



## 1. Introduction

1.1 In Hong Kong, the freedom of assembly, of procession and of demonstration are fundamental rights guaranteed in the **Basic Law** as well as in the **Hong Kong Bill of Rights Ordinance** (Cap. 383) ("BORO"). While such rights might be subject to restrictions, such restrictions must be prescribed by law and should not exceed conditions set forth in the various international instruments such as the International Covenant on Civil and Political Rights ("ICCPR"). At times, Hong Kong has seen many public assemblies and processions. Indeed, the number of public order events during 2011-2015 ranged between 6 029 and 7 529 annually. In 2016, this figure further increased to 13 158. Among these events, about 75%-90% were public assemblies and the rest processions.<sup>1</sup> According to the Government, there has been an increase in the number of public order events involving prosecutions of persons for alleged illegal acts in recent years.<sup>2</sup> The figure increased from 15 in 2011 to 89 in 2014 before easing to 44 in 2015.

1.2 At the request of Hon Holden CHOW Ho-ding,<sup>3</sup> the Research Office has completed a study on the regulation of public assemblies in the New York State and Minnesota of the United States ("the US") and Germany.<sup>4</sup> This information note will first review the regulation of public assemblies in Hong Kong, followed by a discussion of the legislation governing public assemblies in the US and Germany. The areas of study include application procedure, assembly restrictions, public disorder offences (such as unlawful

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<sup>1</sup> See Finance Committee (2016a) and (2017).

<sup>2</sup> According to the Government, a total of 955 people were arrested by the Police during the "Occupy Movement" in 2014 and another 48 after the incident. See GovHK (2016b) and GovHK (2017).

<sup>3</sup> The request was made under a pilot scheme of a new initiative to strengthen research support to individual Members in the Sixth Legislative Council.

<sup>4</sup> Unless otherwise stated, public assemblies in this information note mean public meetings, demonstrations, protests or rallies.

assembly and riot) and related sanctions, as well as the latest regulatory updates in these places. The salient features are summarized in the **Appendix**.

## 2. Hong Kong

2.1 In Hong Kong, the freedoms of assembly, procession, demonstration, etc. are guaranteed in the Basic Law. Article 27 of the Basic Law stipulates that "*Hong Kong residents shall have freedom of speech, of the press and of publication; freedom of association, of assembly, of procession and of demonstration; and the right and freedom to form and join trade unions; and to strike*".

2.2 BORO, which is the domestic enactment of ICCPR, sets out a similar provision. Under Article 17 of BORO, "*[t]he right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others*".

2.3 According to the Government, Article 17 of BORO permits restrictions to be placed on the exercise of the right of peaceful assembly if they are (amongst other things) necessary to pursue certain legitimate goals laid down in the provisions.<sup>5</sup> The right of peaceful assembly also involves a positive duty on the part of Government to take reasonable and appropriate measures to enable lawful assemblies.

### Public Order Ordinance

2.4 In Hong Kong, the **Public Order Ordinance** (Cap. 245) ("the PO Ordinance") is a key ordinance governing public assemblies in the territory. Under the PO Ordinance, any public assembly, the attendance of which exceeds the limit of 50 persons, shall give a notice to the Commissioner of Police not less than seven days prior to the intended event. The notification shall cover such basic information as the date of the public meeting, time of commencement and duration, location or route, theme and the estimated

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<sup>5</sup> See Hong Kong Police Force (2007).

number of participants. An assembly can only be conducted if the Commissioner of Police does not prohibit or object to it, or otherwise it will become an unauthorized assembly. Participants and the persons who hold an unauthorized assembly shall be guilty of an offence and shall be liable to (a) imprisonment for five years on conviction on indictment, and (b) a fine at level 2 (HK\$5,000) and imprisonment for three years on summary conviction.

2.5 According to the Government, upon receipt of a notification of a public assembly, the Police will maintain an active and close communication with the event organizer to offer advice and assistance. The Commissioner of Police may impose condition(s) on a notified public assembly to ensure order of the event and public safety, and the corresponding condition(s) imposed will be stated explicitly in the "letter of no objection" issued to the organizers.<sup>6</sup>

2.6 During the assembly, Police Community Relations Officers may be present to act as a bridge of communication between the organizer and the Field Commander if necessary.<sup>7</sup> The PO Ordinance provides that any police officer at the rank of inspector or above may prevent the holding of, stop or disperse or even vary the place/route of a public assembly, if the police officer reasonably believes that the event is likely to cause or lead to a breach of the peace. According to the Government, the Police will use body-worn video cameras in confrontational situations or incidents where a breach of the peace has occurred or is likely to occur.

