



與《國家安全(立法條文)條例草案》  
有關的現有的法例條文匯編

Collection of existing statutory provisions  
relevant to the National Security  
(Legislative Provisions) Bill

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## 導言

### 目的

《國家安全(立法條文)條例草案》(“草案”)於2003年2月14日公布。草案列出對若干現有條例的原文所作的修訂，這些修訂包括將原文中若干字句或條文刪除，而代以其他字句或條文，或在原文中加入新字句或新條文。這是草擬法例修訂的慣用形式。讀者如欲了解確實的建議修訂範圍及修訂後所達致的效果，一般需將草案與《香港法例》中刊載的受影響條文一併閱讀。

本冊子列出草案建議修訂的現有條文以及其他有關的條文，而建議修訂亦已併入原文之內。此舉將方便讀者將現有的法律與建議的新法律在同一文件上互相比較，令讀者更易於掌握建議修訂的範圍及其達致的效果。

有見於就《基本法》第二十三條提出的立法建議引起公眾廣泛關注，我們遂投入額外資源，編製了本冊子，嘗試以一種更利便讀者的形式展示草案建議的修訂。視乎資源是否許可，我們或考慮將來在進行可能會引起公眾關注的其他法例修訂時，亦編製同類的冊子。

### 地位

本冊子並不構成草案的一部分。正式的建議修訂見載於草案之內。草案如獲通過成為法律，其詮釋並不受本冊子所載的任何資料影響。

### 本冊子的文本

本冊子亦可於以下網址瀏覽和下載：

律政司網頁：<http://www.info.gov.hk/justice>；及

## Foreword

### *Purpose*

The National Security (Legislative Provisions) Bill (“the Bill”) published on 14 February 2003 comprises textual amendments to a number of existing Ordinances by deleting certain words or provisions and substituting or adding new words or provisions in those Ordinances. This is the usual form in which legislative amendments are drafted. In order to appreciate the exact scope and effect of the proposed amendments, usually a reader has to read the Bill together with the affected provisions contained in the Laws of Hong Kong.

This booklet sets out the existing provisions that are proposed to be amended by the Bill and other related provisions. The proposed amendments have been incorporated into the text. Readers can therefore conveniently compare the existing law with the proposed new law in a single document and more easily appreciate the scope and effect of the proposed amendments.

In view of the wide public concern over the legislative proposals on Article 23 of the Basic Law, we have made an exceptional effort to produce this booklet. This is an attempt to present the amendments proposed by a Bill in a more user-friendly format. Depending on the availability of resources, we might consider preparing the same kind of booklet for future legislative amendment exercises that we think may arouse general public concern.

### *Status*

This booklet does not form part of the Bill. The official amendments proposed are those contained in the Bill. Any information set out in this booklet is not intended to affect the interpretation of the Bill if it is passed into law.

### *Copies of this booklet*

This booklet can also be accessed and downloaded at the following web addresses:

Department of Justice webpage: <http://www.info.gov.hk/justice>;  
and

與實施《基本法》第二十三條有關的政府網頁：  
<http://www.basiclaw23.gov.hk>。

我們歡迎讀者複製、轉載或轉發本冊子內的任何資料。

律政司  
法律草擬科  
2003年2月

Government webpage on Proposals to implement Article 23 of the  
Basic Law: <http://www.basiclaw23.gov.hk>.

Readers are free to reproduce or re-disseminate the information in this  
booklet.

Law Drafting Division  
Department of Justice  
February 2003

## 目錄

閱讀指引 .....	2
《刑事罪行條例》(第 200 章) 中受建議修訂影響的條文 .....	4
《官方機密條例》(第 521 章) 中受建議修訂影響的條文 .....	46
《社團條例》(第 151 章) 中受建議修訂影響的條文 .....	86
受建議修訂影響的其他條文 .....	138
附錄 .....	214

## Contents

Reading Guidelines .....	3
Provisions of the Crimes Ordinance (Cap. 200) affected by the proposed amendments .....	5
Provisions of the Official Secrets Ordinance (Cap. 521) affected by the proposed amendments .....	47
Provisions of the Societies Ordinance (Cap. 151) affected by the proposed amendments .....	87
Other provisions affected by the proposed amendments .....	139
Appendix .....	215

## 閱讀指引

### 1. 本冊子列出——

《刑事罪行條例》(第 200 章) 以及《官方機密條例》(第 521 章) 的受影響部分, 和《社團條例》(第 151 章) 的若干條文, 連同併入原文之內的建議修訂;

草案建議修訂的其他條例的現有條文, 連同併入原文之內的建議修訂;

對了解建議修訂有幫助的定義以及在草案中被參照提述的若干現有條文。

### 2. 以粗體印刷的字句是建議在現有條文中加入或作為替代的新字句。

### 3. 加上方括號和以斜體暗底印刷的字句是建議從現有條文中刪除的字句。如建議修訂獲通過, 這些字句便會消失。

### 4. 條文的旁註是列出有關建議修訂的草案條次。

### 5. 條文的條號或英文字母旁邊如註有“(已廢除)”一詞, 即表示該條在過去已遭廢除。

### 6. 條文標題的修訂習慣上是在編輯文稿時作出的。因此, 草案並不另設專項對標題原文作建議修訂。然而, 為方便讀者參考, 本冊子亦將關乎標題的建議編訂顯示出來。

### 7. 本冊子所摘錄的條文, 若干仍載有在香港特別行政區成立前所採用的詞彙(例如“總督”)。這些詞彙將在適當時間正式取替, 而目前則應按《釋義及通則條例》(第 1 章) 所訂的原則, 在符合《基本法》規定的新憲制安排下, 就切合國家對香港恢復行使主權的事實而作相應解釋。

## Reading Guidelines

### 1. This booklet sets out—

the affected Parts of the Crimes Ordinance (Cap. 200) and the Official Secrets Ordinance (Cap. 521) and selected provisions of the Societies Ordinance (Cap. 151), with the proposed amendments to the existing provisions incorporated;

existing provisions in other Ordinances that are proposed to be amended by the Bill, with the proposed amendments incorporated;

definitions and certain existing provisions cross-referred to in the Bill that are considered useful for an understanding of the proposed amendments.

### 2. Words printed in **bold** are proposed additions or substitutions in the text of existing provisions.

### 3. Square-bracketed words printed in *shaded italics* are proposed repeals of the text of existing provisions. Those words will be deleted from the text if the proposed amendments are enacted.

### 4. A marginal note to a provision refers to the clause of the Bill that sets out the relevant proposed amendment.

### 5. The annotation “(Repealed)” appearing next to the number or letter reference of a provision indicates that the provision was repealed previously.

### 6. As a matter of practice, amendments to section headings are made editorially. Textual amendments to section headings are therefore not specifically proposed in the Bill. For ease of reference, proposed editorial changes to section headings are also shown in this booklet.

### 7. Some excerpted provisions still contain expressions used before the establishment of the Hong Kong Special Administrative Region (e.g. “Governor”). Those expressions, to be formally replaced in due course, should be construed according to the principles set out in the Interpretation and General Clauses Ordinance (Cap. 1) in conformity with the new constitutional arrangement under the Basic Law, and with the resumption of Hong Kong’s sovereignty by the People’s Republic of China.

## 《刑事罪行條例》(第 200 章) 中受建議修訂影響的條文

### 第 I 部

#### [ 叛逆 ]

#### 叛國、顛覆及分裂國家

#### [2. 叛逆

(1) 任何人有下述行為，即屬叛逆——

- (a) 殺死或傷害女皇陛下，或導致女皇陛下身體受傷害，或禁錮女皇陛下，或限制女皇陛下的活動；
- (b) 意圖作出 (a) 段所述的作為，並以公開的作為表明該意圖；
- (c) 向女皇陛下發動戰爭——
  - (i) 意圖廢除女皇陛下作為聯合王國或女皇陛下其他領土的君主稱號、榮譽及皇室名稱；或
  - (ii) 旨在以武力或強制手段強迫女皇陛下改變其措施或意見，或旨在向國會或任何英國屬土的立法機關施加武力或強制力，或向其作出恐嚇或威嚇；
- (d) 鼓動外國人以武力入侵聯合王國或任何英國屬土；
- (e) 以任何方式協助與女皇陛下交戰的公敵；或
- (f) 與他人串謀作出 (a) 或 (c) 段所述的事情。

(2) 任何人叛逆，即屬犯罪，一經循公訴程序定罪，可處終身監禁。]

## Provisions of the Crimes Ordinance (Cap. 200) affected by the proposed amendments

### PART I

#### TREASON, SUBVERSION AND SECESSION

#### [2. Treason

(1) *A person commits treason if he—*

- (a) *kills, wounds or causes bodily harm to Her Majesty, or imprisons or restrains Her;*
- (b) *forms an intention to do any such act as is mentioned in paragraph (a) and manifests such intention by an overt act;*
- (c) *levies war against Her Majesty—*
  - (i) *with the intent to depose Her Majesty from the style, honour and royal name of the Crown of the United Kingdom or of any other of Her Majesty's dominions; or*
  - (ii) *in order by force or constraint to compel Her Majesty to change Her measures or counsels, or in order to put any force or constraint upon, or to intimidate or overawe, Parliament or the legislature of any British territory;*
- (d) *instigates any foreigner with force to invade the United Kingdom or any British territory;*
- (e) *assists by any means whatever any public enemy at war with Her Majesty; or*
- (f) *conspires with any other person to do anything mentioned in paragraph (a) or (c).*

(2) *Any person who commits treason shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for life.]*

## 2. 叛國

### (1) 任何<sup>1</sup>中國公民——

#### (a) 懷有——

- (i) 推翻中央人民政府；
  - (ii) 恐嚇中央人民政府；或
  - (iii) 脅逼中央人民政府改變其政策或措施，  
的意圖而加入與中華人民共和國交戰的外來武裝部隊或作為其中一分子；
- (b) 鼓動外來武裝部隊以武力入侵中華人民共和國；或
- (c) 懷有損害中華人民共和國在戰爭中的形勢的意圖，藉着作出任何作為而協助在該場戰爭中與中華人民共和國交戰的公敵，

即屬叛國。

(2) 任何中國公民叛國，即屬犯罪，一經循公訴程序定罪，可處終身監禁。

(3) 第(1)及(2)款亦就任何屬<sup>2</sup>香港永久性居民的中國公民在香港境外作出的第(1)款提述的任何作為而適用於他。

### (4) 就本條而言——

#### (a) “外來武裝部隊”指——

- (i) 屬於某<sup>3</sup>外國的武裝部隊；
- (ii) 受某外國的政府指示或控制的武裝部隊；或
- (iii) 並非以中華人民共和國為基地亦不屬於中華人民共和國的武裝部隊；

#### (b) “與中華人民共和國交戰的公敵”指——

<sup>1</sup> “中國公民”的定義，見附錄第1段。

<sup>2</sup> “香港永久性居民”的定義，見附錄第1段。

<sup>3</sup> “外國”的定義，見附錄第1段。

## 2. Treason

### (1) A <sup>1</sup>Chinese national commits treason if he—

#### (a) with intent to—

- (i) overthrow the Central People's Government;
  - (ii) intimidate the Central People's Government; or
  - (iii) compel the Central People's Government to change its policies or measures, joins or is a part of foreign armed forces at war with the People's Republic of China;
- (b) instigates foreign armed forces to invade the People's Republic of China with force; or
- (c) assists any public enemy at war with the People's Republic of China by doing any act with intent to prejudice the position of the People's Republic of China in the war.

(2) A Chinese national who commits treason is guilty of an offence and is liable on conviction on indictment to imprisonment for life.

(3) Subsections (1) and (2) apply also to any Chinese national who is a <sup>2</sup>Hong Kong permanent resident in relation to any act referred to in subsection (1) done by him outside Hong Kong.

### (4) For the purposes of this section—

#### (a) “foreign armed forces” means—

- (i) armed forces of a <sup>3</sup>foreign country;
- (ii) armed forces which are under the direction or control of the government of a foreign country; or
- (iii) armed forces which are not based in, and are not armed forces of, the People's Republic of China;

#### (b) “public enemy at war with the People's Republic of China” means—

<sup>1</sup> For the definition of “Chinese national”, see paragraph 1 in the Appendix.

<sup>2</sup> For the definition of “Hong Kong permanent resident”, see paragraph 1 in the Appendix.

<sup>3</sup> For the definition of “foreign country”, see paragraph 1 in the Appendix.

- (i) 與中華人民共和國交戰的某外國的政府；或
- (ii) 與中華人民共和國交戰的外來武裝部隊；
- (c) 當——
  - (i) 武裝部隊之間發生公開武裝衝突；或
  - (ii) 已作出公開宣戰，
 戰爭狀態即告存在，而“交戰”須據此解釋。
- (5) 隱匿叛國此項普通法罪行現予取消。
- (6) 收受代價而不檢控叛國此項普通法罪行現予取消。

## 4 2A. 顛覆

(1) 任何人藉使用嚴重危害中華人民共和國的穩定的武力或嚴重犯罪手段，或藉進行戰爭——

- (a) 廢止《中華人民共和國憲法》所確立的中華人民共和國根本制度；
- (b) 推翻中央人民政府；或
- (c) 恐嚇中央人民政府，

即屬顛覆。

(2) 任何人顛覆，即屬犯罪，一經循公訴程序定罪，可處終身監禁。

(3) 第(1)及(2)款亦就任何香港永久性居民在香港境外作出的第(1)款提述的任何作為而適用於他。

(4) 就本條而言——

- (a) “進行戰爭”一詞須參照第2(4)(c)條中“交戰”一詞的涵義而解釋；
- (b) “嚴重犯罪手段”指符合以下說明的任何作為——
  - (i) 危害任何人(作出該作為的人除外)的生命；

- (i) the government of a foreign country at war with the People's Republic of China; or
- (ii) foreign armed forces at war with the People's Republic of China;
- (c) a state of war exists when—
  - (i) open armed conflict between armed forces is occurring; or
  - (ii) war has been publicly declared, and “at war” is to be construed accordingly.

(5) The common law offence of misprision of treason is abolished.

(6) The common law offence of compounding treason is abolished.

## 2A. Subversion

(1) A person commits subversion if he—

- (a) disestablishes the basic system of the People's Republic of China as established by the Constitution of the People's Republic of China;
- (b) overthrows the Central People's Government; or
- (c) intimidates the Central People's Government,

by using force or serious criminal means that seriously endangers the stability of the People's Republic of China or by engaging in war.

(2) A person who commits subversion is guilty of an offence and is liable on conviction on indictment to imprisonment for life.

(3) Subsections (1) and (2) apply also to any Hong Kong permanent resident in relation to any act referred to in subsection (1) done by him outside Hong Kong.

(4) For the purposes of this section—

- (a) the expression “engaging in war” is to be construed by reference to the meaning of the expression “at war” in section 2(4)(c);
- (b) “serious criminal means” means any act which—
  - (i) endangers the life of a person other than the person who does the act;

- (ii) 導致任何人(作出該作為的人除外)受嚴重損傷;
  - (iii) 嚴重危害公眾人士或某部分公眾人士的健康或安全;
  - (iv) 導致對財產的嚴重破壞;或
  - (v) 嚴重干擾電子系統或基要服務、設施或系統(不論屬於公眾或私人)或中斷其運作,
- 而且——
- (vi) 是在香港作出並屬香港法律所訂罪行的;或
  - (vii) (A) 是在香港境外任何地方作出;
  - (B) 屬該地方的法律所訂罪行;及
  - (C) 假使在香港作出便會屬香港法律所訂罪行的。

## 4 2B. 分裂國家

- (1) 任何人藉——
  - (a) 使用嚴重危害中華人民共和國領土完整的武力或嚴重犯罪手段;或
  - (b) 進行戰爭,

而將中華人民共和國的某部分自中華人民共和國的主權分離出去,即屬分裂國家。

(2) 任何人分裂國家,即屬犯罪,一經循公訴程序定罪,可處終身監禁。

(3) 第(1)及(2)款亦就任何香港永久性居民在香港境外作出的第(1)款提述的任何作為而適用於他。

- (4) 就本條而言——
  - (a) “進行戰爭”一詞須參照第2(4)(c)條中“交戰”一詞的涵義而解釋;
  - (b) “嚴重犯罪手段”的涵義與該詞在第2A(4)(b)條中的涵義相同。

- (ii) causes serious injury to a person other than the person who does the act;
  - (iii) seriously endangers the health or safety of the public or a section of the public;
  - (iv) causes serious damage to property; or
  - (v) seriously interferes with or disrupts an electronic system or an essential service, facility or system (whether public or private),
- and—
- (vi) is done in Hong Kong and is an offence under the law of Hong Kong; or
  - (vii) (A) is done in any place outside Hong Kong;
  - (B) is an offence under the law of that place; and
  - (C) would, if done in Hong Kong, be an offence under the law of Hong Kong.

## 2B. Secession

4

(1) A person commits secession if he withdraws any part of the People's Republic of China from its sovereignty by—

- (a) using force or serious criminal means that seriously endangers the territorial integrity of the People's Republic of China; or
- (b) engaging in war.

(2) A person who commits secession is guilty of an offence and is liable on conviction on indictment to imprisonment for life.

(3) Subsections (1) and (2) apply also to any Hong Kong permanent resident in relation to any act referred to in subsection (1) done by him outside Hong Kong.

- (4) For the purposes of this section—
  - (a) the expression “engaging in war” is to be construed by reference to the meaning of the expression “at war” in section 2(4)(c);
  - (b) “serious criminal means” has the same meaning as in section 2A(4)(b).

