(A000684)</li> </ul>

Category	Excerpts*
“B”	<ul style="list-style-type: none"> <li>▶ Drop the proposal to criminalized “unauthorized disclosure” as a new offence. (A000003)</li> <li>▶ The proposal to widen the provisions on unlawful disclosure of information may inhibit freedom of information and the press, for what is deemed a “state secret” may in reality merely a remark or decision that is politically embarrassing. The provisions of this consultation document, if enacted into legislation, will only further contribute to the decline of press freedom in the territory. (A000005)</li> <li>▶ The Official Secrets Ordinance is only one of the means of preventing the unauthorized disclosure of official information. We believe there are other means of stopping leaks without widening of the ambit of the law. (A000077)</li> </ul>
“C”	<ul style="list-style-type: none"> <li>▶ 反對將「中央與特區關係的資料」被列入禁止披露範圍，以免危害新聞自由。(C347)</li> <li>▶ Criminalization of theft or knowing receipt of secret documents has the potential to limit press freedom by curtailing reporting based on such documents. (A000009)</li> <li>▶ The terms “damaging disclosure”, “state secret” and “protected information” are so vague that any access or disclosure without official consent can be caught by the proposals. (B000249)</li> <li>▶ 一些市民對立法的一些法律含義不清楚，如「國家機密」的定義等，希望政府多作解釋，以消除市民大眾的疑慮。(A000941)</li> </ul>

### C. “Public interest” defence

Category	Excerpts*
“A”	<ul style="list-style-type: none"> <li>▶ We urge the adoption of public interest and prior publication defences in the Official Secret Ordinance. These are essential to protect journalists and media organizations that may face prosecution under the theft of state secret proposals. (A000043)</li> <li>▶ 應考慮引入公眾利益抗辯，包括以「有公眾利益發表」及「資料已公開」等抗辯，但對「公眾利益」一詞作較明確的界定，以免濫用。(A000684)</li> <li>▶ 我們完全認同記者們與其他人士對上述法律〔擴大現時的《官方機密條例》範圍〕的恐懼，並認為對現有的資訊自由</li> </ul>

Category	Excerpts*
	造成了威嚇。我們支持引入“出版優先”和“公眾利益”作為法律上的自辯理據。(A000666)
“B”	<ul style="list-style-type: none"> <li data-bbox="392 394 1394 658">▶ 既然是「機密」，你將它公開，犯法的責任自然你要負上，不論資料或政策對公眾有益或有害(每件事物或措施對公眾有益和有害，只視其多數或少許人數)。因此此條在基本法 23 條內的「竊取國家機密」這六個字應一字不易在立法內寫上，(此條不應加上被動的「公眾利益」)，否則 23 條的內容就被闖割了一項嚴重罪行。(B002404)</li> <li data-bbox="392 680 1394 815">▶ 「傳播訊息」絕不是危害國家安全的借口，更不能以披露受保護資料符合公眾知情權這一所謂公眾利益為由，作為免除非法披露罪刑事責任的法律依據。(A000630)</li> </ul>
“C”	<ul style="list-style-type: none"> <li data-bbox="392 848 1394 1021">▶ 此外，有關法例必須引入機制，確保新聞界和學術界人士，維持現有的言論和學術自由。例如部分新聞工作者建議，引入以公眾利益作為傳媒工作者披露資料的抗辯理由，當局也可作詳細研究。(A000975)</li> </ul>

\* The number in the brackets refers to the serial number of the submission in the Compendium.