### Regulation of public assemblies

2.7 The PO Ordinance contains provisions dealing with disorderly behaviour associated with public assemblies.<sup>8</sup> For example, section 18(1) stipulates that an unlawful assembly occurs whenever "**3 or more persons, assembled together, conduct themselves in a disorderly, intimidating, insulting or provocative manner intended or likely to cause any person reasonably to fear**" that they will commit a breach of the peace. Persons found to have taken part in such assembly by virtue of section 18(1) shall be liable to (a) imprisonment for five years on conviction on indictment, and (b) a fine at level 2 (HK\$5,000) and imprisonment for three years on summary conviction.<sup>9</sup>

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<sup>6</sup> See GovHK (2012).

<sup>7</sup> Ibid.

<sup>8</sup> Other regulations that are also applicable to public disorder include the Summary Offences Ordinance (Cap. 228) and Crimes Ordinance (Cap. 200).

<sup>9</sup> See Hong Kong e-Legislation (2017b).

2.8 In addition to the above, the PO Ordinance also includes more serious public order offences, including riot (section 19)<sup>10</sup> and destroying vehicles or buildings while taking part in a riot (section 20).<sup>11</sup> Any person who takes part in a riot shall be guilty of the offence of riot, and shall be liable to (a) imprisonment for 10 years on conviction on indictment; and (b) a fine at level 2 (HK\$5,000) and imprisonment for five years on summary conviction.<sup>12</sup> As to destroying vehicles or buildings while taking part in a riot, the maximum penalty is (a) imprisonment for 14 years on conviction on indictment; and (b) imprisonment for five years on summary conviction.

### 3. The United States

3.1 In the US, the First Amendment to the US Constitution protects people's right to conduct an assembly. It prohibits the US Congress from enacting legislation that would abridge the right of people to assemble peaceably, stating that "*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances*".<sup>13</sup> This prohibition applies equally to state governments.

3.2 The right to assemble is, however, not absolute.<sup>14</sup> The First Amendment to the US Constitution does not provide the right to conduct an assembly at which there is a clear and present danger of riot, disorder, or interference with traffic on public streets, or other immediate threat to public safety or order. Statutes that prohibit people from assembling and using force or violence to accomplish unlawful purposes are permissible under the First Amendment.

3.3 States can enact their own laws to impose restrictions on the time, place and manner of the assembly provided that constitutional safeguards are met. Such time, place and manner restrictions can take the form of requirements to obtain a permit for an assembly. Additional requirements might be set for obtaining the permit, such as the need to provide

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<sup>10</sup> According to section 19 of the PO Ordinance, "[w]hen any person taking part in an assembly which is an unlawful assembly by virtue of section 18(1) commits a breach of the peace, the assembly is a riot and the persons assembled are riotously assembled." See Hong Kong e-Legislation (2017b).

<sup>11</sup> See Gaylord, M.S. et al. (2009).

<sup>12</sup> See Security Bureau (2016).

<sup>13</sup> See Library of Congress (2014) and United States Courts (2017).

<sup>14</sup> See Library of Congress (2014).

information about the organizer of the assembly and specific details about how the assembly is to be conducted. The ensuing paragraphs describe how public assemblies are regulated in the New York State and Minnesota.

### Regulation of public assemblies in the New York State

3.4 Protests or demonstrations are at times seen in the New York State. It is noted that recently, there have been some events involving arrests of people for alleged public disorder offences in the New York City<sup>15</sup>. For example, during 2016, some 40 demonstrators were arrested for behaving disorderly in an anti-racism protest; in another protest following the presidential election, over 50 demonstrators were arrested. Most of the people arrested were reportedly charged with disorderly conduct.<sup>16</sup>

3.5 The New York State Penal Law is a key ordinance governing public assemblies in the state. Section 240 stipulates the offences against public order (including disorderly conduct, unlawful assembly and riot) and sets out the anti-mask restriction.

#### *Provisions dealing with disorderly conduct, unlawful assembly and riot*

3.6 Disorderly conduct is an offence against public order. A person is guilty of disorderly conduct if he or she intends to cause "**public inconvenience, annoyance or alarm, or recklessly creat[e] a risk thereof**". The behaviour includes fighting, disturbing a lawful assembly or blocking traffic. Disorderly conduct is a "Violation" offence, punishable for up to 15 days of imprisonment and/or a fine not exceeding US\$250 (HK\$1,950).<sup>17</sup>

3.7 Unlawful assembly is a more serious offence. Section 240.10 of the New York State Penal Law provides that "*a person is guilty of unlawful assembly when **he assembles with four or more other persons for the purpose of engaging or preparing to engage with them in tumultuous and violent conduct likely to cause public alarm, or when, being present at an assembly which either has or develops such purpose, he remains there with the intent to advance that purpose***". Unlawful assembly is a Class B misdemeanor, subject to imprisonment for up to three months and/or a fine not exceeding US\$500 (HK\$3,900).

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<sup>15</sup> The City of New York, or simply New York, is the largest and most populous city of the New York State.

<sup>16</sup> See NBC New York (2016) and Patch Media (2016).

<sup>17</sup> See Section 240.20 of the New York State Penal Law.