## 2C. 第 159A 及 159G 條適用於串謀或企圖在香港境外作出若干作為

(1) 如任何人在香港與任何其他人士（不論該其他人士在香港或其他地方）達成作出某項行為的協議，而該項協議如按照他們的意圖得以落實，該項行為必會構成或涉及（由協議的一方或多於一方）在香港境外作出的假使在香港作出便會屬第 2A（顛覆）或 2B（分裂國家）條所訂罪行的作為，則——

(a) <sup>4</sup> 第 159A 條就該項協議而適用於該人，猶如該作為是該條所指的罪行；及

(b) 第 159B 至 159E 條據此而具有效力。

(2) 如任何人在香港作出某項作為（“前者”），而前者已超乎只屬在香港境外作出的假使在香港作出便會屬第 2A（顛覆）或 2B（分裂國家）條所訂罪行的作為（“後者”）的預備作為，而他是懷有作出後者的意圖而作出前者的，則——

(a) <sup>5</sup> 第 159G 條就前者而適用於該人，猶如後者是該條所適用的罪行；及

(b) 第 159H 至 159K 條據此而具有效力。

## 2D. 煽惑叛國、顛覆或分裂國家只構成第 9A 條所訂罪行

煽惑他人犯第 2（叛國）、2A（顛覆）或 2B（分裂國家）條只構成第 9A 條（煽動叛亂）所訂罪行。

<sup>4</sup> 《刑事罪行條例》(第 200 章) 第 159A 條，見附錄第 5 段。

<sup>5</sup> 《刑事罪行條例》(第 200 章) 第 159G 條，見附錄第 6 段。

## 2C. Sections 159A and 159G apply to conspiracy or attempt to do certain acts outside Hong Kong

(1) If a person agrees, in Hong Kong, with any other person (whether such other person is in Hong Kong or elsewhere) that a course of conduct shall be pursued which, if the agreement is carried out in accordance with their intentions, will necessarily amount to or involve the doing (by one or more of the parties to the agreement), outside Hong Kong, of any act which would, if done in Hong Kong, be an offence under section 2A (subversion) or 2B (secession)—

(a) <sup>4</sup> section 159A applies to the person in relation to the agreement as if the act was an offence within the meaning of that section; and

(b) sections 159B to 159E have effect accordingly.

(2) If a person does, in Hong Kong, an act (“former”) that is more than merely preparatory to the doing, outside Hong Kong, of any act (“latter”) which would, if done in Hong Kong, be an offence under section 2A (subversion) or 2B (secession) and he does the former with intent to do the latter—

(a) <sup>5</sup> section 159G applies to the person in relation to the former as if the latter was an offence to which that section applies; and

(b) sections 159H to 159K have effect accordingly.

## 2D. Inciting treason, subversion or secession is an offence only under section 9A

Inciting others to commit an offence under section 2 (treason), 2A (subversion) or 2B (secession) is an offence only under section 9A (sedition).

<sup>4</sup> For section 159A of the Crimes Ordinance (Cap. 200), see paragraph 5 in the Appendix.

<sup>5</sup> For section 159G of the Crimes Ordinance (Cap. 200), see paragraph 6 in the Appendix.

### [3. 叛逆性質的罪行

- (1) 任何人意圖達到以下任何目的，即——
- (a) 廢除女皇陛下作為聯合王國或女皇陛下其他領土的君主稱號、榮譽及皇室名稱；
  - (b) 在聯合王國或任何英國屬土境內向女皇陛下發動戰爭，旨在以武力或強制手段強迫女皇陛下改變其措施或意見，或旨在向國會或任何英國屬土的立法機關施加武力或強制力，或向其作出恐嚇或威嚇；或
  - (c) 鼓動外國人以武力入侵聯合王國或任何英國屬土，並以任何公開的作為或以發布任何印刷品或文件表明該意圖，即屬犯罪，一經循公訴程序定罪，可處終身監禁。
- (2) 就根據本條提出的控罪而言，即使被控人經證實的作為足以構成第 2 條所指的叛逆，亦不得以此作為免責辯護；但被裁定本條所訂罪行罪名成立或罪名不成立的人，以後不得根據相同事實就第 2 條所指的叛逆被檢控。]

### [4. 對叛逆等的審訊的限制

- (1) 除非檢控是在犯罪後 3 年內開始進行，否則任何人不得就第 2 或 3 條所訂的罪行被檢控。
- (2) 若案件中所指稱公開的作為是殺死女皇陛下或直接企圖危害女皇陛下的生命，則本條對該案並不適用。
- (3) 叛逆或隱匿叛逆的審訊程序，與審訊謀殺的程序相同。]

### [3. Treasonable offences

- (1) Any person who forms an intention to effect any of the following purposes, that is to say—
- (a) to depose Her Majesty from the style, honour and royal name of the Crown of the United Kingdom or of any other of Her Majesty's dominions;
  - (b) to levy war against Her Majesty within the United Kingdom or any British territory in order by force or constraint to compel Her Majesty to change Her measures or counsels, or in order to put any force or constraint upon, or to intimidate or overawe, Parliament or the legislature of any British territory; or
  - (c) to instigate any foreigner with force to invade the United Kingdom or any British territory,
- and manifests such intention by an overt act or by publishing any printing or writing, shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for life.
- (2) It shall be no defence to a charge under this section that any act proved against the person charged amounts to treason under section 2; but no person convicted or acquitted of an offence under this section shall afterwards be prosecuted for treason under section 2 upon the same facts.]

### [4. Limitations as to trial for treason, etc.

- (1) A person shall not be prosecuted for any offence under section 2 or 3 unless the prosecution is commenced within 3 years after the offence is committed.
- (2) This section does not apply to cases in which the overt act alleged is the killing of Her Majesty, or a direct attempt to endanger the life of Her Majesty.
- (3) The procedure on trials for treason or misprision of treason shall be the same as the procedure on trials for murder.]

[5. 襲擊女皇

任何人故意——

- (a) 在女皇陛下附近拿出或有任何武器或具破壞性或危險性的物品，意圖用以傷害女皇陛下；
- (b) (i) 用任何武器向女皇陛下或其附近發射，或以武器指向、瞄準或對著女皇陛下或其附近；
- (ii) 導致任何爆炸品在女皇陛下附近爆炸；
- (iii) 襲擊女皇陛下；或
- (iv) 將任何物品投向或投中女皇陛下，

意圖使女皇陛下受驚或受傷，或意圖激使社會安寧遭破壞，或因而相當可能會導致社會安寧遭破壞，即屬犯罪，一經循公訴程序定罪，可處監禁 7 年。]

第 II 部

其他 [反英皇] 危害國家的安全罪行

5

6. 煽惑叛變

任何人明知而企圖——

- (a) 勸誘英軍成員放棄職責及放棄向女皇陛下效忠；或
- (b) 煽惑上述任何人——
  - (i) 作出叛變的作為或作出叛逆或叛變性質的作為；或
  - (ii) 召開或試圖召開叛變性質的集會，

即屬犯罪，一經循公訴程序定罪，可處終身監禁。

[5. Assaults on the Queen

Any person who wilfully—

- (a) produces or has near Her Majesty any arms or destructive or dangerous thing with intent to use the same to injure Her Majesty;
- (b) with intent to alarm or to injure Her Majesty, or to provoke a breach of the peace or whereby a breach of the peace is likely to be caused—
  - (i) discharges, or points, aims or presents any arms at or near Her Majesty;
  - (ii) causes any explosive substance to explode near Her Majesty;
  - (iii) assaults Her Majesty; or
  - (iv) throws anything at or upon Her Majesty,

shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 7 years.]

PART II

OTHER OFFENCES [AGAINST THE CROWN] ENDANGERING  
SECURITY OF THE STATE

5

6. Incitement to mutiny

Any person who knowingly attempts—

- (a) to seduce any member of Her Majesty's forces from his duty and allegiance to Her Majesty; or
- (b) to incite any such person—
  - (i) to commit an act of mutiny or any traitorous or mutinous act; or
  - (ii) to make or endeavour to make a mutinous assembly,

shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for life.

## 7. 煽惑離叛

(1) 任何人明知而企圖勸誘——

- (a) 英軍成員；
- (b) (已廢除)
- (ba) 政府飛行服務隊的成員；
- (c) 警務人員；或
- (d) 皇家香港輔助警察隊的成員，

放棄職責或放棄向女皇陛下效忠，即屬犯罪。

(2) 任何人——

- (a) 知道第(1)款所述的成員、官員或人員行將棄職或擅離職守，仍協助該人作該行動；或
- (b) 知道該成員、官員或人員是棄職者或擅離職守者，仍藏匿該人、協助該人藏匿或協助將該人從羈押中救出，

即屬犯罪。

(3) 任何人意圖犯第(1)款所訂罪行，或意圖協助、榘唆、慫使或促致犯第(1)款所訂罪行，而管有某種性質的文件，且將該種性質的文件的文本派發予第(1)款所述的成員、官員或人員是會構成第(1)款所述罪行的，即屬犯罪。

(4) 任何人犯本條所訂罪行，一經循公訴程序定罪，可處罰款 \$5,000 及監禁 2 年。

(5) 如某人由某法庭或在某法庭席前被裁定犯本條所訂罪行，該法庭可命令毀滅或按照命令所指明的其他方式處理與該罪行有關的文件；但在提出上訴的期限屆滿前不得毀滅任何文件，而如有人提出上訴，則在上訴獲最終裁定或被放棄前，不得毀滅任何文件。

(6) 未經律政司同意，不得就本條所訂罪行提出檢控。

## 7. Incitement to disaffection

(1) Any person who knowingly attempts to seduce—

- (a) any member of Her Majesty's forces;
- (b) (*Repealed*)
- (ba) any member of the Government Flying Service;
- (c) any police officer; or
- (d) any member of the Royal Hong Kong Auxiliary Police Force,

from his duty or allegiance to Her Majesty shall be guilty of an offence.

(2) Any person who—

- (a) knowing that any member or officer mentioned in subsection (1) is about to desert or absent himself without leave, assists him in so doing; or
- (b) knowing such member or officer to be a deserter or absentee without leave, conceals him or assists him in concealing himself or assists in his rescue from custody,

shall be guilty of an offence.

(3) Any person who, with intent to commit or to aid, abet, counsel or procure the commission of an offence under subsection (1), has in his possession any document of such a nature that the dissemination of copies thereof among the members or officers mentioned in subsection (1) would constitute such an offence, shall be guilty of an offence.

(4) Any person guilty of an offence under this section shall be liable on conviction upon indictment to a fine of \$5,000 and to imprisonment for 2 years.

(5) The court by or before which a person is convicted of an offence under this section may order any documents connected with the offence to be destroyed or dealt with in such other manner as may be specified in the order; but no documents shall be destroyed before the expiration of the period within which an appeal may be lodged, and if an appeal is lodged no document shall be destroyed until after the appeal has been finally determined or abandoned.

(6) No prosecution for an offence under this section shall be instituted without the consent of the Attorney General.

## 8. 搜查及防止發生第 7 條所訂罪行的權力

(1) 如法官根據經宣誓而作的告發，信納有合理理由懷疑有人犯第 7 條所訂罪行，並信納會在告發所指明的處所或地方發現犯該罪證據，可批出搜查令，授權一名不低於督察職級的警務人員，連同任何其他警務人員——

- (a) 於搜查令簽發日期起計 1 個月內隨時進入該處所或地方，在有需要時並可使用武力進入；
- (b) 搜查該處所或地方，及搜查在場所發現的任何人；及
- (c) 檢取在該處所或地方或在上述任何人身上發現，而該警務人員有合理理由懷疑是屬犯該罪行證據的任何物品。

(2) 依據第 (1) 款批出的搜查令對任何女子作搜查，只可由另一名女子進行。

(3) 儘管有第 (1) 款的規定——

- (a) 該款所述的搜查令，只可就懷疑在提起告發前 3 個月內所犯的罪行批出；
- (b) 如根據第 (1) 款批出的搜查令已就某處所執行，則進行或指示進行搜查的警務人員——
  - (i) 須通知佔用人已進行搜查，並須應要求向該佔用人提供一份從該處所移走的文件或其他物件的列表；及

## 8. Power to search and prevent offences under section 7

(1) If a judge is satisfied by information on oath that there is reasonable ground for suspecting that an offence under section 7 has been committed, and that evidence of the commission thereof is to be found at any premises or place specified in the information, he may grant a search warrant authorizing a police officer not below the rank of inspector, together with any other police officers—

- (a) to enter the premises or place at any time within 1 month from the date of the warrant, if necessary by force;
- (b) to search the premises or place and any person found therein; and
- (c) to seize anything found on the premises or place or on any such person which the officer has reasonable ground for suspecting to be evidence of the commission of such an offence.

(2) A woman shall not be searched, in pursuance of a warrant granted under subsection (1), except by a woman.

(3) Notwithstanding anything contained in subsection (1)—

- (a) a warrant shall only be granted under subsection (1) in respect of an offence suspected to have been committed within the 3 months prior to the laying of the information thereof;
- (b) if a warrant under subsection (1) has been executed on any premises, the police officer who has conducted or directed the search shall—
  - (i) notify the occupier that the search has taken place, and supply him on request with a list of any documents or other objects which have been removed from the premises; and

- (ii) 如曾從其他人身上移走任何文件，須向該人提供一份該等文件的列表；
- (c) 根據第(1)款檢取的物品，可保留一段不超過1個月的期間，而倘在該段期間內已開始進行第7條所訂罪行的法律程序，則可保留至該等法律程序終結為止；及
- (d) 《刑事訴訟程序條例》(第221章)第102條(該條就處置與罪行有關的財產作出規定)適用於根據本條已歸警方管有的財產，猶如該條適用於在該條所述的情況下歸警方管有的財產一樣。

附表  
第13段

#### [9. 煽動意圖

##### (1) 煽動意圖是指意圖——

- (a) 引起憎恨或藐視女皇陛下本人、其世襲繼承人或其他繼承人，或香港政府，或女皇陛下領土其他部分的政府，或依法成立而受女皇陛下保護的領域的政府，或激起對其離叛；或
- (b) 激起女皇陛下子民或香港居民企圖不循合法途徑促使改變其他在香港的依法制定的事項；或
- (c) 引起對香港司法的憎恨、藐視或激起對其離叛；或
- (d) 引起女皇陛下子民間或香港居民間的不滿或離叛；或
- (e) 引起或加深香港不同階層居民間的惡感及敵意；或

- (ii) where any documents have been removed from any other person, supply that person with a list of such documents;
- (c) anything seized under subsection (1) may be retained for a period not exceeding 1 month, or if within that period proceedings are commenced for an offence under section 7, until the conclusion of those proceedings; and
- (d) section 102 of the Criminal Procedure Ordinance (Cap. 221) (which makes provision for the disposal of property connected with offences) shall apply to property which has come into the possession of the police under this section as it applies to property which has come into the possession of the police in the circumstances mentioned in that section.

#### [9. Seditious intention

##### (1) A seditious intention is an intention—

- (a) to bring into hatred or contempt or to excite disaffection against the person of Her Majesty, or Her Heirs or Successors, or against the Government of Hong Kong, or the government of any other part of Her Majesty's dominions or of any territory under Her Majesty's protection as by law established; or
- (b) to excite Her Majesty's subjects or inhabitants of Hong Kong to attempt to procure the alteration, otherwise than by lawful means, of any other matter in Hong Kong as by law established; or
- (c) to bring into hatred or contempt or to excite disaffection against the administration of justice in Hong Kong; or
- (d) to raise discontent or disaffection amongst Her Majesty's subjects or inhabitants of Hong Kong; or
- (e) to promote feelings of ill-will and enmity between different classes of the population of Hong Kong; or

Schedule,  
para. 13

- (f) 煽惑他人使用暴力；或
- (g) 慫使他人不守法或不服從合法命令。

(2) 任何作為、言論或刊物，不會僅因其有下列意圖而具有煽動性——

- (a) 顯示女皇陛下在其任何措施上被誤導或犯錯誤；或
- (b) 指出依法成立的香港政府或香港憲制的錯誤或缺點，或法例或司法的錯誤或缺點，而目的在於矯正該等錯誤或缺點；或
- (c) 慫恿女皇陛下子民或香港居民嘗試循合法途徑促使改變在香港的依法制定的事項；或
- (d) 指出在香港不同階層居民間產生或有傾向產生惡感及敵意的事項，而目的在於將其消除。

(3) (已廢除)]

## 6 9A. 煽動叛亂

(1) 在不抵觸第 9D 條的條文下，任何人——

- (a) 煽惑他人犯第 2 (叛國)、2A (顛覆) 或 2B (分裂國家) 條所訂罪行；或
- (b) 煽惑他人在香港或其他地方進行會嚴重危害中華人民共和國的穩定的公眾暴亂，

即屬煽動叛亂。

(2) 任何人——

- (a) 藉作出第 (1)(a) 款提述的作為而煽動叛亂，即屬犯罪，一經循公訴程序定罪，可處終身監禁；

- (f) *to incite persons to violence; or*
- (g) *to counsel disobedience to law or to any lawful order.*

(2) *An act, speech or publication is not seditious by reason only that it intends—*

- (a) *to show that Her Majesty has been misled or mistaken in any of Her measures; or*
- (b) *to point out errors or defects in the government or constitution of Hong Kong as by law established or in legislation or in the administration of justice with a view to the remedying of such errors or defects; or*
- (c) *to persuade Her Majesty's subjects or inhabitants of Hong Kong to attempt to procure by lawful means the alteration of any matter in Hong Kong as by law established; or*
- (d) *to point out, with a view to their removal, any matters which are producing or have a tendency to produce feelings of ill-will and enmity between different classes of the population of Hong Kong.*

(3) (Repealed)]

## 9A. Sedition

(1) A person commits sedition if, subject to section 9D, he—

- (a) **incites others to commit an offence under section 2 (treason), 2A (subversion) or 2B (secession); or**
- (b) **incites others to engage, in Hong Kong or elsewhere, in violent public disorder that would seriously endanger the stability of the People's Republic of China.**

(2) A person who—

- (a) **commits sedition by doing an act referred to in subsection (1)(a) is guilty of an offence and is liable on conviction on indictment to imprisonment for life;**

(b) 藉作出第 (1)(b) 款提述的作為而煽動叛亂，即屬犯罪，一經循公訴程序定罪，可處罰款及監禁 7 年。

## 6 9B. 煽惑煽動叛亂並非罪行

煽惑他人犯第 9A 條 (煽動叛亂) 所訂罪行並非罪行。

## 6 9C. 處理煽動性刊物

(1) 在本條中，“煽動性刊物”指相當可能導致犯第 2 (叛國)、2A (顛覆) 或 2B (分裂國家) 條所訂罪行的<sup>6</sup>刊物。

(2) 在不抵觸第 9D 條的條文下，任何人懷有藉着任何煽動性刊物而煽惑他人犯第 2 (叛國)、2A (顛覆) 或 2B (分裂國家) 條所訂罪行的意圖，而——

- (a) 發表、售賣、要約售賣、分發或展示該煽動性刊物；
- (b) 印製或複製該煽動性刊物；或
- (c) 輸入或輸出該煽動性刊物，

即屬犯罪，一經循公訴程序定罪，可處罰款 \$500,000 及監禁 7 年。

## 6 9D. 若干作為並非煽惑

(1) 為施行第 9A 條，任何人不得僅因他作出訂明作為，而被視為煽惑他人——

- (a) 犯第 2 (叛國)、2A (顛覆) 或 2B (分裂國家) 條所訂罪行；或
- (b) 進行會嚴重危害中華人民共和國的穩定的公眾暴亂。

<sup>6</sup> “刊物”的定義，見附錄第 1 段。

(b) commits sedition by doing an act referred to in subsection (1)(b) is guilty of an offence and is liable on conviction on indictment to a fine and to imprisonment for 7 years.

## 9B. Inciting sedition not an offence

Inciting others to commit an offence under section 9A (sedition) is not an offence.

## 9C. Handling seditious publication

(1) In this section, “seditious publication” means a publication that is likely to cause the commission of an offence under section 2 (treason), 2A (subversion) or 2B (secession).

(2) Subject to section 9D, a person who—

- (a) publishes, sells, offers for sale, distributes or displays any seditious publication;
- (b) prints or reproduces any seditious publication; or
- (c) imports or exports any seditious publication,

with intent to incite others, by means of the publication, to commit an offence under section 2 (treason), 2A (subversion) or 2B (secession) is guilty of an offence and is liable on conviction on indictment to a fine of \$500,000 and to imprisonment for 7 years.

## 9D. Certain acts are not incitement

(1) For the purposes of section 9A, a person shall not, by reason only that he does a prescribed act, be regarded as inciting others to—

- (a) commit an offence under section 2 (treason), 2A (subversion) or 2B (secession); or
- (b) engage in violent public disorder that would seriously endanger the stability of the People’s Republic of China.

<sup>6</sup> For the definition of “publication”, see paragraph 1 in the Appendix.

(2) 為施行第 9C 條，任何人不得僅因他懷有只作出訂明作為的意圖而作出第 9C(2)(a)、(b) 或 (c) 條所提述的任何作為（“後者”），而被視為懷有煽惑他人犯第 2 (叛國)、2A (顛覆) 或 2B (分裂國家) 條所訂罪行的意圖而作出後者。

(3) 在本條中，“訂明作為”指——

- (a) 顯示中央人民政府或香港特別行政區政府在其任何措施上被誤導或犯錯誤；
- (b) 以矯正中華人民共和國或香港特別行政區的——
  - (i) 管治或憲制；
  - (ii) 法律；或
  - (iii) 司法，中的錯誤或缺失為出發點，指出該等錯誤或缺失；
- (c) 慫恿中華人民共和國或香港特別行政區的公眾人士嘗試以合法手段，促致改變中華人民共和國或香港特別行政區（視屬何情況而定）的法律所規定的任何事宜；或
- (d) 以消除任何在或傾向在中華人民共和國或香港特別行政區人口中不同組別之間製造怨恨或敵意的任何事宜為出發點，指出該事宜。

(2) For the purposes of section 9C, a person shall not, by reason only that he does any act referred to in section 9C(2)(a), (b) or (c) with intent only to do a prescribed act, be regarded as doing the first-mentioned act with intent to incite others to commit an offence under section 2 (treason), 2A (subversion) or 2B (secession).

(3) In this section, “prescribed act” means—

- (a) showing that the Central People’s Government or the Government of the Hong Kong Special Administrative Region has been misled or mistaken in any of its measures;
- (b) pointing out errors or defects—
  - (i) in the government or constitution of;
  - (ii) in the laws of; or
  - (iii) in the administration of justice in, the People’s Republic of China or the Hong Kong Special Administrative Region with a view to the remedying of such errors or defects;
- (c) persuading members of the public in the People’s Republic of China or in the Hong Kong Special Administrative Region to attempt to procure, by lawful means, the alteration of any matter provided for in the law of the People’s Republic of China or of the Hong Kong Special Administrative Region, as the case may be; or
- (d) pointing out any matter which is producing or has a tendency to produce feelings of ill-will or enmity between different classes of the population of the People’s Republic of China or of the Hong Kong Special Administrative Region with a view to the removal of such matter.

## [10. 罪行

### (1) 任何人——

- (a) 作出、企圖作出、準備作出或與任何人串謀作出煽動意圖的作為；或
- (b) 發表煽動文字；或
- (c) 刊印、發布、出售、要約出售、分發、展示或複製煽動刊物；或
- (d) 輸入煽動刊物（其本人無理由相信該刊物屬煽動刊物則除外），

即屬犯罪，第一次定罪可處罰款 \$5,000 及監禁 2 年，其後定罪可處監禁 3 年；煽動刊物則予以沒收並歸予官方。

(2) 任何人無合法辯解而管有煽動刊物，即屬犯罪，第一次定罪可處罰款 \$2,000 及監禁 1 年，其後定罪可處監禁 2 年；該等刊物則予以沒收並歸予官方。

(3) 凡任何人就煽動刊物而被根據第 (1) 或 (2) 款定罪後，法庭可命令檢取及沒收由下列的人管有的任何該等煽動刊物文本——

- (a) 上述被定罪的人；或
- (b) 命令內載明名稱的其他人（如法庭根據經宣誓後作出的證供，信納該人管有的刊物文本是供上述被定罪的人使用的）。

(4) 根據第 (3) 款檢取的刊物文本，須按照法庭指示處置；但在提出上訴的期限屆滿前不得毀滅該等刊物文本，或如有人提出上訴，則在上訴獲最終裁定或被放棄前，不得毀滅該等刊物文本。

## [10. Offences

### (1) Any person who—

- (a) does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act with a seditious intention; or
- (b) utters any seditious words; or
- (c) prints, publishes, sells, offers for sale, distributes, displays or reproduces any seditious publication; or
- (d) imports any seditious publication, unless he has no reason to believe that it is seditious,

shall be guilty of an offence and shall be liable for a first offence to a fine of \$5,000 and to imprisonment for 2 years, and for a subsequent offence to imprisonment for 3 years; and any seditious publication shall be forfeited to the Crown.

(2) Any person who without lawful excuse has in his possession any seditious publication shall be guilty of an offence and shall be liable for a first offence to a fine of \$2,000 and to imprisonment for 1 year, and for a subsequent offence to imprisonment for 2 years; and such publication shall be forfeited to the Crown.

(3) Where any person has been convicted of an offence under subsection (1) or (2) in respect of any seditious publication, the court may order the seizure and forfeiture of any copies of the seditious publication in the possession of—

- (a) the person convicted; or
- (b) any other person named in the order, if the court is satisfied by evidence on oath that the copies are in the possession of the other person for the use of the person convicted.

(4) Any copies seized under subsection (3) shall be disposed of as the court may direct; but no copies shall be destroyed until the expiration of the period within which an appeal may be lodged or, if an appeal is lodged, until the appeal has been finally determined or abandoned.

(5) 在本條中——  
“煽動文字” (seditious words) 指具煽動意圖的文字；  
“煽動刊物” (seditious publication) 指具煽動意圖的刊物。]

附表  
第 13 段

### [11. 法律程序

(1) 就第 10 條所訂罪行提出的檢控，只可於犯罪後 6 個月內開始進行。

(2) 未經律政司書面同意，不得就第 10 條所訂罪行提出檢控。]

### 12. 證據

附表  
第 14 段

任何人不得因一名證人所作的未經佐證證供而被裁定犯第 [10] 9A 或 9C 條所訂的罪行。

### 13. 搜查令

附表  
第 15 段

如裁判官根據經宣誓而作的告發，信納有合理理由相信有人已經或行將犯第 [10] 9A 或 9C 條所訂罪行，可批出搜查令，授權警務人員，在所需協助下及在有需要時使用武力下進入搜查令所載明的處所或地方，及搜查該處所或地方和每名在場所發現的人，並檢取在該處所或地方發現而該警務人員有合理理由懷疑是屬犯第 [10] 9A 或 9C 條所訂罪行證據的任何物品。

附表  
第 15 段

(5) In this section—  
“seditious publication” (煽動刊物) means a publication having a seditious intention;  
“seditious words” (煽動文字) means words having a seditious intention.]

### [11. Legal proceedings

(1) No prosecution for an offence under section 10 shall be begun except within 6 months after the offence is committed.

(2) No prosecution for an offence under section 10 shall be instituted without the written consent of the Attorney General.]

### 12. Evidence

No person shall be convicted for an offence under section [10] 9A or 9C on the uncorroborated testimony of one witness.

### 13. Search warrant

If a magistrate is satisfied by information on oath that there is reasonable cause to believe that an offence under section [10] 9A or 9C has been or is about to be committed he may grant a search warrant authorizing any police officer to enter any premises or place named in the warrant, with such assistance as may be necessary, and if necessary by force, and to search the premises or place and every person found therein, and to seize anything found on the premises or place which the officer has reasonable ground for suspecting to be evidence of an offence under section [10] 9A or 9C.

Schedule,  
para. 13

Schedule,  
para. 14

Schedule,  
para. 15

Schedule,  
para. 15

[14. 移走煽動刊物的權力

- (1) 任何警務人員或公職人員均可——
- (a) 進入任何處所或地方；
  - (b) 截停及登上任何車輛、電車、火車或船隻，並從該處移走或清除任何煽動刊物。
- (2) 任何警務人員或公職人員均可——
- (a) 破啟其根據本條獲授權進入的處所或地方的外門或內門；
  - (b) 以武力驅逐或移走妨礙其根據本條獲授權行使移走或清除權力的人或物品；
  - (c) 扣留任何車輛、電車、火車或船隻，直至從該處將煽動刊物全部移走或清除為止；
  - (d) 在移走或清除煽動刊物時，將任何人驅離任何車輛、電車、火車或船隻。
- (3) 儘管有第(1)(a)款的規定，如有關的煽動刊物並非從公眾地方可見，則只有在符合下列情況下，方可行使該款所賦予的權力——
- (a) 事先取得有關處所或地方佔用人的准許；或
  - (b) 根據及按照裁判官為此目的而發出的手令。]

[15. 為犯死刑罪而作的非法誓言

- 任何人——
- (a) 為任何誓言或屬誓言性質的協定而監誓或在場並同意有關監誓，而該等誓言或屬誓言性質的協定其意是約束作出該等誓言或協定的人必須犯謀殺、叛逆或有暴力的海盜行為的罪行的；或
  - (b) 並非被強迫而作出上述誓言或協定，即屬犯罪，一經循公訴程序定罪，可處終身監禁。]

[14. Power to remove seditious publications

- (1) Any police officer or public officer may—
- (a) enter any premises or place;
  - (b) stop and board any vehicle, tramcar, train or vessel,
- and remove therefrom or obliterate any seditious publication.
- (2) Any police officer or public officer may—
- (a) break open any outer or inner door of any premises or place which he is empowered by this section to enter;
  - (b) remove by force any person or thing obstructing any removal or obliteration which he is empowered by this section to make;
  - (c) detain any vehicle, tramcar, train or vessel until any seditious publication has been removed or obliterated therefrom;
  - (d) remove any person from any vehicle, tramcar, train or vessel while any seditious publication is removed or obliterated.
- (3) Notwithstanding anything contained in subsection (1)(a), the powers conferred thereby shall, if the seditious publication is not visible from a public place, only be exercised—
- (a) with the prior permission of the occupier of the premises or place; or
  - (b) under and in accordance with a warrant issued by a magistrate for such purpose.]

[15. Unlawful oaths to commit capital offences

- Any person who—
- (a) administers, or is present at and consents to the administering of, any oath or engagement in the nature of an oath, purporting to bind the person who takes it to commit an offence of murder, treason or piracy with violence; or
  - (b) takes any such oath or engagement, not being compelled to do so,
- shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for life.]

[16. 為犯罪而作的其他非法誓言

任何人——

- (a) 為任何誓言或屬誓言性質的協定而監誓或在場並同意有關監誓，而該等誓言或屬誓言性質的協定其意是約束作出該等誓言或協定的人必須作出下列任何作為——
- (i) 參加任何叛變或煽動性質的計劃；
  - (ii) 犯任何非可懲處死刑的罪行；
  - (iii) 激使社會安寧遭破壞；
  - (iv) 隸屬任何為作出第 (i)、(ii) 或 (iii) 節所述的作為而組成的任何聯會或社團；
  - (v) 服從並非依法設立的委員會或團體的命令或指揮，或服從法律上無此權限的領導者或指揮者或其他人的命令或指揮；
  - (vi) 不告發或不提出證據指證任何有關連者或其他人；
  - (vii) 不揭發或透露任何非法聯會或社團或任何已作出或將會作出的非法作為、由其本人或其他人監誓或作出或向其本人或向其他人提出的非法誓言或協定，或該等誓言或協定的意義；或

(b) 並非被強迫而作出上述誓言或協定，  
即屬犯罪，一經循公訴程序定罪，可處監禁 7 年。]

[17. 被強迫作非法誓言

就根據第 15 或 16 條提出的控罪而言，即使被控人被強迫作出第 15 或 16 條所述的誓言或協定，亦不得以此作為免責辯護，除非——

[16. Other unlawful oaths to commit offences

Any person who—

- (a) administers, or is present at and consents to the administering of, any oath or engagement in the nature of an oath, purporting to bind the person who takes it to act in any of the following ways, that is to say—
- (i) to engage in any mutinous or seditious enterprise;
  - (ii) to commit any offence not punishable with death;
  - (iii) to provoke a breach of the peace;
  - (iv) to be of any association or society, formed for the purpose of doing any act mentioned in sub-paragraph (i), (ii) or (iii);
  - (v) to obey the orders or commands of any committee or body of men not lawfully constituted, or of any leader or commander or other person not having authority by law for that purpose;
  - (vi) not to inform or give evidence against any associate or other person;
  - (vii) not to reveal or discover any unlawful association or society or any illegal act done or to be done, or any illegal oath or engagement that may have been administered or tendered to or taken by himself or any other person, or the import of any such oath or engagement; or
- (b) takes any such oath or engagement, not being compelled to do so,

shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 7 years.]

[17. Compulsion in taking unlawful oaths

It shall be no defence to a charge under section 15 or 16 that the person charged was compelled to take any oath or engagement mentioned therein, unless—

- (a) 在作出該誓言或協定後 14 天內；或
- (b) 如被強行阻止或受疾病所阻，在阻礙消失後 14 天內，

該被控人——

- (i) 藉在裁判官席前宣誓而作的告發；或
- (ii) 如實際服役於英軍，則藉該項告發或給予其指揮官員的通知，

聲明其就該事項知道的一切事情，包括為誓言或協定而監誓或作出誓言或協定的時間、地點和在场的人。]

## 18. 非法操練

(1) 任何人——

- (a) 未經總督或警務處處長准許而訓練或操練他人使用武器或進行軍事練習或變陣演習；或
- (b) 出席未經總督或警務處處長准許舉行的聚會，而該聚會旨在訓練或操練他人使用武器或進行軍事練習或變陣演習，

即屬犯罪，一經循公訴程序定罪，可處監禁 7 年。

(2) 任何人——

- (a) 在第 (1) 款所述的聚會中接受訓練或操練使用武器或進行軍事練習或變陣演習；或
- (b) 出席任何該等聚會，旨在接受該等訓練或操練，

即屬犯罪，一經循公訴程序定罪，可處監禁 2 年。

(a) *within 14 days after taking it; or*  
(b) *if prevented by actual force or sickness, within 14 days after the termination of such prevention, the person charged declares—*

- (i) *by information on oath before a magistrate; or*
- (ii) *if he is on actual service in Her Majesty's forces, either by such information or by informing his commanding officer,*

*of all he knows concerning the matter, including any person by whom and in whose presence, and the place where, and the time when, the oath or engagement was administered or taken.]*

## 18. Unlawful drilling

(1) Any person who—

- (a) without the permission of the Governor or the Commissioner of Police, trains or drills any other person in the use of arms or the practice of military exercises or evolutions; or
- (b) is present at any meeting of persons, held without the permission of the Governor or the Commissioner of Police for the purpose of training or drilling any other persons in the use of arms or the practice of military exercises or evolutions,

shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 7 years.

(2) Any person who—

- (a) at any meeting mentioned in subsection (1) is trained or drilled in the use of arms or the practice of military exercises or evolutions; or
- (b) is present at any such meeting for the purpose of being so trained or drilled,

shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 2 years.

## 第IIA部

### 關於第I及II部所訂的若干罪行的執行條文

#### 7 18A. 第I及II部及本部的執行等須符合《基本法》

第I及II部及本部的條文須以符合《基本法》第三十九條的方式而解釋、適用及執行。

#### 7 18B. 調查權力

(1) 如職級在總警司級或以上的警務人員合理地相信——

- (a) 有人已犯或正犯第2(叛國)、2A(顛覆)、2B(分裂國家)、9A(煽動叛亂)或9C(處理煽動性刊物)條所訂罪行；
- (b) 在任何處所、地方或運輸工具中，有任何相當可能屬或相當可能包含對該罪行的調查具有重大價值的證據的物品；及
- (c) 若然不即時採取行動，該等證據將會喪失，因而會導致對該罪行的調查造成嚴重損害，

他可指示任何警務人員就該處所、地方或運輸工具行使第(2)款所賦予的權力。

(2) 根據按第(1)款就某處所、地方或運輸工具發出的指示行事的警務人員——

- (a) 可進入該處所或地方，如有必要，並可為該目的破開該處所或地方的任何門戶或窗戶；
- (b) 可截停並登上該運輸工具；
- (c) 可搜查該處所、地方或運輸工具，或對任何在其內發現的人進行搜身；

## PART IIA

### ENFORCEMENT PROVISIONS CONCERNING CERTAIN OFFENCES UNDER PARTS I AND II

#### 7 18A. Enforcement, etc. of Parts I and II and this Part to be consistent with Basic Law

The provisions of Parts I and II and this Part are to be interpreted, applied and enforced in a manner that is consistent with Article 39 of the Basic Law.