3.8 An unlawful assembly may turn into a riot when people assembled have begun to engage in tumultuous and violent conduct. It is notable in the New York State that **riot is distinguished into first degree and second degree. Riot in the first degree** is a more serious offence, concerned with **a group of more than 10 people engaging in violent act causing physical injuries or property damages**. As defined in Section 240.06 of the New York Penal Law, a person is guilty of first-degree riot when he or she "*[s]imultaneously with ten or more other persons, engages in tumultuous and violent conduct and thereby intentionally or recklessly causes or creates a grave risk of causing public alarm, and in the course of and as a result of such conduct, a person other than one of the participants suffers physical injury or substantial property damage occurs*". Riot in the first degree is a Class E felony, punishable by up to four years of imprisonment and/or a fine not exceeding US\$5,000 (HK\$38,900).

3.9 **Second-degree riot** is less severe. It is concerned with **a group of more than four people engaging in violent act but physical injuries or property damages are not the necessary elements of the crime**. A person is guilty "*when, simultaneously with four or more other persons, he engages in tumultuous and violent conduct and thereby intentionally or recklessly causes or creates a grave risk of causing public alarm*".<sup>18</sup> Riot in the second degree is a Class A misdemeanor, subject to imprisonment for up to one year and/or a fine not exceeding US\$1,000 (HK\$7,780).

#### *Restriction on wearing masks in public places for crime prevention*

3.10 There is notably an **anti-mask restriction** in the New York State. Under its loitering law (also known as anti-mask law), people are prohibited from being disguised or masked when congregating in a public place, unless it is in connection with a party or entertainment permitted by the relevant authority.<sup>19</sup> Breach of the provision may be subject to imprisonment for up to 15 days and/or a fine not exceeding US\$250 (HK\$1,950).

3.11 The police in the New York City have periodically used the anti-mask law during public gatherings and demonstrations. For example, during the Occupy Wall Street movement in 2011, some demonstrators were reportedly

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<sup>18</sup> Second-degree riot is defined in Section 240.05 of the New York Penal Law. See The New York State Senate (2017).

<sup>19</sup> See Section 240.35(4) of the New York State Penal Law.



arrested and charged for wearing masks.<sup>20</sup> Yet, the anti-mask restriction is controversial<sup>21</sup> and has been subject to litigation several times over the past decade or so. For example, in the early 2000s, a religious organization challenged against the constitutionality of the anti-mask statute by seeking permanent injunctive relief before court.<sup>22</sup> The district court held that the statute had violated the First Amendment for the right to anonymous speech and association, among others. However, the decision was later reversed by the court of appeal, which reviewed the history of the anti-mask law and found that it was "indisputably aimed at deterring violence and facilitating the apprehension of wrongdoers" and that it "was not enacted to suppress any particular viewpoint".<sup>23</sup> The appeal to review the court of appeal's decision was later rejected by the US Supreme Court.

### *Additional requirements by individual cities*

3.12 Within the New York State, each city can set out its own additional procedure or requirements for holding public assemblies in the city. For example, in the New York City, a permit is required from the City government's Street Activity Permit Office or the police to conduct a procession or demonstration in a public street or pedestrian plaza. There may be additional permits required, such as a permit from the police for using a sound amplifying system and a certificate from the fire department for using generators.

3.13 If the public assembly is conducted in the vicinity of the City Hall<sup>24</sup>, seat of the New York City government, **the size of assembly held is limited to 300 people for a maximum of a three-hour period**, with the exception of public ceremonies and commemorations.<sup>25</sup> Adopted in April 2000, the

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<sup>20</sup> See The Wall Street Journal (2011).

<sup>21</sup> The origins of the anti-mask law go back to a statute enacted in 1845 in response to attacks on police by disguised farmers at that time.

<sup>22</sup> In September 1999, the Church of the American Knights of the Ku Klux Klan ("Knights") applied for a parade permit to rally on the steps of the New York County Courthouse in October 1999. The New York Police Department denied the permit for the reason that the Knights' plan of wearing masks in the event would violate New York's anti-mask statute. The Knights then applied for a preliminary injunction to force the Police Department to allow its members to wear marks during demonstration; however, the injunction was not granted. As a result, its members conducted the demonstration as planned but did not wear masks. After the event, the Knights sought declaratory and permanent injunctive relief from the court. See Harvard Law Review (2004).

<sup>23</sup> See Harvard Law Review (2004).

<sup>24</sup> Vicinity of the City Hall covers areas on the City Hall steps, sidewalk and plaza area fronting the City Hall.

<sup>25</sup> See American Legal Publishing Corporation (2017a).

measures are meant to strengthen the security in response to the threat of terrorist attacks of government buildings.<sup>26</sup>

### Regulation of public assemblies in Minnesota

3.14 Minnesota is one of the various cities in the US experiencing a series of protests against excessive use of force by the police on ethnic minorities in recent years.<sup>27</sup> Notably, in July 2016, a protest in the City of St Paul was degenerated into a violent confrontation with more than a hundred protesters arrested and charged with unlawful assembly, riot, etc.

3.15 Minnesota Statutes are the official state law of Minnesota, reprinted in even numbered years with the incorporation of all new laws, amendments or repeals of old law. Section 609 deals with unlawful assembly and riot, as well as prohibiting wearing a robe, mask or other disguise in a public place to conceal the identity of the wearer.

#### *Provisions dealing with unlawful assembly and riot*

3.16 According to Section 609.705 of the Minnesota Statutes, **when three or more persons assemble**, each participant is guilty of unlawful assembly if the assembly is "**(1) with intent to commit any unlawful act by force; or (2) with intent to carry out any purpose in such manner as will disturb or threaten the public peace; or (3) without unlawful purpose, but the participants so conduct themselves in a disorderly manner as to disturb or threaten the public peace**". It is also a crime in Minnesota to refuse to leave

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<sup>26</sup> In response to the threat of terrorist attack of the City Hall in 1998, the New York City stepped up its security measures by banning public access and gatherings in the vicinity of the City Hall, with the exception of government-organized/sponsored events. At that time, a not-for-profit corporation (Housing Works) applied to hold a press conference there but the request was denied. Housing Works subsequently sought a preliminary injunction and the district court ruled in its favour. In response, the New York City amended the policy in January 2000 to permit public gatherings but limited the size to 50 people on the steps of the City Hall and 150 people in the plaza area with a capped duration of two hours. Housing Works then further sought a permanent injunction to bar the policy enforcement and the district court again ruled in its favour. As a further response, the government revised its policy in April 2000 to allow public gatherings with a limit of 300 persons for a three-hour duration. See *Housing Works, Inc., Plaintiff-Appellee v. Bernard KERIK, Commissioner of the New York City Police Department and the City of New York, Defendants – Appellants*. No. 01-7245 (2001).

<sup>27</sup> There were increased demonstrations arising from the so-called Black Lives Matter Movement on racism which took place in cities like Boston, Seattle, Minneapolis and St Paul. See Mitchell Hamline Law Journal of Public Policy and Practice (2017).



the place of an unlawful assembly.<sup>28</sup> Unlawful assembly and refusal to disperse from an unlawful assembly are misdemeanors, punishable by up to 90 days in jail or a fine of up to US\$1,000 (HK\$7,780), or both.

3.17 In Minnesota, riot is distinguished into three degrees of seriousness. **Riot in the third degree** is the least serious, which occurs **when a group of three or more persons engaged to disturb the public peace by "an intentional act or threat of unlawful force or violence to person or property"**. People convicted of committing a third-degree riot can be punishable for up to one-year imprisonment and/or a fine of up to US\$1,000 (HK\$7,780). **Riot in the second degree** is more serious, **involving the arming of dangerous weapons**<sup>29</sup> and the penalty is imprisonment for up to five years and/or a fine of up to US\$10,000 (HK\$77,800). **Riot in the first degree** is the most severe **involving death**. A person who is guilty may be imprisoned for up to 20 years and/or a fine of up to US\$35,000 (HK\$272,000).<sup>30</sup>

#### *Restriction on concealing identity in public places for crime prevention*

3.18 To prevent crime, people in Minnesota are **prohibited from concealing his or her identity in a public place by means of a robe, mask, or other disguise**. Similar to the New York State, concealing the identity for amusement and entertainment purposes are given exemption. Further exemption has since 1995 been provided to situations where covering up is concerned with religious beliefs, weather protection or medical treatment.<sup>31</sup> There have been recent cases of demonstrators violating this law. For example, in March 2017, a rally turned violent in the City of St Paul and several suspects concealing their identity with black clothing were charged with concealing identities in a public place, among other offence(s).<sup>32</sup> A person committing the offence is guilty of misdemeanor, subject to imprisonment for not more than 90 days or a fine of not more than US\$1,000 (HK\$7,800), or both.

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<sup>28</sup> See section 609.715 of Minnesota Statutes.

<sup>29</sup> Dangerous weapons include any device or flammable liquid capable of resulting in death or great bodily harm.

<sup>30</sup> See section 609.71 of the Minnesota Statutes.

<sup>31</sup> See section 609.735 of the Minnesota Statutes.

<sup>32</sup> See Minnesota Lawyer (2017) and Cable News Network (2017).