#### 7 18B. Investigation power

(1) If a police officer of or above the rank of chief superintendent of police reasonably believes that—

- (a) an offence under section 2 (treason), 2A (subversion), 2B (secession), 9A (sedition) or 9C (handling seditious publication) has been committed or is being committed;
- (b) anything which is likely to be or likely to contain evidence of substantial value to the investigation of the offence is in any premises, place or conveyance; and
- (c) unless immediate action is taken, such evidence would be lost and the investigation of the offence would be seriously prejudiced as a result,

he may direct any police officer to exercise any power conferred by subsection (2) in relation to the premises, place or conveyance.

(2) A police officer acting under a direction given under subsection (1) in relation to any premises, place or conveyance—

- (a) may enter the premises or place and, if necessary, break open any door or window of the premises or place for that purpose;
- (b) may stop and board the conveyance;
- (c) may search the premises, place or conveyance or any person found therein;

- (d) 可檢取、扣押或移走在該處所、地方或運輸工具內發現並且他覺得屬或包含第 2 (叛國)、2A (顛覆)、2B (分裂國家)、9A (煽動叛亂) 或 9C (處理煽動性刊物) 條所訂罪行的證據的任何物品；
- (e) 可在他行使 (c) 或 (d) 段所賦予的權力所需的時間內，扣留該運輸工具；及
- (f) 可用武力移走妨礙他行使本款所賦予的任何權力的人或物品。

(3) 如遇到要求，警務人員須在行使第 (2) 款所賦予的任何權力之前，出示其警察委任證。

(4) 根據第 (2)(c) 款對某人進行搜身，只可由性別與該人相同的警務人員進行。

(5) 為免生疑問，現宣布<sup>7</sup>《釋義及通則條例》(第 1 章) 第 83 條及<sup>8</sup>該條例第 XII 部其他條文適用於第 (2) 款及該款所賦予的任何權力。

(6) 就本條而言——

- (a) “運輸工具”指任何車輛、纜車、電車、鐵路列車、船隻或飛機；
- (b) “處所”包括任何構築物。

## 7 18C. 需獲律政司司長同意

對第 I 或 II 部任何條文所訂的罪行的檢控須由律政司司長提起，或在獲得律政司司長書面同意的情況下提起，否則不得提起。

<sup>7</sup> 《釋義及通則條例》(第 1 章) 第 83 條，見附錄第 3 段。

<sup>8</sup> 《釋義及通則條例》(第 1 章) 第 XII 部第 82 條，見附錄第 2 段。

- (d) may seize, detain or remove anything found in the premises, place or conveyance which appears to him to be or to contain evidence of an offence under section 2 (treason), 2A (subversion), 2B (secession), 9A (sedition) or 9C (handling seditious publication);
- (e) may detain the conveyance for such time as may be necessary for his exercise of the power conferred by paragraph (c) or (d); and
- (f) may remove by force any person or thing obstructing him in the exercise of any power conferred by this subsection.

(3) If requested, a police officer shall produce his police warrant card for inspection before exercising any power conferred by subsection (2).

(4) A person may be searched under subsection (2)(c) only by a police officer of the same sex.

(5) For the avoidance of doubt, it is declared that<sup>7</sup> section 83 of the Interpretation and General Clauses Ordinance (Cap. 1) and other provisions of<sup>8</sup> Part XII of that Ordinance apply to subsection (2) and any power conferred by it.

(6) For the purposes of this section—

- (a) “conveyance” means any vehicle, tramcar, train, vessel or aircraft;
- (b) “premises” includes any structure.

## 18C. Consent of Secretary for Justice required

Prosecution for an offence under any provision of Part I or II shall not be instituted except by, or with the written consent of, the Secretary for Justice.

<sup>7</sup> For section 83 of the Interpretation and General Clauses Ordinance (Cap. 1), see paragraph 3 in the Appendix.

<sup>8</sup> For section 82 of Part XII of the Interpretation and General Clauses Ordinance (Cap. 1), see paragraph 2 in the Appendix.

7 **18D. 若干罪行須由陪審團審訊**

為免生疑問，被控犯第 2 (叛國)、 2A (顛覆)、 2B (分裂國家) 或 9A(2)(a) (因煽惑叛國、顛覆或分裂國家而屬煽動叛亂) 條所訂罪行的被控人須於原訟法庭受審。

7 **18E. 被控犯第 9A(2)(b) 或 9C 條所訂罪行  
可選擇由陪審團審訊**

(1) 為第 9A(2)(b) (因煽惑公眾暴亂而屬煽動叛亂) 或 9C (處理煽動性刊物) 條所訂罪行而會在裁判官席前受審的被控人，可於聆訊展開前通知該裁判官，選擇在原訟法庭受審。

(2) 凡——

(a) 被控人在裁判官席前被控以第 9A(2)(b) (因煽惑公眾暴亂而屬煽動叛亂) 或 9C (處理煽動性刊物) 條所訂罪行；而

(b) 已有申請根據<sup>9</sup>《裁判官條例》(第 227 章) 第 88 條提出，要求作出命令將有關案件移交區域法院，被控人可於該命令作出前通知該裁判官，選擇在原訟法庭受審。

(3) 為第 9A(2)(b) (因煽惑公眾暴亂而屬煽動叛亂) 或 9C (處理煽動性刊物) 條所訂罪行而會在區域法院受審的被控人，可於聆訊展開前通知法官，選擇在原訟法庭受審。

(4) 就第 (1) 及 (3) 款而言，凡證據因應被控人對控罪或控罪中的任何一項表示不認罪而獲收取或聽取，聆訊即告展開。

<sup>9</sup> 《裁判官條例》(第 227 章) 第 88 條，見附錄第 13 段。

**18D. Certain offences to be tried by jury**

7

For the avoidance of doubt, an accused charged with an offence under section 2 (treason), 2A (subversion), 2B (secession) or 9A(2)(a) (sedition by inciting commission of treason, subversion or secession) shall stand trial before the Court of First Instance.

**18E. Election of trial by jury for offence  
under section 9A(2)(b) or 9C**

7

(1) An accused who is to stand trial before a magistrate for an offence under section 9A(2)(b) (sedition by inciting violent public disorder) or 9C (handling seditious publication) may elect to stand trial before the Court of First Instance by notifying the magistrate before the hearing commences.

(2) Where—

(a) an accused is charged before a magistrate with an offence under section 9A(2)(b) (sedition by inciting violent public disorder) or 9C (handling seditious publication); and

(b) an application has been made under<sup>9</sup>section 88 of the Magistrates Ordinance (Cap. 227) for an order transferring the case to the District Court, the accused may elect to stand trial before the Court of First Instance by notifying the magistrate before the order is made.

(3) An accused who is to stand trial before the District Court for an offence under section 9A(2)(b) (sedition by inciting violent public disorder) or 9C (handling seditious publication) may elect to stand trial before the Court of First Instance by notifying the judge before the hearing commences.

(4) For the purposes of subsections (1) and (3), the hearing commences at the time when evidence is received or heard in consequence of the accused pleading not guilty to the charge or any of the charges.

<sup>9</sup> For section 88 of the Magistrates Ordinance (Cap. 227), see paragraph 13 in the Appendix.

## 《官方機密條例》(第 521 章) 中受建議修訂影響的條文

### 第 III 部

#### 非法披露

#### 12. 釋義

(1) 在本部中——

“公務人員”(public servant) 指——

8(1)(a) [(a) 在英皇香港政府下擔任受薪職位的人，不論該職位屬永久或臨時性質；]

8(1)(a) (a) 任何擔任《退休金利益條例(設定職位)令》(第 99 章，附屬法例) 附表 1 第 2 欄指明的職位的人；

8(1)(a) [(b) 任何受僱在英皇聯合王國政府公務員體制(包括女皇陛下外交部及女皇陛下海外公務員系統)內工作的人；]

8(1)(a) (b) 任何擔任香港特別行政區政府轄下受薪職位的人，不論該職位屬永久或臨時性質；

8(1)(a) [(c) 武裝部隊任何成員；]

(d) 訂明團體或屬訂明類別的團體的成員或僱員，而他本身是為施行本段而被訂明的或是屬於任何該等團體的訂明成員或僱員類別的；

(e) 擔任訂明職位人士或該等人士的僱員，而他本身是為施行本段而被訂明的或是屬於訂明僱員類別的；

“地區”(territory) 指香港以外的不屬國家的地區；

## Provisions of the Official Secrets Ordinance (Cap. 521) affected by the proposed amendments

### PART III

#### UNLAWFUL DISCLOSURE

#### 12. Interpretation

(1) In this Part—

“armed forces”(武裝部隊) means the armed forces of the Crown;

“British national”(英國國民) means a British citizen, a British Overseas citizen, a British Dependent Territories citizen, a British National (Overseas) or a British protected person;

“defence”(防務) means—

(a) the size, shape, organization, logistics, order of battle, deployment, operations, state of readiness and training of the armed forces;

(b) the weapons, stores or other equipment of the armed forces and the invention, development, production and operation of such equipment and research relating to it;

(c) defence policy and strategy and military planning and intelligence;

(d) plans and measures for the maintenance of essential supplies and services that are or would be needed in time of war;

“disclose” and “disclosure”(披露), in relation to a document or other article, include parting with possession of it;

“Hong Kong permanent resident”(香港永久性居民) has the meaning assigned to that term by section 2(1) of the Immigration Ordinance (Cap. 115);

“international relations”(國際關係) means the relations between States, between international organizations or between one or more States and one or more such organizations and includes—

“防務”(defence)指——

- (a) 武裝部隊的規模、狀況、組織、後勤、戰鬥序列、部署、行動、戒備狀態及訓練；
- (b) 武裝部隊的武器、補給品或其他裝備，以及該等裝備的發明、研製、生產及操作和與之有關的研究；
- (c) 防憲政策和策略以及軍事規劃和情報；
- (d) 維持在戰時需要或會在戰時需要的供應品和服務的計劃及措施；

“武裝部隊”(armed forces)指英皇的武裝部隊；

“披露”(disclose, disclosure)就文件或其他物品而言，包括放棄對該文件或物品的管有；

“訂明”(prescribed)指由總督訂立的命令所訂明；

“香港永久性居民”(Hong Kong permanent resident)具有《人民入境條例》(第115章)第2(1)條給予該詞的涵義；

“英國國民”(British national)指英國公民、英國海外公民、英國屬土公民、英國國民(海外)或受英國保護人士；

“國家”(State)包括一個國家的政府及其政府的任何機構；

8(1)(b) “國家安全”(national security)指保完中華人民共和國的領土完整及獨立自主；

“國際關係”(international relations)指國家與國家之間的關係或國際組織與國際組織之間的關係，或一個或多於一個國家與一個或多於一個國際組織之間的關係，並包括——

- (a) 關乎聯合王國以外的國家或國際組織、並能影響聯合王國與另一國家或某一國際組織的關係的事宜；及

- (a) any matter relating to a State other than the United Kingdom or to an international organization that is capable of affecting the relations of the United Kingdom with another State or with an international organization; and
- (b) any matter relating to the relations between the *[United Kingdom and Hong Kong or the external relations of Hong Kong;]* **Hong Kong Special Administrative Region and any place outside the People's Republic of China;**

Schedule,  
para. 32

“national security”(國家安全) means the safeguarding of the territorial integrity and the independence of the People's Republic of China;

8(1)(b)

“prescribed”(訂明) means prescribed by an order made by the Governor;

“public servant”(公務人員) means—

*[(a) any person who holds an office of emolument under the Crown in right of the Government of Hong Kong, whether such office is permanent or temporary;]*

8(1)(a)

(a) any person who holds an office specified in column 2 of Schedule 1 to the Pension Benefits Ordinance (Established Offices) Order (Cap. 99 sub. leg.);

8(1)(a)

*[(b) any person employed in the civil service of the Crown in right of the United Kingdom, including Her Majesty's Diplomatic Service and Her Majesty's Overseas Civil Service;]*

8(1)(a)

(b) any person who holds an office of emolument under the Government of the Hong Kong Special Administrative Region, whether such office is permanent or temporary;

8(1)(a)

*[(c) any member of the armed forces;]*

8(1)(a)

(d) any person who is a member or employee of a prescribed body or a body of a prescribed class and either is prescribed for the purposes of this paragraph or belongs to a prescribed class of members or employees of any such body;

(b) 關乎 [聯合王國與香港之間的關係或香港的對外關係的事宜。] 香港特別行政區與中華人民共和國以外任何地方的關係的事宜。

(2) 除第 (3) 款另有規定外，在本部中，“政府承辦商” (government contractor) 指任何不是公務人員，但屬——

8(2)

(a) 為 [英皇香港政府、第 (1) 款所述的任何部門、部隊或團體] 香港特別行政區政府或任何擔任根據第 (1) 款訂明的職位的人士的目的，提供貨品或服務 (或受僱為該等目的提供貨品或服務) 的人；或

(b) 根據以下協議或安排提供貨品或服務 (或受僱根據以下協議或安排提供貨品或服務) 的人：由總督核證為屬任何地區的政府、任何聯合王國以外的國家的政府或任何國際組織屬其中一方的協議或安排的協議或安排，或根據附屬於任何該等協議或安排的或為執行任何該等協議或安排而訂立的協議或安排。

(3) 凡為施行第 (1) 款而訂立的命令訂明任何團體或任何擔任職位人士的僱員或僱員類別，以下人士須當作不是就本部而言的政府承辦商——

(a) 該團體或擔任該職位人士的未經訂明僱員，或該團體或該人士的僱員但不屬於訂明僱員類別者；及

(b) 並非為執行該團體或擔任該職位的人士的某職能的目的而提供貨品或服務 (或並非受僱為該目的而提供貨品或服務) 的人，而該僱員或該訂明類別的僱員是就該職能而被任用的。

(e) any person who holds a prescribed office or who is an employee of such a person and either is prescribed for the purposes of this paragraph or belongs to a prescribed class of such employees; “State” (國家) includes the government of a State and any organ of its government;

“territory” (地區) means any territory, not being a State, outside Hong Kong.

(2) In this Part, “government contractor” (政府承辦商) means, subject to subsection (3), any person who is not a public servant but who provides, or is employed in the provision of, goods or services—

(a) for the purposes of the [Crown in right of the Government of Hong Kong, of any of the services, forces or bodies mentioned in subsection (1)] **Government of the Hong Kong Special Administrative Region** or of the holder of any office prescribed under subsection (1); or

8(2)

(b) under an agreement or arrangement certified by the Governor as being an agreement or arrangement to which the Government of a territory, the Government of a State, other than the United Kingdom, or an international organization is a party or which is subordinate to, or made for the purposes of implementing, any such agreement or arrangement.

(3) Where an employee or a class of employees of any body, or of any holder of an office, is prescribed by an order made for the purposes of subsection (1), the following persons shall be deemed not to be a government contractor for the purposes of this Part—

(a) any employee of that body, or of the holder of that office, who is not prescribed or is not within the prescribed class of employees; and

(b) any person who does not provide, or is not employed in the provision of, goods or services for the purposes of the performance of those functions of the body or the holder of the office in connection with which the employee or prescribed class of employees is engaged.

(4) 除第(5)款另有規定外而在符合第(6)款的規定下，在本部中，“國際組織”(international organization)指其成員僅限於國家或國家及地區的組織，亦包括提述該等組織轄下的機構。

(5) 在第(4)款中，提述國際組織之處，包括提述任何該等組織(不論其成員是否僅限於國家或國家及地區)，並包括商業組織。

(6) 在為本條的施行而決定某一組織的成員是否僅限於國家或國家及地區時，任何成員如本身屬成員僅限於國家的組織，或本身屬該等組織轄下的機構，須視為國家。

(7) 在本部中，“保安或情報”(security or intelligence)指保安或情報部門或其任何部分的工作或支援該等部門的工作，而提述關乎保安或情報的資料之處，包括提述由該等部門、支援該等部門的人或該等部門的任何部分所持有或轉傳的資料。

9 **12A. 第 III 部的執行等須符合  
《基本法》**

本部的條文須以符合《基本法》第三十九條的方式而解釋、適用及執行。

13. 保安及情報資料—— 部門成員及  
獲知會人士

- (1) 任何屬或曾經屬——
- (a) 保安及情報部門的成員的人士；或
  - (b) 獲知會受本款條文規限的人士，

(4) In this Part, “international organization” (國際組織) means, subject to subsections (5) and (6), an organization of which only States or States and territories are members and includes a reference to any organ of such an organization.

(5) In subsection (4) the reference to an international organization includes a reference to any such organization whether or not one of which only States or States and territories are members and includes a commercial organization.

(6) In determining for the purposes of this section whether only States or States and territories are members of an organization, any member that is itself an organization of which only States are members, or that is an organ of such an organization, shall be treated as a State.

(7) In this Part, “security or intelligence” (保安或情報) means the work of, or in support of, the security or intelligence services or any part of them, and references to information relating to security or intelligence include references to information held or transmitted by those services or by persons in support of them, or any part of them.

**12A. Enforcement, etc. of Part III to be  
consistent with Basic Law**

**The provisions of this Part are to be interpreted, applied and enforced in a manner that is consistent with Article 39 of the Basic Law.**

13. Security and intelligence information—  
members of services and  
persons notified

- (1) A person who is or has been—
- (a) a member of the security and intelligence services; or
  - (b) a person notified that he is subject to the provisions of this subsection,

如在沒有合法權限的情況下，披露憑藉他作為任何該等部門的成員的身分或於該項知會有效或曾經有效期間在其工作過程中而由或曾經由他管有，並關乎保安或情報的資料、文件或其他物品，即屬犯罪。

(2) 第(1)款中提述披露關乎保安或情報的資料之處，包括提述作出本意是披露該等資料的陳述，亦包括提述作出擬被其所致予的人視為該等披露的陳述。

(3) 被控犯本條所訂罪行的人如證明在指稱的罪行發生時，他既不知道亦無合理理由相信有關的資料、文件或物品是關乎保安或情報的，即可以此作為免責辯護。

(4) 某人受第(1)款規限的知會，須以總督送達該人的書面通知而作出，而總督如認為有關人士所承擔的工作屬或包括與保安或情報部門有關連，且其性質是為保障聯合王國的國家安全或香港的安全的需要，該人宜受該款規限，則總督可送達該等通知。

(5) 除第(6)款另有規定外，為施行第(1)款而作出的知會，在自其送達日期起計的5年期內有效，但該項知會可藉根據第(4)款送達的另一通知而續期，每次可續期5年。

(6) 為施行第(1)款而作出的知會可隨時藉由總督送達有關人士的另一書面通知而撤銷，而總督如認為該人所承擔的工作不再屬第(4)款所述者，即須送達該另一通知。

commits an offence if without lawful authority he discloses any information, document or other article relating to security or intelligence that is or has been in his possession by virtue of his position as a member of any of those services or in the course of his work while the notification is or was in force.