### *Additional requirements by individual cities*

3.19 Similar to the New York State, each city in Minnesota can set out its own additional procedure or requirements for holding public assemblies in the city. In the largest city **Minneapolis**, for example, a permit is not required for holding assemblies in a street, alley or on public sidewalk, but prior notification to the police is required.<sup>33, 34</sup> In contrast, in the **City of St Paul**, the capital and second largest city of Minnesota, any person who wishes to organize a public assembly in streets or on sidewalks with over 25 participants will be required to obtain a permit from the police.<sup>35</sup> If the assembly is to be held at the Minnesota state government complex, Capitol Complex, prior permission must be obtained from the Department of Administration, State of Minnesota.<sup>36</sup>

### *Recent legislative proposals against disorderly behaviour*

3.20 Amid the rising protests in recent years, Minnesota has sought to introduce legislative proposals to increase the penalty for demonstrators' disorderly behaviour. Earlier in 2017, a bill was introduced by lawmakers under which a person is civilly liable for "public safety response costs" if he or she is convicted of participating in an unlawful assembly, being present at an unlawful assembly, or committing a public nuisance. Government agencies may bring action against the person to recover the civil liability and related legal, administrative, and court expenses incurred in connection with the unlawful assembly. Nevertheless, the proposal has met with resistance amid the concern that the move might be adopted as a way to crack down on protests in Minnesota.<sup>37</sup> The bill was introduced into the House of Representatives in January 2017. It was heard in the relevant committee but no further progress has been seen. In the Senate, it has not been heard since introduction in February 2017.

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<sup>33</sup> Information is provided by the Minneapolis government in response to the request of the Research Office.

<sup>34</sup> However, a parade permit is required from the Minneapolis government if it is a procession or march in a street or alley in the city.

<sup>35</sup> Depending on the anticipated number of participants, application should be submitted to the police department from five calendar days to 20 business days in advance of the event. If it is an annual event, application should be made at least 90 days in advance but not more than 365 days. See Municode (2017).

<sup>36</sup> See Plant Management Division, Department of Administration, State of Minnesota (undated).

<sup>37</sup> See The Office of the United Nations High Commissioner for Human Rights (2017).

3.21 Meanwhile, there has been another bill aiming at increasing the criminal penalties on protestors for obstructing airport and highway traffic. The legislative proposal has been keenly debated at the Minnesota legislature, with supporters regarding it a public safety measure and opponents seeing it a threat to free speech and assembly rights. Although the proposal was passed by the House of Representatives and the Senate in May 2017,<sup>38</sup> it was vetoed by the Governor.<sup>39</sup>

## 4. Germany

4.1 Freedom of assembly is a fundamental right in Germany protected by the Grundgesetz or Basic Law, the constitution of Germany.<sup>40</sup> Article 8 of the Basic Law provides that all Germans shall have the right to assemble peacefully and unarmed without prior notification or permission. In the case of outdoor assemblies, this right may be restricted by or pursuant to a law.<sup>41</sup> Article 8 of the Basic Law and its protections by the government are regulated by the **Federal Act on Assemblies and Processions of 1953 (Versammlungsgesetz)** ("Federal Assembly Act").

4.2 According to the German government, during public assemblies, the police must act in an "assembly-friendly" manner. However, in the case of violence, they must rigorously intervene against offenders and institute criminal proceedings.<sup>42</sup> It is noted that during the recent G20 Summit held in Hamburg in July 2017, there were massive demonstrations against the event. Violence broke out with attacks of people and destruction of properties. Reportedly, hundreds of protestors were arrested and over a hundred being charged.<sup>43</sup>

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<sup>38</sup> The proposal was included as part of the Judiciary and Public Safety Omnibus Bill. An omnibus bill is a large bill that includes several different issues under one general topic. It is usually an appropriation bill containing many pages, and is often comprised of several individual bills. The Governor vetoed the Judiciary and Public Safety Omnibus Bill due to large cuts by the legislature to the budgets of certain spending areas proposed in the original bill. As a result of the disapproval, the relevant committee reconvened to debate a new omnibus package. After negotiations between the committee leaders and the Governor, the final bill did not include the provision that would have increased the penalties on protestors.

<sup>39</sup> See City of Minneapolis (2017).

<sup>40</sup> The Basic Law was adopted in 1949 when Germany was divided. Upon reunification in 1990, the Germans kept the term Basic Law, instead of Constitution, to symbolize the success of the Basic Law in West Germany.

<sup>41</sup> See Federal Ministry of Justice and Consumer Protection (2014).

<sup>42</sup> See Federal Republic of Germany (2013).

<sup>43</sup> See Deutsche Welle (2017) and NL Times (2017).

### *Requirement to give prior notice or obtain a permit*

4.3 Under the Federal Assembly Act, public assemblies are distinguished into indoor assemblies and outdoor assemblies. Indoor assemblies do not need to be notified or permitted by the competent authorities. Nevertheless, the law allows the police authority to dissolve a public indoor assembly given the relevant circumstances are met, such as occurrence of violence or an immediate danger to public safety and order, provided that no other police measures are sufficient. In addition, indoor assemblies are prohibited if:

- (a) the organizer is legally not allowed to organize an assembly;
- (b) the organizer allows protestors to carry weapons or other forbidden objects;
- (c) there is proof that the organizer or his or her followers intend to create an insurgent or violent course of events; and
- (d) there is proof that the organizer or his or her followers hold a view or tolerate statements which would constitute a crime to be prosecuted by the authorities.<sup>44</sup>

4.4 Compared with indoor assemblies, outdoor assemblies may present a greater threat to public safety as the number of participants can be large. As such, the Federal Assembly Act requires organizers of outdoor assemblies to notify the competent authority **at least 48 hours prior to the announcement of the event**. The competent authority will contact the organizer if an assembly is not allowed. Alternatively, if the assembly can be held, the competent authority will issue an informal registration confirmation and may impose certain restrictions or requirements on the event.