(2) The reference in subsection (1) to disclosing information relating to security or intelligence includes a reference to making any statement that purports to be a disclosure of such information or is intended to be taken by those to whom it is addressed as being such a disclosure.

(3) It is a defence for a person charged with an offence under this section to prove that, at the time of the alleged offence, he did not know and had no reasonable cause to believe that the information, document or article in question related to security or intelligence.

(4) Notification that a person is subject to subsection (1) shall be effected by a notice in writing served on him by the Governor, and such a notice may be served if, in the Governor's opinion, the work undertaken by the person in question is or includes work connected with the security or intelligence services and its nature is such that the interests of the national security of the United Kingdom or the security of Hong Kong require that he should be subject to that subsection.

(5) Subject to subsection (6), a notification for the purposes of subsection (1) shall be in force for the period of 5 years beginning with the day on which it is served but may be renewed by further notices under subsection (4) for periods of 5 years at a time.

(6) A notification for the purposes of subsection (1) may at any time be revoked by a further notice in writing served by the Governor on the person concerned and the Governor shall serve such a further notice as soon as, in his opinion, the work undertaken by that person ceases to be such as is mentioned in subsection (4).

#### 14. 保安及情報資料——公務人員及承辦商

(1) 屬或曾經屬公務人員或政府承辦商的人如在沒有合法權限的情況下，作出一項具損害性的披露，而所披露的是憑藉他作為公務人員或政府承辦商的身分(但並非第 13(1) 條所述者) 而由或曾經由他管有，並關乎保安或情報的資料、文件或其他物品，即屬犯罪。

(2) 就第 (1) 款而言，如——

- (a) 披露導致對保安或情報部門或其任何部分的工作的損害；
- (b) 有關資料、文件或物品的性質屬若被未經授權而披露便相當可能會導致該等損害者；或
- (c) 某種類或類別的資料、文件或物品被未經授權而披露便相當可能會具有該效果，而有關的資料、文件或物品屬於該種類或類別，

披露即屬具損害性。

(3) 被控犯本條所訂罪行的人如證明在指稱的罪行發生時，他既不知道亦無合理因由相信——

- (a) 有關的資料、文件或物品關乎保安或情報；或
- (b) 披露會屬第 (2) 款所指的具損害性，

即可以此作為免責辯護。

#### 15. 防務資料

(1) 屬或曾經屬公務人員或政府承辦商的人如在沒有合法權限的情況下，作出一項具損害性的披露，而所披露的是憑藉他作為公務人員或政府承辦商的身分而由或曾經由他管有，並關乎防務的資料、文件或其他物品，即屬犯罪。

#### 14. Security and intelligence information—public servants and contractors

(1) A person who is or has been a public servant or government contractor commits an offence if without lawful authority he makes a damaging disclosure of any information, document or other article relating to security or intelligence that is or has been in his possession by virtue of his position as such but otherwise than as mentioned in section 13(1).

(2) For the purposes of subsection (1), a disclosure is damaging if—

- (a) the disclosure causes damage to the work of, or any part of, the security or intelligence services;
- (b) the information, document or article in question is of such a nature that its unauthorized disclosure would be likely to cause such damage; or
- (c) the information, document or article in question falls within a class or description of information, documents or articles the unauthorized disclosure of which would be likely to have that effect.

(3) It is a defence for a person charged with an offence under this section to prove that, at the time of the alleged offence, he did not know and had no reasonable cause to believe that—

- (a) the information, document or article in question related to security or intelligence; or
- (b) the disclosure would be damaging within the meaning of subsection (2).

#### 15. Defence information

(1) A person who is or has been a public servant or government contractor commits an offence if without lawful authority he makes a damaging disclosure of any information, document or other article relating to defence that is or has been in his possession by virtue of his position as such.

(2) 就第(1)款而言，如——

- (a) 披露對武裝部隊或其任何部分執行其任務的能力有損害；
- (b) 披露引致武裝部隊成員死亡或受傷，或引致武裝部隊的裝備或裝置受嚴重損害；
- (c) 披露危害(但並非以(a)及(b)段所述方式危害)聯合王國或香港在其他地方的利益、嚴重妨礙聯合王國或香港促進或保障該等利益或危害英國國民或香港永久性居民在其他地方的安全；或
- (d) 有關的資料、文件或物品的性質屬若被未經授權而披露便相當可能會具有(a)至(c)段所描述的任何效果者，

披露即屬具損害性。

(3) 被控犯本條所訂罪行的人如證明在指稱的罪行發生時，他既不知道亦無合理理由相信——

- (a) 有關的資料、文件或物品關乎防務；或
- (b) 披露會屬第(2)款所指的具損害性，

即可以此作為免責辯護。

## 16. 關乎國際關係的資料

(1) 屬或曾經屬公務人員或政府承辦商的人如在沒有合法權限的情況下，作出一項具損害性的披露，而所披露的是——

- (a) 關乎國際關係的資料、文件或其他物品；或

(2) For the purposes of subsection (1), a disclosure is damaging if—

- (a) the disclosure damages the capability of, or any part of, the armed forces to carry out their tasks;
- (b) the disclosure leads to loss of life or injury to members of the armed forces or serious damage to the equipment or installations of those forces;
- (c) otherwise than as mentioned in paragraphs (a) and (b), the disclosure endangers the interests of the United Kingdom or Hong Kong elsewhere, seriously obstructs the promotion or protection by the United Kingdom or Hong Kong of those interests or endangers the safety of British nationals or Hong Kong permanent residents elsewhere; or
- (d) the information, document or article in question is of such a nature that its unauthorized disclosure would be likely to have any of the effects described in paragraphs (a) to (c).

(3) It is a defence for a person charged with an offence under this section to prove that, at the time of the alleged offence, he did not know and had no reasonable cause to believe that—

- (a) the information, document or article in question related to defence; or
- (b) the disclosure would be damaging within the meaning of subsection (2).

## 16. Information related to international relations

(1) A person who is or has been a public servant or government contractor commits an offence if without lawful authority he makes a damaging disclosure of—

- (a) any information, document or other article relating to international relations; or

(b) 自聯合王國以外的國家或地區或自國際組織取得的任何機密的資料、文件或其他物品，且該等資料、文件或物品是憑藉他作為公務人員或政府承辦商的身分而由或曾經由他管有的，他即屬犯罪。

(2) 就第(1)款而言，如——

(a) 披露危害聯合王國或香港在其他地方的利益、嚴重妨礙聯合王國或香港促進或保障該等利益或危害英國國民或香港永久性居民在其他地方的安全；或

(b) 有關的資料、文件或物品的性質屬若被未經授權而披露便相當可能會具有(a)段所描述的任何效果者，披露即屬具損害性。

(3) 就第(1)(b)款所述的資料、文件或其他物品而言——

(a) 確定其屬機密此一事實；或

(b) 確定其性質或內容，

可足以為第(2)(b)款的施行而確定該資料、文件或物品的性質屬若被未經授權而披露便相當可能具有該款所述的任何效果者。

(4) 被控犯本條所訂罪行的人如證明在指稱的罪行發生時，他既不知道亦無合理因由相信——

(a) 有關的資料、文件或物品屬第(1)款所述者；或

(b) 披露會屬第(2)款所指的具損害性，

即可以此作為免責辯護。

(b) any confidential information, document or other article that was obtained from a territory or a State, other than the United Kingdom, or an international organization, being information or a document or article that is or has been in his possession by virtue of his position as a public servant or government contractor.

(2) For the purposes of subsection (1), a disclosure is damaging if—

(a) the disclosure endangers the interests of the United Kingdom or Hong Kong elsewhere, seriously obstructs the promotion or protection by the United Kingdom or Hong Kong of those interests or endangers the safety of British nationals or Hong Kong permanent residents elsewhere; or

(b) the information, document or article in question is of such a nature that its unauthorized disclosure would be likely to have any of the effects described in paragraph (a).

(3) In the case of information or a document or other article mentioned in subsection (1)(b)—

(a) to establish as a fact that it is confidential; or

(b) to establish its nature or contents,

may be sufficient to establish for the purpose of subsection (2)(b) that the information, document or article is of such a nature that its unauthorized disclosure would be likely to have any of the effects described in that subsection.

(4) It is a defence for a person charged with an offence under this section to prove that, at the time of the alleged offence, he did not know and had no reasonable cause to believe that—

(a) the information, document or article in question was such as is mentioned in subsection (1); or

(b) the disclosure would be damaging within the meaning of subsection (2).

(5) 就本條而言，凡自某地區、國家或組織按某些條款取得資料、文件或物品而該等條款規定它須在機密情況下持有，或在某情況下自某地區、國家或組織取得資料、文件或物品而該情況令該地區、國家或組織期望它在機密情況下持有是合理的，該資料、文件或物品即屬機密。

## 10 16A. 關於中央管理的香港事務的資料

(1) 屬或曾經屬公務人員或政府承辦商的人如在沒有合法權限的情況下，作出一項具損害性的披露，而所披露的是——

(a) 關乎與香港特別行政區有關並且根據《基本法》是由中央管理的事務；及

(b) 憑藉他作為公務人員或政府承辦商的身分而由或曾經由他管有，

的資料、<sup>10</sup> 文件或其他物品，他即屬犯罪。

(2) 就第(1)款而言，如——

(a) 披露危害國家安全；或

(b) 有關的資料、文件或物品的性質屬若被未經授權而披露便相當可能會危害國家安全者，

披露即屬具損害性。

(3) 被控犯本條所訂罪行的人如證明在指稱的罪行發生時，他既不知道亦無合理理由相信——

(a) 有關的資料、文件或物品屬第(1)(a)款所述者；或

<sup>10</sup> “文件”的定義，見附錄第1段。

(5) For the purposes of this section, any information, document or article obtained from a territory, State or organization is confidential at any time while the terms on which it was obtained require it to be held in confidence or while the circumstances in which it was obtained make it reasonable for the territory, State or organization to expect that it would be so held.

## 16A. Information related to Hong Kong affairs within the responsibility of the Central Authorities

10

(1) A person who is or has been a public servant or government contractor commits an offence if he makes, without lawful authority, a damaging disclosure of any information,<sup>10</sup> document or other article—

(a) that relates to any affairs concerning the Hong Kong Special Administrative Region which are, under the Basic Law, within the responsibility of the Central Authorities; and

(b) that is or has been in his possession by virtue of his position as a public servant or government contractor.

(2) For the purposes of subsection (1), a disclosure is damaging if—

(a) the disclosure endangers national security; or

(b) the information, document or article in question is of such a nature that its unauthorized disclosure would be likely to endanger national security.

(3) It is a defence for a person charged with an offence under this section to prove that, at the time of the alleged offence, he did not know and had no reasonable cause to believe that—

(a) the information, document or article in question was such as is mentioned in subsection (1)(a); or

<sup>10</sup> For the definition of “document”, see paragraph 1 in the Appendix.

(b) 披露會屬第 (2) 款所指的具損害性，  
即可以此作為免責辯護。

## 17. 關乎犯罪及刑事調查的資料

(1) 屬或曾經屬公務人員或政府承辦商的人如在沒有合法權  
限的情況下，披露本條適用並憑藉他作為公務人員或政府承辦商  
身分而由或曾經由他管有的資料、文件或其他物品，即屬犯罪。

(2) 本條適用於——

(a) 若被披露便——

- (i) 導致犯罪的資料、文件或其他物品；
- (ii) 利便某人逃離合法羈押或作出對受合法羈押的  
人的穩當看管有損害的作為的資料、文件或其  
他物品；或
- (iii) 阻礙防止或偵查罪行，或阻礙拘捕或檢控疑犯  
的資料、文件或其他物品；

(b) 其性質屬若被未經授權而披露便相當可能會具有 (a)  
段所述的任何效果的資料、文件或其他物件；

(c) 因為根據在《電訊條例》(第 106 章) 第 33 條下發出的  
命令採取的行動而取得的資料；

(d) 因為根據在《郵政署條例》(第 98 章) 第 13(1) 條下發  
出的手令採取的行動而取得的資料；或

(e) 關乎因為如 (c) 或 (d) 段所述採取行動而取得的資  
料，以及被或曾經被用於 (或被或曾經被持有以用於)  
該等行動的或因為該等行動而取得的文件或其他物  
品。

(b) the disclosure would be damaging within the  
meaning of subsection (2).

## 17. Information related to commission of offences and criminal investigations

(1) A person who is or has been a public servant or  
government contractor commits an offence if without lawful  
authority he discloses any information, document or other  
article to which this section applies and that is or has been in  
his possession by virtue of his position as such.

(2) This section applies to—

(a) any information, document or other article the  
disclosure of which—

- (i) results in the commission of an offence;
- (ii) facilitates an escape from legal custody or  
the doing of any other act prejudicial to  
the safekeeping of persons in legal  
custody; or

(iii) impedes the prevention or detection of  
offences or the apprehension or  
prosecution of suspected offenders;

(b) any information, document or other article the  
nature of which is such that its unauthorized  
disclosure would be likely to have any of the  
effects mentioned in paragraph (a);

(c) any information obtained by reason of action  
taken under an order issued under section 33 of  
the Telecommunications Ordinance (Cap. 106);

(d) any information obtained by reason of action  
taken under a warrant issued under section  
13(1) of the Post Office Ordinance (Cap. 98);  
or

(e) any information relating to the obtaining of  
information by reason of action taken as  
mentioned in paragraph (c) or (d) and any  
document or other article that is or has been  
used or held for use in, or has been obtained by  
reason of, any such action.

(3) 就符合第 (2)(a) 款的描述的披露而被控犯本條所訂罪行的人如證明在指稱的罪行發生時，他既不知道亦無合理理由相信該項披露會有該款所述的任何效果，即可以此作為免責辯護。

(4) 就任何其他披露而被控犯本條所訂罪行的人如證明在指稱的罪行發生時，他既不知道亦無合理理由相信有關的資料、文件或物品是本條適用的資料、文件或物品，即可以此作為免責辯護。

(5) 在本條中，“合法羈押”(legal custody) 包括依據任何成文法則或任何根據成文法則作出的文書而作的拘留。

11 18. 因未經授權的披露或違法取覽所得的資料或在機密情況下託付的資料

(1) 如有任何資料、文件或其他物品在第 (2) 款所述的情況下落入某人的管有，而該人知道或有合理理由相信——

(a) 第 13 至 17 條中的任何一條禁止將它披露；及

(b) 它是如第 (2) 款所述落入他的管有的，而在沒有合法權限的情況下將它披露，該人即屬犯罪。

(2) 第 (1) 款所提述的情況為第 13 至 17 條中的任何一條禁止披露的資料、文件或其他物品因以下事件以致落入有關人士的管有——

(a) 某公務人員或政府承辦商在沒有合法權限的情況下將它披露 (不論是向該有關人士或另一人披露)；

(3) It is a defence for a person charged with an offence under this section in respect of a disclosure falling within subsection (2)(a) to prove that, at the time of the alleged offence, he did not know and had no reasonable cause to believe that the disclosure would have any of the effects mentioned in that subsection.

(4) It is a defence for a person charged with an offence under this section in respect of any other disclosure to prove that, at the time of the alleged offence, he did not know and had no reasonable cause to believe that the information, document or article in question was information or a document or article to which this section applies.

(5) In this section “legal custody” (合法羈押) includes detention in pursuance of any enactment or any instrument made under an enactment.

18. Information resulting from unauthorized disclosures or illegal access or information entrusted in confidence

11

(1) A person who comes into possession of any information, document or other article in circumstances mentioned in subsection (2) commits an offence if he discloses it without lawful authority and knowing, or having reasonable cause to believe, that—

(a) it is protected against disclosure by any of sections 13 to 17; and

(b) it has come into his possession as mentioned in subsection (2).

(2) The circumstances referred to in subsection (1) are where any information, document or other article protected against disclosure by any of sections 13 to 17 has come into a person's possession as a result of it having been—

(a) disclosed (whether to him or another) by a public servant or government contractor without lawful authority;

- 11(1)(a) (b) 某公務人員或政府承辦商按某些條款將它託付該有關人士而該等條款規定它須在機密情況下持有，或某公務人員或政府承辦商在某情況下將它託付該有關人士而該情況令該公務人員或政府承辦商能合理地期望它會在機密情況下持有；*[或]*
- 11(1)(b) (c) 它如 (b) 段所述被託付某人而該人在沒有合法權限的情況下將它披露 (不論是向該有關人士或另一人披露) *[或]*；或
- 11(1)(c) (d) 它藉着 (不論被該有關人士或另一人) 違法取覽而被取得，

而就 (a) 及 (b) 段而言，“公務人員或政府承辦商”在有關資料、文件或物品是在某前任公務人員或前任政府承辦商仍是公務人員或政府承辦商期間落入他的管有的情況下，包括該前任公務人員或前任政府承辦商。

附表  
第 33(1) 段 (3) 就第 13 至 *[16]* 16A 條中的任何一條禁止披露的資料、文件或物品而言，除非——

- (a) 任何人將之披露是具損害性的；及
- (b) 該人知道或有合理理由相信將之披露是具損害性的，

否則該人不屬犯本條所訂罪行。

附表  
第 33(2) 段 (4) 披露資料、文件或其他物品是否具損害性此一問題，須為第 (3) 款的施行，而以就公務人員在違反第 14、15 *[或 16]*、16 或 16A 條的情況下披露該資料、文件或物品裁定該問題的方式，予以裁定。

(5) 凡資料、文件或其他物品因以下事件以致落入某人的管有——

- (a) 它如第 (2)(a) 款所述被政府承辦商披露；或
- (b) 它如第 (2)(c) 款所述被披露，

則除非該項披露是由英國國民或香港永久性居民作出的或是在香港作出的，否則該人並不就該資料、文件或物品犯本條所訂罪行。

- (b) entrusted to him by a public servant or government contractor on terms requiring it to be held in confidence or in circumstances in which the public servant or government contractor could reasonably expect that it would be so held; *[or]* 11(1)(a)
- (c) disclosed (whether to him or another) without lawful authority by a person to whom it was entrusted as mentioned in paragraph (b)*[.]*; or 11(1)(b)
- (d) **acquired by means of illegal access (whether by himself or another) to it,** 11(1)(c)

**and for the purposes of paragraphs (a) and (b), “public servant or government contractor” includes a person who was formerly a public servant or government contractor where the information, document or article came into his possession when he was such a public servant or government contractor.**

(3) In the case of information or a document or article protected against disclosure by sections 13 to *[16]* 16A, a person does not commit an offence under this section unless—

- (a) the disclosure by him is damaging; and
- (b) he makes it knowing, or having reasonable cause to believe, that it would be damaging.