4.5 In the case that the outdoor assembly is not allowed or no prior notice is given, the police authority may dissolve it at its discretion. Added to this, the organizer or leader will be sanctioned for up to one-year imprisonment or a fine. Failure to comply with the restrictions imposed on the assembly will also be subject to imprisonment of up to six months or a fine. For public assemblies held in the vicinity of the Parliament and the Federal

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<sup>44</sup> See ICNL (undated).

Constitutional Court<sup>45</sup>, special approval must be obtained from the Federal Ministry of the Interior.<sup>46</sup>

4.6 In contrast to the case of public outdoor assemblies, it is allowed that no notice be given of "spontaneous assemblies" without prior planning. A spontaneous assembly is generally regarded as one organized in response to some occurrence, incident, other assembly or speech, where the organizer (if there is one) is unable to meet the legal deadline for prior notification, or where there is no organizer at all. Such assemblies often occur around the time of the triggering event, and the ability to hold them is important because delay would weaken the message to be expressed.<sup>47</sup>

### *Regulatory requirements and restrictions*

4.7 The Federal Assembly Act also sets out specific requirements or restrictions for holding public assemblies.<sup>48</sup> These include that:

- (a) every individual, political party or organization has the right to organize or participate in public assemblies, except for those which (i) the Federal Constitutional Court has suspended their right or declared unconstitutional; or (ii) prohibited under the Basic Law;
- (b) all public assembly must have **a leader to be in charge of the event**, who usually is the organizer of the assembly. The leader can arrange manpower to act as unarmed security guards/stewards to maintain the order of the event and the police can impose a limit or specify the level of manpower needed. Those engaged to maintain the order are required to **wear a white armlet marked with "Ordner"**. The organizer or leader may be fined should they fail to maintain sufficient

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<sup>45</sup> The Federal Constitutional Court is both a court and a constitutional organ, entrusted to ensuring that the Basic Law is obeyed.

<sup>46</sup> Section 16 of the Federal Assembly Act prohibits the holding of public assemblies in the precincts of the Parliament and the Federal Constitutional Court. These precincts are regulated by the Act on Pacified Precincts for Constitutional Bodies of the Federation (Gesetz über befriedete Bezirke für Verfassungsorgane des Bundes). Holding of public assemblies is subject to the approval of the Federal Ministry of the Interior and application must be submitted at least seven days prior to the event. Approval is given on a case-by-case basis.

<sup>47</sup> See OSCE Office for Democratic Institutions and Human Rights (2010).

<sup>48</sup> See Bundesministerium der Justiz und für Verbraucherschutz (2008), Polizei Hessen (2015) and ICNL (undated).

stewards specified by the police. Use of armed security guards/stewards is punishable for up to one-year imprisonment or a fine; and

- (c) during the assembly, all participants are banned from (i) **carrying weapons or dangerous objects**; (ii) **wearing uniforms, part of uniforms or similar pieces of clothes** as an expression of common political attitude, as this is capable of inciting "suggestive-militant effects in the direction of intimidating, uniform militancy"<sup>49</sup>; and (iii) **hiding the identity** by covering up their face with any kind of clothing or accessories. Violation of the above will be subject to imprisonment (up to one year for carrying weapons/hiding the identity and up to two years for wearing uniforms), or a fine.

#### Sanctions against disorderly behaviour

4.8 The Federal Assembly Act contains provisions dealing with violent conduct during assemblies. In addition, various articles in the Criminal Code and the Act on Regulatory Offences may also apply to public disorder arising from public assemblies. Relevant provisions include the following:

- (a) section 21 of the **Federal Assembly Act** provides that anyone who engages or threatens to engage in violent activities or causes gross disturbances with the intention of preventing or breaking up an assembly shall be sanctioned with imprisonment for up to three years or a fine;
- (b) under section 125 of the **Criminal Code**, a person is guilty of riot and shall face imprisonment for up to three years or a fine if he or she participates (i) in acts of violence against persons or objects, or (ii) in threats to persons to commit acts of violence which are committed by a crowd of people together in a manner posing a threat to public safety. In serious cases such as the use of weapon or causing severe damages of properties, the maximum imprisonment is 10 years; and

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<sup>49</sup> The ban was found unproblematic by the Federal Constitutional Court in its decision in 1982. However, according to Salat O (2015), there remained much confusion as to what falls under the uniform ban and what do not.



- (c) section 113 of the **Act on Regulatory Offences on "unauthorized gathering"** stipulates that anyone who fails to leave a public gathering at which the relevant authority has lawfully requested the crowd to disperse three times shall be deemed to have committed an offence, punishable for up to €1,000 fine (HK\$9,300).

### State-level assembly laws

4.9 Germany reformed its federal system in 2006 which allows, among other things, the states (Länder) to enact their own statutes to regulate public assemblies. Being the largest state in Germany, Bavaria was the first state which replaced the Federal Assembly Act with its own state law, the Bavarian Assembly Act. Other states such as Lower Saxony and Saxony-Anhalt followed suit, and the Federal Assembly Act remains in force for those states that do not have their own law.

### *Bavarian Assembly Act*

4.10 The Bavarian Assembly Act, which was enacted in 2008, has taken the Federal Assembly Act as points of reference in many aspects. However, **it has also developed its own provisions which are considered to be more restrictive**. For example, the Act provides that the assembly organizers have a duty to give notification to the competent authority even for spontaneous assemblies. In addition, the competent authority may reject the assembly leader and stewards nominated by the organizer if they are found unreliable or unsuitable.<sup>50</sup>

4.11 In addition to the above, the Bavarian Assembly Act originally contained provisions featuring increased liability of the organizers and enhanced power of the police. For instance, the Act required the organizers to make appropriate measures to prevent or stop violent acts in a public assembly and failure to do so would subject them to a fine. Furthermore, the police was empowered to take recordings of assemblies to evaluate police tactics which could be stored for follow-up uses for a prolonged period of time.<sup>51</sup> However, following the enactment, several trade associations and

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<sup>50</sup> See Bundesverfassungsgericht (2009).

<sup>51</sup> See Bayerische Staatskanzlei (2015) and Bundesverfassungsgericht (2009).

non-government organizations applied for a temporary injunction before the Federal Constitutional Court, arguing that the regulations would deter people from making use of the freedom of assembly. The temporary injunction was granted in 2009 and the related provisions were suspended.

4.12 Following the provisional rulings, the Bavarian Assembly Act was amended with the removal of certain provisions, including the one concerned with sanctioning organizers for failure to make appropriate measures to prevent violence.<sup>52</sup> The amended Act allows (a) films and pictures of assemblies by the police only where it is necessary in view of the size and the unclear situation of an assembly, and (b) the identification of individual protestors on the produced pictures if the persons constitute a real danger to public safety or order. Recordings must be deleted no later than two months after the assembly if no longer needed.

## **5. Concluding remarks**

5.1 Freedom of assembly is a fundamental right in all the places studied protected by the constitutional documents which have a higher status than ordinary law. The right to assembly is however not absolute in these places, and they have some forms of regulation of public assemblies. These include the requirement for organizers to give a prior notice to or obtain a permit from the relevant competent authority before the assembly. In addition, unlawful assemblies and riots are punishable by imprisonment and/or monetary fines.

5.2 All the places studied have established their public assembly legislation with varying degrees of strictness. In Minnesota, a person may be guilty of unlawful assembly if he or she behaves disorderly and disturbs the public peace even without unlawful purpose. Such disorderly act is a misdemeanor punishable by imprisonment of up to 90 days and/or a fine. It is also a crime in Minnesota to refuse to leave an unlawful assembly. Furthermore, riot is classified into three levels of seriousness and the punishment for the most serious degree is 20-year imprisonment and/or a fine. In comparison, unlawful assembly and riot in Hong Kong are subject to

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<sup>52</sup> According to Max Planck Institute for Comparative Public and International Law (2014), the Bavarian Parliament did not wait for further proceedings by the Federal Constitutional Court but amended the Act based on the remarks of the Federal Constitutional Court in its interim relief decision.

maximum imprisonment of five years and 10 years respectively on conviction on indictment.

5.3 In Germany, indoor assemblies are prohibited under specified situations. Outdoor assemblies in the proximity of the Parliament and the Federal Constitutional Court shall be subject to approval of the relevant ministry. Added to this, an organizer or leader can be sanctioned with imprisonment or monetary fines for organizing an assembly against the authorities' explicit interdiction or for incompliance with the requirements such as violating the restrictions imposed by the authorities or allowing security guards/stewards to bear weapons at the assembly.

5.4 Furthermore, assembly participants in all the overseas places studied are subject to some forms of anti-mask law. In the New York State and Minnesota, people are prohibited from being disguised or masked to conceal their identities when congregating in a public place. Nevertheless, the New York State grants exemptions if covering up is connected with party or entertainment, and so does Minnesota for religious beliefs, weather protection and medical treatment. Likewise, Germany prohibits assembly participants to conceal their faces with any kind of clothing or accessories during the assembly event.

5.5 In the US and Germany, the federal government allows individual states to enact their own statutes to regulate public assemblies. In the US, the state of Minnesota had previously proposed to increase the penalties on demonstrators with disorderly behaviour but it has met with resistance from some concern groups/people. The relevant bills have not become law. In Germany, the state assembly law in Bavaria was originally more restrictive than the federal one featuring increased liability of the organizers and enhanced power of the police, but it has undergone amendments after successful legal challenges by some trade associations and non-government organizations.