(4) The question whether a disclosure of information or of a document or other article is damaging shall be determined for the purposes of subsection (3) as it would be determined in relation to a disclosure of that information, document or article by a public servant in contravention of section 14, 15 *[or 16]*, 16 or 16A.

(5) A person does not commit an offence under this section in respect of information or a document or other article that has come into his possession as a result of it having been disclosed—

- (a) as mentioned in subsection (2)(a) by a government contractor; or
- (b) as mentioned in subsection (2)(c),

unless that disclosure was by a British national or Hong Kong permanent resident or took place in Hong Kong.

Schedule,  
para. 33(1)

Schedule,  
para. 33(2)

11(2) (5A) 就第 (2) 款而言，如有以下情況，有關的人即屬違法取覽資料、文件或物品——

(a) 有關的資料、文件或物品 (視屬何情況而定) 憑藉該人就該資料、文件或物品 (視屬何情況而定) 所犯的下列罪行，而落入他的管有或維持由他管有——

(i) <sup>11</sup>《電訊條例》(第 106 章) 第 27A 條 (藉電訊而在未獲授權下取用電腦資料) 所訂罪行；

(ii) <sup>12</sup>《刑事罪行條例》(第 200 章) 第 161 條 (有犯罪或不誠實意圖而取用電腦) 所訂罪行；或

(iii) <sup>13</sup>《盜竊罪條例》(第 210 章) 第 9 (盜竊罪)、10 (搶劫罪) 或 11 (入屋犯法罪) 條所訂罪行；或

(b) 有關的資料、文件或物品 (視屬何情況而定) 以一項利益作為交換而落入他的管有或維持由他管有，而提供或接受該項利益屬 <sup>14</sup>《防止賄賂條例》(第 201 章) 第 4 條 (賄賂) 所訂罪行。

(6) 就本條而言，如任何資料、文件或物品——

11(3) (a) 關乎保安或情報 [或防務或國際關係]、防務、國際關係或與香港特別行政區有關而根據《基本法》是由中央管理的事務，或屬如第 16(1)(b) 條所述者；或

<sup>11</sup> 《電訊條例》(第 106 章) 第 27A 條，見附錄第 4 段。

<sup>12</sup> 《刑事罪行條例》(第 200 章) 第 161 條，見附錄第 7 段。

<sup>13</sup> 《盜竊罪條例》(第 210 章) 第 9、10 及 11 條，見附錄第 9 段。

<sup>14</sup> 《防止賄賂條例》(第 201 章) 第 4 條，見附錄第 8 段。

(5A) For the purposes of subsection (2), a person has illegal access to information or a document or article if—

(a) the information, document or article, as the case may be, comes into or remains in his possession by virtue of an offence under—

(i) <sup>11</sup>section 27A (unauthorized access to computer by telecommunications) of the Telecommunications Ordinance (Cap. 106);

(ii) <sup>12</sup>section 161 (access to computer with criminal or dishonest intent) of the Crimes Ordinance (Cap. 200); or

(iii) <sup>13</sup>section 9 (theft), 10 (robbery) or 11 (burglary) of the Theft Ordinance (Cap. 210), committed by him in relation to the information, document or article, as the case may be; or

(b) the information, document or article, as the case may be, comes into or remains in his possession in exchange for an advantage the offer or acceptance of which is an offence under <sup>14</sup>section 4 (bribery) of the Prevention of Bribery Ordinance (Cap. 201).

(6) For the purposes of this section, information or a document or article is protected against disclosure by any of sections 13 to 17 if—

(a) it relates to security or intelligence, defence [or international relations], international relations or affairs concerning the Hong Kong Special Administrative Region which are, under the Basic Law, within the responsibility of the Central Authorities or is such as is mentioned in section 16(1)(b); or

<sup>11</sup> For section 27A of the Telecommunications Ordinance (Cap. 106), see paragraph 4 in the Appendix.

<sup>12</sup> For section 161 of the Crimes Ordinance (Cap. 200), see paragraph 7 in the Appendix.

<sup>13</sup> For sections 9, 10 and 11 of the Theft Ordinance (Cap. 210), see paragraph 9 in the Appendix.

<sup>14</sup> For section 4 of the Prevention of Bribery Ordinance (Cap. 201), see paragraph 8 in the Appendix.

11(4) (b) 是第 17 條適用的資料、文件或物品，該資料、文件或物品即屬為第 13 至 17 條中的任何一條禁止披露者，而如它符合 (a) 段的描述，它即屬為第 13 [至 16] 至 16A 條中的任何一條禁止披露者。

(7) 任何人不得就他披露任何資料、文件或其他物品，而既被裁定犯本條所訂罪行又被裁定犯第 13 至 17 條中的任何一條所訂的罪行。

### 19. 因諜報活動所得的資料

任何人如在沒有合法權限的情況下，披露他知道或有合理理由相信是因違反第 3 條以致落入他的管有的任何資料、文件或其他物品，即屬犯罪。

### 20. 在機密情況下託付予地區、國家或國際組織的資料

(1) 如有任何資料、文件或其他物品在第 (2) 款所述的情況下落入某人的管有，而該人知道或有合理理由相信——

- (a) 它是如第 (2)(a) 款所述在機密情況下傳達的；
- (b) 它是如第 (2)(b) 款所述落入他的管有的；及
- (c) 將它披露會具損害性，

而將它作具損害性的披露，即屬犯罪。

(2) 第 (1) 款所提述的情況為關乎保安或情報或防務或國際關係的任何資料、文件或其他物品——

- (a) 被聯合王國政府或香港政府在機密情況下傳達予某地區、國家或國際組織，或被人代表聯合王國政府或香港政府在機密情況下傳達予某地區、國家或國際組織；及

(b) it is information or a document or article to which section 17 applies, and information or a document or article is protected against disclosure by sections 13 [to 16] to 16A if it falls within paragraph (a).

(7) No person shall be convicted for both an offence under this section and an offence under any of sections 13 to 17 in relation to the disclosure by him of any information or document or other article.

### 19. Information resulting from spying

A person commits an offence if without lawful authority he discloses any information, document or other article that he knows, or has reasonable cause to believe, to have come into his possession as a result of a contravention of section 3.

### 20. Information entrusted in confidence to territories, States or international organizations

(1) A person who comes into possession of any information, document or other article in circumstances mentioned in subsection (2) commits an offence if he makes a damaging disclosure of it knowing, or having reasonable cause to believe, that—

- (a) it has been communicated in confidence as mentioned in subsection (2)(a);
- (b) it has come into his possession as mentioned in subsection (2)(b); and
- (c) its disclosure would be damaging.

(2) The circumstances referred to in subsection (1) are where any information, document or other article relating to security or intelligence, defence or international relations—

- (a) has been communicated in confidence by or on behalf of the Government of the United Kingdom or Hong Kong to a territory or State or an international organization; and

- (b) 因為被人在沒有該地區、國家或組織或(如屬組織)組織的成員的授權的情況下披露,以致落入某一人的管有(不論該項披露是向該一人或其他人作出的)。
- (3) 在以下情況,有關人士不屬犯第(1)款所訂罪行——
- (a) 該人在合法權限下披露有關的資料、文件或物品;或
- (b) 有關的資料、文件或物品已於過去在有關地區、國家或組織或(如屬組織)組織的成員的授權下提供予公眾。
- (4) 就本條而言,披露資料、文件或物品是否具損害性此一問題,須以就公務人員在違反第 14、15 [或 16]、16 或 16A 條的情況下披露該資料、文件或物品裁定該問題的會採用方式,予以裁定。
- (5) 就本條而言,如任何資料、文件或物品——
- (a) 按某些條款傳達而該等條款規定它須在機密情況下持有;或
- (b) 在某情況下傳達而該情況令傳達者能合理地期望它會在機密情況下持有,
- 該資料、文件或物品即屬在機密情況下傳達。
- (6) 任何人不得就他披露任何資料、文件或其他物品,而既被裁定犯本條所訂罪行又被裁定犯第 13 至 18 條中的任何一條所訂的罪行。

## 21. 經授權的披露

- (1) 就本部而言,如——
- (a) 公務人員;或
- (b) 既非公務人員亦非政府承辦商,但受制於一項第 13(1) 條所指的有效知會的人,

- (b) has come into a person's possession as a result of it having been disclosed (whether to him or another) without the authority of that territory, State or organization or, in the case of an organization, of a member of it.
- (3) A person does not commit an offence under subsection (1) if the information, document or article—
- (a) is disclosed by him with lawful authority; or
- (b) has previously been made available to the public with the authority of the territory, State or organization concerned or, in the case of an organization, of a member of it.
- (4) For the purposes of this section, the question whether a disclosure is damaging shall be determined as it would be determined in relation to a disclosure of the information, document or article in question by a public servant in contravention of section 14, 15 [or 16], 16 or 16A.
- (5) For the purposes of this section, information or a document or article is communicated in confidence if it is communicated—
- (a) on terms requiring it to be held in confidence; or
- (b) in circumstances in which the person communicating it could reasonably expect that it would be so held.
- (6) No person shall be convicted for both an offence under this section and an offence under any of sections 13 to 18 in relation to the disclosure by him of any information or document or other article.

## 21. Authorized disclosures

- (1) For the purposes of this Part, a disclosure by—
- (a) a public servant; or
- (b) a person, not being a public servant or government contractor, in whose case a notification for the purposes of section 13(1) is in force,

按照其公務上的職責作出披露，該項披露即屬在合法權限下作出，亦僅在該等情況下該項披露方屬在合法權限下作出。

(2) 就本部而言，如政府承辦商——

(a) 按照正式授權作出披露；或

(b) 憑藉某職能而屬政府承辦商，而他在沒有違反正式限制的情況下為該職能的目的作出披露，

該項披露即屬在合法權限下作出，亦僅在該等情況下該項披露方屬在合法權限下作出。

(3) 就本部而言，如任何其他人士作出的披露——

(a) 是由公務人員為他作為公務人員的職能的目的而作出的；或

(b) 是按照正式授權作出的，

該項披露即屬在合法權限下作出，亦僅在該等情況下該項披露方屬在合法權限下作出。

(4) 被控犯第 13 至 20 條中的任何一條所訂的罪行的人如證明在指稱的罪行發生時，他相信他有合法權限作出有關的披露而亦沒有合理理由相信情況並非如此，即可以此作為免責辯護。

(5) 除第 (6) 款另有規定外，在本條中，“正式授權”(official authorization) 及“正式限制”(official restriction) 指由公務人員或政府承辦商妥為給予或施加的授權或限制，或由訂明團體或屬於訂明類別的團體妥為給予或施加(或由他人代表訂明團體或屬於訂明類別的團體妥為給予或施加)的授權或限制。

(6) 就第 20 條而言，“正式授權”(official authorization) 包括由有關地區、國家或組織或(如屬組織)組織的成員妥為給予(或由他人代表有關該等地區、國家、組織或成員妥為給予)的授權。

## 22. 資料的保障

(1) 凡公務人員或政府承辦商憑藉他作為公務人員或政府承辦商的身分，管有或控制任何若被他在沒有合法權限的情況下披露便會屬犯第 13 至 21 條中的任何一條所訂的罪行的文件或其他物品，如——

is made with lawful authority if, and only if, it is made in accordance with his official duty.

(2) For the purposes of this Part, a disclosure by a government contractor is made with lawful authority if, and only if, it is made—

(a) in accordance with an official authorization; or

(b) for the purposes of the functions by virtue of which he is a government contractor and without contravening an official restriction.

(3) For the purposes of this Part, a disclosure by any other person is made with lawful authority if, and only if, it is made—

(a) by a public servant for the purposes of his functions as such; or

(b) in accordance with an official authorization.

(4) It is a defence for a person charged with an offence under any of sections 13 to 20 to prove that at the time of the alleged offence he believed that he had lawful authority to make the disclosure in question and had no reasonable cause to believe otherwise.

(5) In this section “official authorization” (正式授權) and “official restriction” (正式限制) mean, subject to subsection (6), an authorization or restriction duly given or imposed by a public servant or government contractor or by or on behalf of a prescribed body or a body of a prescribed class.

(6) In relation to section 20, “official authorization” (正式授權) includes an authorization duly given by or on behalf of the territory, State or organization concerned or, in the case of an organization, a member of it.

## 22. Safeguarding of information

(1) Where a public servant or government contractor, by virtue of his position as such, has in his possession or under his control any document or other article which it would be an offence under any of sections 13 to 21 for him to disclose without lawful authority, he commits an offence if—

- (a) (就公務人員而言) 他在違反其公務上的職責的情況下保留該文件或物品；或
- (b) (就政府承辦商而言) 他沒有遵從關於該文件或物品的交回或處置的正式指示，

或沒有採取可合理地期望一名處於其位置的人會採取的謹慎措施，以防止該文件或物品在未經授權下披露，他即屬犯罪。

(2) 被控犯第 (1)(a) 款所訂罪行的公務人員如證明在指稱的罪行發生時，他相信他是按照其公務上的職責行事而亦沒有合理理由相信情況並非如此，即可以此作為免責辯護。

(3) 在第 (1) 及 (2) 款中，提述公務人員之處，包括既非公務人員亦非政府承辦商但受制於一項第 13(1) 條所指的有效知會的人。

(4) 凡任何人管有或控制任何若被他在沒有合法權限的情況下披露便會屬犯第 18 或 19 條所訂罪行的文件或其他物品，如——

- (a) 他沒有遵從關於該文件或物品的交回或處置的正式指示；或
- (b) 他按某些條款自公務人員或政府承辦商處取得該文件或物品而該等條款規定它須在機密情況下持有，或他在某情況下自公務人員或政府承辦商處取得該文件或物品而該情況令該公務人員或政府承辦商能夠合理地期望它會在機密情況下持有，而他沒有採取可合理地期望處於其位置的人會採取的謹慎措施，以防止該文件或物品在未經授權下披露，

他即屬犯罪。

(5) 凡任何人管有或控制任何若被他在沒有合法權限的情況下披露便會屬犯第 20 條所訂罪行的文件或其他物品，他如沒有遵從關於該文件或物品的交回或處置的正式指示，即屬犯罪。

- (a) being a public servant, he retains the document or article contrary to his official duty; or
- (b) being a government contractor, he fails to comply with an official direction for the return or disposal of the document or article,

or if he fails to take such care to prevent the unauthorized disclosure of the document or article as a person in his position may reasonably be expected to take.

(2) It is a defence for a public servant charged with an offence under subsection (1)(a) to prove that at the time of the alleged offence he believed that he was acting in accordance with his official duty and had no reasonable cause to believe otherwise.

(3) In subsections (1) and (2) references to a public servant include any person, not being a public servant or government contractor, in whose case a notification for the purposes of section 13(1) is in force.

(4) Where a person has in his possession or under his control any document or other article that it would be an offence under section 18 or 19 for him to disclose without lawful authority, he commits an offence if—

- (a) he fails to comply with an official direction for its return or disposal; or
- (b) where he obtained it from a public servant or government contractor on terms requiring it to be held in confidence or in circumstances in which that servant or contractor could reasonably expect that it would be so held, he fails to take such care to prevent its unauthorized disclosure as a person in his position may reasonably be expected to take.

(5) Where a person has in his possession or under his control any document or other article that it would be an offence under section 20 for him to disclose without lawful authority, he commits an offence if he fails to comply with an official direction for its return or disposal.

(6) 凡有任何官方資料、文件或其他物品能被人用於取覽被第 13 至 21 條禁止披露的任何資料、文件或其他物品，則任何人披露該資料、文件或物品，而從作出該項披露的情況來看，預期該資料、文件或物品可能被人在沒有權限下用於該目的是合理的，該人即屬犯罪。

(7) 就第 (6) 款而言，如有以下情況，有關人士所披露的資料、文件或物品即屬官方資料、文件或物品——

- (a) 他憑藉其作為公務人員或政府承辦商的身分或曾經憑藉該身分而管有該資料、文件或物品；或
- (b) 他知道或有合理理由相信某公務人員或政府承辦商憑藉其作為公務人員或政府承辦商的身分或曾經憑藉該身分而管有該資料、文件或物品。

(8) 第 18(6) 條為本條第 (6) 款的施行而適用，如同其為該條的施行而適用。

(9) 在本條中，“正式指示”(official direction) 指由公務人員或政府承辦商妥為給予的指示，或由訂明團體或屬於訂明類別的團體妥為給予(或由他人代表訂明團體或屬於訂明類別的團體妥為給予)的指示。

### 23. 在海外作出的作為

任何作為若由英國國民、香港永久性居民或公務人員在香港作出便會根據本部任何條文(第 22(1)、(4) 或 (5) 條除外)屬罪行，則該作為如由該人在香港境外作出，即屬該條文所訂的罪行。

### 24. 關於罪行審訊的條文

(1) 就本部所訂罪行而進行的法律程序，只可由律政司司長提起或在律政司司長同意下提起。

(6) A person commits an offence if he discloses any official information, document or other article that can be used for the purpose of obtaining access to any information, document or other article protected against disclosure by sections 13 to 21 and the circumstances in which it is disclosed are such that it would be reasonable to expect that it might be used for that purpose without authority.

(7) For the purposes of subsection (6), a person discloses information or a document or article that is official if—

- (a) he has or has had it in his possession by virtue of his position as a public servant or government contractor; or
- (b) he knows or has reasonable cause to believe that a public servant or government contractor has or has had it in his possession by virtue of his position as such.

(8) Section 18(6) applies for the purposes of subsection (6) of this section as it applies for the purposes of that section.

(9) In this section “official direction” (正式指示) means a direction duly given by a public servant or government contractor or by or on behalf of a prescribed body or a body of a prescribed class.

### 23. Acts done abroad

Any act done by a British national, a Hong Kong permanent resident or a public servant outside Hong Kong shall, if it would be an offence by that person under any provision of this Part other than section 22(1), (4) or (5) when done by him in Hong Kong, be an offence under that provision.

### 24. Provisions as to trial of offences

(1) Proceedings for an offence under this Part shall not be instituted except by or with the consent of the Secretary for Justice.

(2) 法庭除具有命令不許公眾旁聽任何法律程序的權力外，在不損害該等權力的原則下，如在法庭進行的有關本部所訂罪行(第 22(1)、(4) 或 (5) 條所訂罪行除外)的法律程序或上訴時的法律程序中，或在就本部所訂罪行而審訊某人的審訊過程中，控方以發布行將在法律程序中提出的證據或作出的陳述會有損聯合王國或香港的安全為理由，申請在聆訊的任何部分不許全部或部分公眾旁聽，法庭可作出具有此效力的命令，但在任何情況下均須公開宣布判刑。

## 12 24A. 選擇由陪審團審訊

(1) 為第 13、14、15、16、16A、17、18、19 或 20 條所訂罪行而會在裁判官席前受審的被告人，可於聆訊展開前通知該裁判官，選擇在原訟法庭受審。

(2) 凡——

(a) 被告人在裁判官席前被控以第 13、14、15、16、16A、17、18、19 或 20 條所訂罪行；而

(b) 已有申請根據《裁判官條例》(第 227 章) 第 88 條提出，要求作出命令將有關案件移交區域法院，被告人可於該命令作出前通知該裁判官，選擇在原訟法庭受審。

(3) 為第 13、14、15、16、16A、17、18、19 或 20 條所訂罪行而會在區域法院受審的被告人，可於聆訊展開前通知法官，選擇在原訟法庭受審。

(4) 就第 (1) 及 (3) 款而言，凡證據因應被告人對控罪或控罪中的任何一項表示不認罪而獲收取或聽取，聆訊即告展開。

(2) In addition and without prejudice to any powers that a court may possess to order the exclusion of the public from any proceedings, if, in the course of proceedings before a court against any person for an offence under this Part, other than an offence under section 22(1), (4) or (5), or the proceedings on appeal, or in the course of the trial of a person for an offence under this Part, application is made by the prosecution, on the ground that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the safety of the United Kingdom or Hong Kong, that all or any portion of the public shall be excluded during any part of the hearing, the court may make an order to that effect, but the passing of sentence shall in any case take place in public.

## 24A. Election of trial by jury

12

(1) An accused who is to stand trial before a magistrate for an offence under section 13, 14, 15, 16, 16A, 17, 18, 19 or 20 may elect to stand trial before the Court of First Instance by notifying the magistrate before the hearing commences.

(2) Where—

(a) an accused is charged before a magistrate with an offence under section 13, 14, 15, 16, 16A, 17, 18, 19 or 20; and

(b) an application has been made under section 88 of the Magistrates Ordinance (Cap. 227) for an order transferring the case to the District Court, the accused may elect to stand trial before the Court of First Instance by notifying the magistrate before the order is made.

(3) An accused who is to stand trial before the District Court for an offence under section 13, 14, 15, 16, 16A, 17, 18, 19 or 20 may elect to stand trial before the Court of First Instance by notifying the judge before the hearing commences.

(4) For the purposes of subsections (1) and (3), the hearing commences at the time when evidence is received or heard in consequence of the accused pleading not guilty to the charge or any of the charges.

## 25. 罰則

(1) 任何人犯本部任何條文(第 22(1)、(4) 或 (5) 條除外)所訂罪行——

- (a) 一經循公訴程序定罪，可處罰款 \$500,000 及監禁 2 年；
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。

(2) 任何人犯第 22(1)、(4) 或 (5) 條所訂罪行，一經循簡易程序定罪，可處第 4 級罰款及監禁 3 個月。

## 26. 搜查手令

裁判官如因經宣誓而作的告發而信納有合理理由懷疑有人已犯或即將犯本部所訂罪行(第 22(1)、(4) 或 (5) 條所訂罪行除外)，可授予搜查手令，授權任何警務人員——

- (a) 於任何時間進入該手令所指明的任何處所或地方，在有需要時可使用武力進入；
- (b) 搜查該處所或地方及於其內發現的每一人；
- (c) 檢取他在該處所或地方或在該人身上發現的任何圖片、圖則、模型、物品、紀錄、文件或任何性質類似的東西，或任何屬有人已犯或即將犯本部所訂罪行的證據的東西，但先決條件是他有合理理由懷疑有人已就或即將就所檢取的物品犯本部所訂罪行。

## 25. Penalties

(1) A person who commits an offence under any provision of this Part other than section 22(1), (4) or (5) shall be liable—

- (a) on conviction on indictment to a fine of \$500,000 and to imprisonment for 2 years;
- (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(2) A person who commits an offence under section 22(1), (4) or (5) shall be liable on summary conviction to a fine at level 4 and to imprisonment for 3 months.

## 26. Search warrants

If a magistrate is satisfied by information on oath that there is reasonable ground for suspecting that an offence under this Part, other than under section 22(1), (4) or (5), has been or is about to be committed, he may grant a search warrant authorizing any police officer to—

- (a) enter at any time any premises or place named in the warrant, if necessary by force;
- (b) search the premises or place and every person found therein;
- (c) seize any sketch, plan, model, article, note, document or anything of a like nature or anything that is evidence of an offence under this Part having been or being about to be committed, that he may find on the premises or place or on any such person, and with regard to or in connection with which he has reasonable ground for suspecting that an offence under this Part has been or is about to be committed.

## 《社團條例》(第 151 章) 中受建議修訂影響的條文

### 詳題

附表第 6 段 本條例旨在就社團的註冊、禁止某些社團的運作、取締某些組織，以及與此有關的事宜，訂定條文。

#### 1. 簡稱 [不予選錄]

#### 2. 釋義

(1) 在本條例中，除文意另有所指外——

“三合會儀式”(triad ritual) 指三合會社團普遍採用的任何儀式、與該等儀式十分相似的任何儀式以及該等儀式的任何部分；

“分支機構”(branch) 就社團的分支機構而言，包括以任何方式隸屬於其他社團的任何社團；

“本地社團”(local society) 指在香港組織和成立或總部或主要的業務地點設於香港的任何社團，包括憑藉第 2(2B) 或 4 條而當作是在香港成立的任何社團；

“外國政治性組織”(foreign political organization) 包括——

- (a) 外國政府或其政治分部；
- (b) 外國政府的代理人或外國政府的政治分部的代理人；或
- (c) 在外國的政黨或其代理人；

## Provisions of the Societies Ordinance (Cap. 151) affected by the proposed amendments

### Long title

To provide for the registration of societies, for the prohibition of the operation of certain societies, **for the proscription of certain organizations** and for matters related thereto.

Schedule,  
para. 6

#### 1. Short title [*Not excerpted*]

#### 2. Interpretation

(1) In this Ordinance, unless the context otherwise requires—

“branch”(分支機構), in relation to a society, includes any society which is in any way subordinate to any other society;

“connection”(聯繫), in relation to a society or a branch, that is a political body, includes the following circumstances—

- (a) if the society or the branch solicits or accepts financial contributions, financial sponsorships or financial support of any kind or loans, directly or indirectly, from a foreign political organization or a political organization of Taiwan;
- (b) if the society or the branch is affiliated directly or indirectly with a foreign political organization or a political organization of Taiwan;
- (c) if the society's or the branch's policies or any of them are determined directly or indirectly by a foreign political organization or a political organization of Taiwan; or
- (d) if a foreign political organization or a political organization of Taiwan directs, dictates, controls or participates, directly or indirectly, in the decision making process of the society or the branch;

“台灣政治性組織” (political organization of Taiwan) 包括——

- (a) 台灣地區政府或其政治分部；
- (b) 台灣地區政府的代理人或該政府政治分部的代理人；或
- (c) 在台灣的政黨或其代理人；

13(1) “受取締組織” (proscribed organization) 指根據第 8A 條被取締的組織；

“社團” (society) 指本條例條文適用的任何會社、公司、一人以上的合夥或組織，不論性質或宗旨為何；

“社團事務主任” (Societies Officer) 指按照第 3 條條文委任的社團事務主任及任何助理社團事務主任；

“指明的表格” (specified form) 指由社團事務主任指明的表格；

“政治性團體” (political body) 指——

- (a) 政黨或宣稱是政黨的組織；或
- (b) 其主要功能或宗旨是為參加選舉的候選人宣傳或作準備的組織；

“秘書處” (Secretariat) 指由第 26BA 條設立的洗脫三合會會籍秘書處；

“幹事” (office-bearer) 就社團而言，指社團或其分支機構的會長、副會長、秘書或司庫，或社團或其分支機構的委員會成員或管治組織成員，或在社團或其分支機構擔任類似任何上述職位或職務的人；或就三合會社團而言，指在三合會社團擔任普通成員以外任何職級或職位的人，而“幹事”就第 8A 條所指的本地組織而言，亦須以相同方式解釋；

附表第 7 段

“election” (選舉) means—

- (a) a general election or a by-election to elect members of the Legislative Council; or
- (b) an ordinary election or a by-election to elect members of a District Council;

“exempted society” (獲豁免社團) means a society exempted by the Societies Officer from registration under this Ordinance;

“foreign political organization” (外國政治性組織) includes—

- (a) a government of a foreign country or a political subdivision of a government of a foreign country;
- (b) an agent of a government of a foreign country or an agent of a political subdivision of the government of a foreign country; or
- (c) a political party in a foreign country or its agent;

“local society” (本地社團) means any society organized and established in Hong Kong or having its headquarters or chief place of business in Hong Kong, and includes any society deemed to be established in Hong Kong by virtue of section 2(2B) or 4;

“office-bearer” (幹事) of a society means any person who is the president, or vice-president, or secretary or treasurer of such society or any branch thereof, or who is a member of the committee or governing body of such society or any branch thereof, or who holds in such society or any branch thereof any office or position analogous to any of those mentioned above or in the case of a triad society, any person holding any rank or office in the triad society other than that of any ordinary member **and “office-bearer” of a local organization within the meaning of section 8A shall be construed in the same manner;**

“performance of functions” (履行職能) includes the exercise of powers and the performance of duties;

“political body” (政治性團體) means—

- (a) a political party or an organization that purports to be a political party; or

“履行職能”(performance of functions) 包括行使權力和履行責任；

“審裁處”(Tribunal) 指由第 26A 條設立的洗脫三合會會籍審裁處；

“選舉”(election) 指——

(a) 為選出立法會議員而舉行的換屆選舉或補選；或

(b) 為選出區議會議員而舉行的一般選舉或補選；

“獲豁免社團”(exempted society) 指根據本條例獲社團事務主任豁免註冊的社團；

“聯繫”(connection) 就屬政治性團體的社團或分支機構而言，包括以下情況——

(a) 該社團或該分支機構直接或間接尋求或接受外國政治性組織或台灣政治性組織的資助、任何形式的財政上的贊助或支援或貸款；

(b) 該社團或該分支機構直接或間接附屬於外國政治性組織或台灣政治性組織；

(c) 該社團或該分支機構的任何政策是直接或間接由外國政治性組織或台灣政治性組織釐定；或

(d) 在該社團或該分支機構的決策過程中，外國政治性組織或台灣政治性組織直接或間接作出指示、主使、控制或參與。

13(2) (2) 除在與根據第 8A 條取締組織有關連的情況下，本條例的條文不適用於附表所列明的人。

(2A) (已廢除)

(2B) 至於已根據《商業登記條例》(第 310 章) 登記，因而在附中列為不屬本條例適用範圍的社團，如社團事務主任向該社團發出書面通知，表示他認為該社團並非純粹用作宗禱、慈善、社

(b) an organization whose principal function or main object is to promote or prepare a candidate for an election;

“political organization of Taiwan” (台灣政治性組織) includes—

(a) the administration of Taiwan or a political subdivision of the administration;

(b) an agent of the administration of Taiwan or an agent of a political subdivision of the administration; or

(c) a political party in Taiwan or its agent;

“proscribed organization” (受取締組織) means an organization proscribed under section 8A;

13(1)

“Secretariat” (秘書處) means the Triad Renunciation Secretariat established by section 26BA;

“Societies Officer” (社團事務主任) means the Societies Officer and any Assistant Societies Officer appointed in accordance with the provisions of section 3;

“society” (社團) means any club, company, partnership or association of persons, whatever the nature or objects, to which the provisions of this Ordinance apply;

“specified form” (指明的表格) means a form specified by the Societies Officer;

“triad ritual” (三合會儀式) means any ritual commonly used by triad societies, any ritual closely resembling any such ritual and any part of any such ritual;

“Tribunal” (審裁處) means the Triad Renunciation Tribunal established by section 26A.

(2) The provisions of this Ordinance shall not apply to any person listed in the Schedule **except in connection with the proscription of an organization under section 8A.**

13(2)

(2A) (Repealed)

(2B) This Ordinance applies to a society to which it otherwise would not apply under the Schedule by its being registered under the Business Registration Ordinance (Cap. 310) if the Societies Officer gives written notice to the society that he is of the opinion that the society is not used solely for religious, charitable, social or recreational purposes. The

交或康樂用途，本條例即適用於該社團，而該社團則被當作是在該通知發出當日在香港成立。

(3) 行政長官會同行政會議可藉命令修訂附表。

(4) 在本條例中，“公共安全”、“公共秩序”及“保護他人的權利和自由”各詞的釋義，與根據《公民權利和政治權利國際公約》適用於香港的有關規定所作的釋義相同。“國家安全”(national security) 則指保衛中華人民共和國的領土完整及獨立自主。

## 14 2A. 執行等須符合《基本法》

本條例的條文須以符合《基本法》第三十九條的方式而解釋、適用及執行。

3. 社團事務主任的委任 [不予選錄]

4. 當作在香港成立的社團 [不予選錄]

5. 申請註冊或豁免註冊 [不予選錄]

### 5A. 註冊及豁免註冊

(1) 在第(3)款的規限下，社團事務主任可註冊任何社團或分支機構。

(2) 在第(3)款的規限下，社團事務主任如信納任何社團或分支機構是純粹為宗楨、慈善、社交或康樂目的而成立，或信納它是純粹成立以作為鄉事委員會或由鄉事委員會組成的聯會或其他組織，他可豁免該社團或該分支機構註冊。社團事務主任如豁免

society is taken to be established in Hong Kong on the date on which the notice is given.

(3) The Chief Executive in Council may by order amend the Schedule.

(4) In this Ordinance the expressions “public safety”, “public order (*ordre public*)” and “the protection of rights and freedoms of others” are interpreted in the same way as under the International Covenant on Civil and Political Rights as applied to Hong Kong. “national security” (國家安全) means the safeguarding of the territorial integrity and the independence of the People’s Republic of China.

## 2A. Enforcement, etc. to be consistent with Basic Law

**The provisions of this Ordinance are to be interpreted, applied and enforced in a manner that is consistent with Article 39 of the Basic Law.**

3. Appointment of Societies Officer [*Not excerpted*]

4. Societies deemed to be established in Hong Kong [*Not excerpted*]

5. Application for registration or exemption from registration [*Not excerpted*]

### 5A. Registration and exemption from registration

(1) Subject to subsection (3), the Societies Officer may register a society or a branch.

(2) Subject to subsection (3), the Societies Officer may exempt a society or a branch from registration if he is satisfied that the society or the branch is established solely for religious, charitable, social or recreational purposes or as a rural committee or a federation or other association of rural committees. If the Societies Officer exempts a society or

任何社團或任何分支機構註冊，他可以指明的表格發出豁免證明書。

(3) 社團事務主任在諮詢保安局局長後，可拒絕任何社團或分支機構註冊或拒絕予其豁免註冊——

(a) 如他合理地相信拒絕註冊該社團或該分支機構或拒絕予其豁免註冊，是維護國家安全或公共安全、公共秩序或保護他人的權利和自由所需要者；或

(b) 如該社團或該分支機構是政治性團體，並與外國政治性組織或台灣政治性組織有聯繫。

(4) 社團事務主任如事先沒有給予該社團機會，就為何不應拒絕其註冊申請或豁免註冊申請而作出該社團認為適當的陳詞或書面申述，則不得拒絕該項申請，但如社團事務主任合理地相信，給予該社團機會作出陳詞或書面申述，在該個案的情況下並不切實可行，則不在此限。

(5) 社團事務主任須在作出決定後 14 天內，以書面方式將他拒絕註冊社團或其分支機構或拒絕予其豁免註冊的理由給予該社團。

(6) 任何社團或分支機構，均可運作及繼續運作，直至有關社團接獲通知指社團事務主任已拒絕其註冊申請或豁免註冊申請為止。

5B. 就遭拒絕註冊或豁免註冊而提出上訴 [不予選錄]

5C. 與註冊有關的罪行 [不予選錄]

a branch from registration, he may issue a certificate of exemption from registration in the specified form.

(3) The Societies Officer may, after consultation with the Secretary for Security, refuse to register or to exempt from registration a society or a branch—

(a) if he reasonably believes that the refusal is necessary in the interests of national security or public safety, public order (*ordre public*) or the protection of the rights and freedoms of others; or

(b) if the society or the branch is a political body that has a connection with a foreign political organization or a political organization of Taiwan.