Table – Salient features on the regulation of public assemblies in selected places

		Hong Kong	New York State	Minnesota	Germany
1.	Major law governing public assemblies	<ul style="list-style-type: none"> <li>Public Order Ordinance.</li> </ul>	<ul style="list-style-type: none"> <li>New York Penal Law.</li> </ul>	<ul style="list-style-type: none"> <li>Minnesota Statutes.</li> </ul>	<ul style="list-style-type: none"> <li>Federal Assembly Act, or state-level assembly law.<sup>(1)</sup></li> </ul>
2.	Permit/notification requirement	<ul style="list-style-type: none"> <li>Notification required.</li> </ul>	<ul style="list-style-type: none"> <li>Not laid down in state law; each city can set out its own procedure or requirements.</li> <li>In its largest city the New York City, a permit is required.</li> </ul>	<ul style="list-style-type: none"> <li>Not laid down in state law; each city can set out its own procedure or requirements.</li> <li>In its largest city Minneapolis, prior notification is required.</li> </ul>	<ul style="list-style-type: none"> <li>Notification required for outdoor assemblies unless they are spontaneous in nature.</li> <li>Special approval required for assembly in the vicinity of the Parliament and the Federal Constitutional Court.</li> </ul>
3.	Wearing mask to hide identity	<ul style="list-style-type: none"> <li>Not prohibited.</li> </ul>	<ul style="list-style-type: none"> <li>Prohibited.</li> </ul>	<ul style="list-style-type: none"> <li>Prohibited.</li> </ul>	<ul style="list-style-type: none"> <li>Prohibited.</li> </ul>
4.	Wearing uniforms as an expression of common political attitude	<ul style="list-style-type: none"> <li>Not prohibited.</li> </ul>	<ul style="list-style-type: none"> <li>Not prohibited.</li> </ul>	<ul style="list-style-type: none"> <li>Not prohibited.</li> </ul>	<ul style="list-style-type: none"> <li>Prohibited.</li> </ul>
5.	Arrangement of manpower by organizers/leaders to maintain assembly order	<ul style="list-style-type: none"> <li>Not specified in law.</li> </ul>	<ul style="list-style-type: none"> <li>Not specified in law.</li> </ul>	<ul style="list-style-type: none"> <li>Not specified in law.</li> </ul>	<ul style="list-style-type: none"> <li>Specified in law.</li> </ul>
6.	Examples of provisions dealing with public disorder and maximum sanctions	<u>Public Order Ordinance</u> <ul style="list-style-type: none"> <li>Unlawful assembly: <b>five years</b> (conviction on indictment).</li> <li>Riot: <b>10 years</b> (conviction on indictment).</li> </ul>	<u>New York Penal Law</u> <ul style="list-style-type: none"> <li>Unlawful assembly: <b>three months</b> and/or a fine.</li> <li>Riot in the first degree: <b>four years</b> and/or a fine.</li> <li>Riot in the second degree: <b>one year</b> and/or a fine.</li> </ul>	<u>Minnesota Statutes</u> <ul style="list-style-type: none"> <li>Unlawful assembly: <b>90 days</b> and/or a fine.</li> <li>Riot in the first degree: <b>20 years</b> and/or a fine.</li> <li>Riot in the second degree: <b>five years</b> and/or a fine.</li> <li>Riot in the third degree: <b>one year</b> and/or a fine.</li> </ul>	<u>Federal Assembly Act and other laws on criminal and regulatory offences</u> <ul style="list-style-type: none"> <li>Engaging or threatening to engage in violent activities to prevent/break up an assembly: <b>three years</b> or a fine.</li> <li>Riot: <b>three years</b> or a fine.</li> <li>Serious cases of rioting: <b>10 years</b>.</li> </ul>
7.	Special remarks	<ul style="list-style-type: none"> <li>Nil.</li> </ul>	<ul style="list-style-type: none"> <li>Size of public assembly held in the vicinity of the City Hall in the New York City is limited to 300 participants for a maximum duration of three hours.</li> <li>The anti-mask statute has been subject to litigation several times over the past decade or so.</li> </ul>	<ul style="list-style-type: none"> <li>Recent legislative proposals introduced by lawmakers to increase the penalty for demonstrators' disorderly behavior have met with resistance. The relevant bills have not become law.</li> </ul>	<ul style="list-style-type: none"> <li>The Bavarian Assembly Act, featuring increased liability of the organizer and enhanced power of the police, had been subject to legal challenge. As a result, the Act was amended with the removal of certain restrictive provisions.</li> </ul>

Note: (1) Unless otherwise stated, the regulatory requirements for holding public assemblies are based on the Federal Assembly Act.

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Prepared by Tiffany NG  
Research Office  
Information Services Division  
Legislative Council Secretariat  
23 November 2017  
Tel: 2871 2122

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