(4) The Societies Officer shall not refuse an application for registration or exemption from registration without first giving the society an opportunity to be heard or to make written representations as the society thinks fit as to why the application should not be refused unless the Societies Officer reasonably believes that in the circumstances of the case it would not be practicable to give the society the opportunity to be heard or to make representations.

(5) The Societies Officer shall give to a society written reasons for his refusal to register or to exempt from registration the society or the branch within 14 days of the decision.

(6) A society or a branch may operate and continue to operate until the society is notified that the Societies Officer has refused its application for registration or exemption from registration.

5B. Appeal against refusal to register or to exempt, etc. [Not excerpted]

5C. Offences in relation to registration, etc. [Not excerpted]

## 5D. 取消註冊或註冊豁免

(1) 社團事務主任在諮詢保安局局長後，可取消任何社團或分支機構的註冊或註冊豁免——

- (a) 如他合理地相信，取消該社團或該分支機構的註冊或註冊豁免，是維護國家安全或公共安全、公共秩序或保護他人的權利和自由所需要者；或
- (b) 如該社團或該分支機構是政治性團體，並與外國政治性組織或台灣政治性組織有聯繫。

(2) 社團事務主任如事先沒有給予該社團機會，就為何不應取消有關註冊或註冊豁免而作出該社團認為適當的陳詞或書面申述，則不得取消該項註冊或註冊豁免，但如社團事務主任合理地相信，給予該社團機會作出陳詞或書面申述，在該個案的情況下並不切實可行，則不在此限。

(3) 社團事務主任須在作出決定後 14 天內，以書面方式將他決定取消社團或其分支機構的註冊或註冊豁免的理由給予該社團。

## 5E. 就取消提出上訴

有關社團、有關分支機構或該社團中或該分支機構中的幹事或成員，如因社團事務主任取消註冊或註冊豁免的決定而感到受屈，均可在有關該項決定的通知發出予該社團後 30 天內，向行政長官會同行政會議提出上訴。行政長官會同行政會議可確認、更改或推翻該項決定，遭上訴的決定則暫停實施，直至行政長官會同行政會議就該項上訴作出聆訊及裁決為止。

## 5D. Cancellation of registration or exemption from registration

(1) The Societies Officer may, after consultation with the Secretary for Security, cancel the registration or exemption from registration of a society or a branch—

- (a) if he reasonably believes that the cancellation is necessary in the interests of national security or public safety, public order (*ordre public*) or the protection of the rights and freedoms of others; or
- (b) if the society or the branch is a political body that has a connection with a foreign political organization or a political organization of Taiwan.

(2) The Societies Officer shall not cancel the registration or exemption from registration without first giving the society an opportunity to be heard or to make written representations as the society thinks fit as to why the registration or exemption from registration should not be cancelled unless the Societies Officer reasonably believes that in the circumstances of the case it would not be practicable to give the society the opportunity to be heard or to make representations.

(3) The Societies Officer shall give to a society written reasons for his decision to cancel the registration or exemption from registration of the society or branch within 14 days of the decision.

## 5E. Appeal against cancellation

The society, the branch, an office-bearer or a member of the society or the branch who is aggrieved by the decision of the Societies Officer to cancel the registration or exemption from registration may appeal to the Chief Executive in Council within 30 days of the date when notice of the decision was given to the society. The Chief Executive in Council may confirm, vary or reverse the decision. The operation of the decision appealed against is suspended until the Chief Executive in Council has heard and determined the appeal.

## 5F. 繼續運作的罪行

(1) 如任何社團或分支機構遭拒絕註冊或豁免註冊，或其註冊或註冊豁免遭到取消——

(a) 而無人就該項拒絕或取消在上訴期限內根據第 5B 或 5E 條提出上訴；或

(b) 而該項拒絕或取消在上訴後被確認，

則該社團或該分支機構須停止運作。

(2) 凡任何社團或分支機構沒有遵從第 (1) 款的規定，該社團或該分支機構的每名幹事或每名自稱或聲稱是幹事的人即屬犯罪，一經循簡易程序定罪——

(a) 如為某一社團而首次就該項罪行被定罪，可處第 3 級罰款；及

(b) 如為同一社團而第二次或其後再度就該項罪行被定罪，可處第 4 級罰款及監禁 3 個月；此外，並可自首次定罪的日期起計，就該項罪行持續的每天，處以罰款 \$300。

(3) 如被告人確立而使法庭信納，他已盡應盡的努力以確保該社團或該分支機構遵從第 (1) 款的規定，以及沒有遵從該款的規定是由於非他所能控制的原因所致的，即為對第 (2) 款所訂控罪的免責辯護。

## 6. 鄉事委員會 [不予選錄]

## 7. 通知、紀錄等的格式 [不予選錄]

## 8. 禁止社團的運作

(1) 如——

## 5F. Offences of continued operation

(1) A society or a branch that is refused registration or exemption or has had its registration or exemption cancelled and the refusal or cancellation—

(a) has not been appealed against within the time limited for appeal under section 5B or 5E; or

(b) has been confirmed on appeal,

shall cease its operation as a society or a branch.

(2) If a society or a branch fails to comply with subsection (1), every office-bearer or person professing or claiming to be an office-bearer of the society or the branch commits an offence and is liable on summary conviction—

(a) for a first conviction for the offence in relation to a particular society, to a fine at level 3; and

(b) for a second or subsequent conviction for the offence in relation to the same society, to a fine at level 4 and to imprisonment for 3 months and in addition to a fine of \$300 for each day during which the offence continues, commencing on the date of the first conviction.

(3) It is a defence to a charge under subsection (2) if the defendant establishes to the satisfaction of the court that he has exercised due diligence to ensure the society or the branch complied with subsection (1) and that the failure occurred for reasons beyond his control.

## 6. Rural committees [*Not excerpted*]

## 7. Form of notices, records, etc. [*Not excerpted*]

## 8. Prohibition of operation of societies

(1) The Societies Officer may recommend to the Secretary for Security to make an order prohibiting the operation or continued operation of the society or the branch—

- (a) 社團事務主任合理地相信禁止任何社團或分支機構的運作或繼續運作，是維護國家安全或公共安全、公共秩序或保護他人的權利和自由所需要者；或
- (b) 該社團或該分支機構是政治性團體，並與外國政治性組織或台灣政治性組織有聯繫，

社團事務主任可建議保安局局長作出命令，禁止該社團或該分支機構運作或繼續運作。

(2) 保安局局長獲社團事務主任根據第(1)款作出建議後，可藉在憲報刊登的命令，禁止該社團或該分支機構在香港運作或繼續運作。

(3) 保安局局長如事先沒有給予該社團或該分支機構機會，就為何不應根據第(2)款作出命令而作出該社團或該分支機構認為適當的陳詞或書面申述，則不得作出該命令。

(4) 如保安局局長合理地相信給予該社團或該分支機構機會作出陳詞或書面申述，在該個案的情況下並不切實可行，第(3)款則不適用。

(5) 根據第(2)款作出的命令，須在切實可行範圍內盡快——

- (a) 送達該社團或該分支機構；
- (b) (如該社團或該分支機構佔用或使用任何建築物或處所)在該社團或該分支機構佔用或使用作為集會地點的建築物或處所以及在該建築物或處所所在的警區中最近的警署，以顯眼方式張貼；及
- (c) 在憲報刊登。

- (a) if he reasonably believes that the prohibition of the operation or continued operation of a society or a branch is necessary in the interests of national security or public safety, public order (*ordre public*) or the protection of the rights and freedoms of others; or
- (b) if the society or the branch is a political body that has a connection with a foreign political organization or a political organization of Taiwan.

(2) On the recommendation by the Societies Officer under subsection (1), the Secretary for Security may by order published in the Gazette prohibit the operation or continued operation of the society or the branch in Hong Kong.

(3) The Secretary for Security shall not make an order under subsection (2) without first affording the society or the branch an opportunity to be heard or to make representations in writing as the society or the branch thinks fit as to why such an order should not be made.

(4) Subsection (3) shall not apply where the Secretary for Security reasonably believes that affording the society or the branch an opportunity to be heard or to make representations in writing would not be practicable in the circumstances of that case.

(5) An order made under subsection (2) shall as soon as practicable be—

- (a) served on the society or the branch;
- (b) (where the society or the branch occupies or uses any building or premises) affixed in a conspicuous manner on any building or premises occupied or used as a place of meeting by the society or the branch and at the nearest police station of the police district in which such building or premises are situated; and
- (c) published in the Gazette.

(6) 凡根據第(2)款作出命令，即使就該項命令已經有或可能有  
有任何上訴根據第(7)款提出，該項命令一經在憲報刊登，即行生  
效，而該項命令如指明於較後日期生效，則在該指明日期生效。

(7) 根據本條作出的命令涉及的任何社團或任何分支機構，  
以及該社團中或該分支機構中因保安局局長根據本條作出的命令  
而感到受屈的幹事或成員，均可在該項命令生效後 30 天內，就該  
項命令的作出向行政長官會同行政會議上訴，而行政長官會同行  
政會議可確認、更改或撤銷該項命令。

## 15 8A. 取締危害國家安全的組織

(1) 保安局局長如合理地相信為國家安全利益的目的，取締  
本條適用的任何本地組織是必要的，並合理地相信取締該本地組  
織與該目的是相稱的，則可藉命令取締該本地組織。

(2) 凡任何本地組織——

- (a) 的宗旨或其中一項宗旨是進行叛國、顛覆、分裂國  
家或煽動叛亂或犯諜報活動罪；
- (b) 已作出或正企圖作出叛國、顛覆、分裂國家或煽動  
叛亂，或已犯或正企圖犯諜報活動罪；或
- (c) 從屬於某內地組織，而該內地組織已遭中央基於保  
障中華人民共和國安全的理由，根據中華人民共和  
國法律禁止（該項禁止已藉明文禁令正式宣布）運  
作，

本條適用於該本地組織。

(3) 凡有證明書——

- (a) 由中央人民政府或代表中央人民政府發出；及

(6) An order made under subsection (2) shall take effect  
on publication in the Gazette or, if the order specifies a  
subsequent date for its taking effect, shall take effect on that  
specified date, notwithstanding that an appeal has been or  
may be made against the order under subsection (7).

(7) A society or a branch in relation to which an order  
is made under this section and any office-bearer or member  
of the society or the branch who is aggrieved by an order of  
the Secretary for Security made under this section may  
appeal to the Chief Executive in Council against the making  
of the order within 30 days after the order takes effect and  
the Chief Executive in Council may confirm, vary or revoke  
the order.

## 8A. Proscription of organizations endangering national security

15

(1) The Secretary for Security may by order proscribe  
any local organization to which this section applies if he  
reasonably believes that the proscription is necessary in the  
interests of national security and is proportionate for such  
purpose.

(2) This section applies to any local organization—

- (a) the objective, or one of the objectives, of which is  
to engage in treason, subversion, secession or  
sedition or commit an offence of spying;
- (b) which has committed or is attempting to commit  
treason, subversion, secession or sedition or an  
offence of spying; or
- (c) which is subordinate to a mainland organization  
the operation of which has been prohibited on the  
ground of protecting the security of the People's  
Republic of China, as officially proclaimed by  
means of an open decree, by the Central  
Authorities under the law of the People's  
Republic of China.

(3) A certificate which—

- (a) is given by or on behalf of the Central People's  
Government; and

(b) 述明某內地組織已遭中央基於保障中華人民共和國安全的理由，根據中華人民共和國法律禁止運作，而該項禁止已藉明文禁令正式宣布，該證明書即為該項禁止的確證。

- (4) 一份宣稱是第(3)款所提述的證明書的文件——
- (a) 須在任何法律程序中獲接受為證據，而無需進一步證明；及
- (b) 除在有相反證明的情況外，須當作是上述證明書。
- (5) 就本條而言——
- (a) “叛國”指屬《刑事罪行條例》(第200章)第2條所訂罪行的作為；
- (b) “顛覆”指屬《刑事罪行條例》(第200章)第2A條所訂罪行的作為；
- (c) “分裂國家”指屬《刑事罪行條例》(第200章)第2B條所訂罪行的作為；
- (d) “煽動叛亂”指屬《刑事罪行條例》(第200章)第9A條所訂罪行的作為；
- (e) “諜報活動罪”指<sup>15</sup>《官方機密條例》(第521章)第3條所訂罪行；
- (f) “本地組織”指——
- (i) 任何已根據或須根據本條例註冊的社團，或獲豁免而無需根據本條例註冊的社團；或
- (ii) 附表所列的任何團體；
- (g) “內地組織”指——
- (i) 在中華人民共和國任何部分(台灣、香港及澳門除外)組成或成立的團體；或

<sup>15</sup> 《官方機密條例》(第521章)第3條，見附錄第15段。

(b) states that the operation of a mainland organization has been prohibited on the ground of protecting the security of the People's Republic of China, as officially proclaimed by means of an open decree, by the Central Authorities under the law of the People's Republic of China, shall be conclusive evidence of the prohibition.

- (4) A document purporting to be a certificate referred to in subsection (3) shall—
- (a) be received in evidence in any legal proceedings without further proof; and
- (b) unless the contrary is proved, be deemed to be such a certificate.
- (5) For the purposes of this section—
- (a) “treason” means an act that is an offence under section 2 of the Crimes Ordinance (Cap. 200);
- (b) “subversion” means an act that is an offence under section 2A of the Crimes Ordinance (Cap. 200);
- (c) “secession” means an act that is an offence under section 2B of the Crimes Ordinance (Cap. 200);
- (d) “sedition” means an act that is an offence under section 9A of the Crimes Ordinance (Cap. 200);
- (e) “offence of spying” means an offence under<sup>15</sup>section 3 of the Official Secrets Ordinance (Cap. 521);
- (f) “local organization” means—
- (i) any society which is registered, registrable or exempted from registration under this Ordinance; or
- (ii) any body of persons listed in the Schedule;
- (g) “mainland organization” means any body of persons—
- (i) organized and established; or

<sup>15</sup> For section 3 of the Official Secrets Ordinance (Cap. 521), see paragraph 15 in the Appendix.

- (ii) 總部或主要業務地點設於中華人民共和國任何部分(台灣、香港及澳門除外)的團體；
- (h) 如以下條件符合，一個本地組織(“前者”)即屬從屬於一個內地組織(“後者”)——
  - (i) 前者為其運作直接或間接尋求或接受後者的可觀的財政上的資助、任何種類的可觀的財政上的補助或可觀的財政上的支援或數額可觀的貸款；
  - (ii) 前者直接或間接受後者指示或控制；或
  - (iii) 前者的政策或前者的任何政策是直接或間接由後者釐定。

## 15 8B. 取締的程序規定

(1) 保安局局長在根據第 8A 條取締某組織前，必須向該組織給予機會，讓它就何以它不應被取締而——

- (a) 陳詞；或
- (b) 作出書面申述，

視乎它認為何者合適而定。

(2) 如保安局局長合理地相信向有關組織給予機會陳詞或作出書面申述，在該個案的情況下並非切實可行，則第(1)款不適用。

(3) 保安局局長在根據第 8A(1) 條作出命令後，必須在切實可行範圍內盡快——

- (a) 將該命令的文本一份送達有關組織；
- (b) (如該組織佔用或使用任何建築物或處所) 在以下地方以顯眼方式張貼一份該命令的文本——

- (ii) having its headquarters or principal place of business, in any part of the People's Republic of China other than Taiwan, Hong Kong or Macau;
- (h) a local organization (“the former”) is subordinate to a mainland organization (“the latter”) if—
  - (i) the former solicits or accepts for its operation substantial financial contributions, substantial financial sponsorship or substantial financial support of any kind or loans of a substantial amount, directly or indirectly, from the latter;
  - (ii) the former is under the direction or control, directly or indirectly, of the latter; or
  - (iii) the policies of the former or any of such policies are determined, directly or indirectly, by the latter.

## 8B. Procedural requirements for proscription

15

(1) Before proscribing an organization under section 8A, the Secretary for Security must afford the organization an opportunity—

- (a) to be heard; or
- (b) to make representations in writing,

as the organization thinks fit as to why it should not be proscribed.

(2) Subsection (1) does not apply where the Secretary for Security reasonably believes that affording the organization an opportunity to be heard or to make representations in writing would not be practicable in the circumstances of the case.

(3) As soon as practicable after making an order under section 8A(1), the Secretary for Security must—

- (a) serve a copy of the order on the organization;
- (b) (where the organization occupies or uses any building or premises) affix a copy of the order in a conspicuous manner—

- (i) 保安局局長覺得屬該組織佔用或使用作為集會地點的建築物或處所；及
  - (ii) 該建築物或處所所在的警區中最近的警署；
  - (c) 在憲報刊登該命令；及
  - (d) 在每日於香港行銷的兩份中文報章及每日於香港行銷的一份英文報章上刊登該命令。
- (4) 即使已經有或可能有任何上訴根據第 8D 條針對某項取締而提出，根據第 8A(1) 條作出的命令——
- (a) 如——
    - (i) 於同日根據第 (3)(c) 及 (d) 款刊登，則於該日生效；
    - (ii) 於不同日子根據第 (3)(c) 及 (d) 款刊登，則於其中的最後一日生效；或
  - (b) 於其內指明的較後日期 (如有的話) 生效。

15 **8C. 禁止參加受取締組織的活動**

- (1) 任何人——
  - (a) 身為受取締組織的幹事或以受取締組織幹事身分行事，或自稱是或聲稱是受取締組織的幹事；
  - (b) 管理受取締組織或協助管理受取締組織；
  - (c) 身為受取締組織的成員或以受取締組織成員身分行事；
  - (d) 參與受取締組織的集會；或
  - (e) 向受取締組織支付金錢或給予其他形式的援助，
 即屬犯罪，一經定罪，可處第 6 級罰款及監禁 3 年。
- (2) 被控犯第 (1) 款所訂罪行的人如證明在指稱的罪行發生時，他既不知道亦沒有理由相信有關組織已根據第 8A 條被取締，即可以此作為免責辯護。

- (i) on any building or premises which appear to the Secretary for Security to be occupied or used as a place of meeting by the organization; and
  - (ii) at the nearest police station of the police district in which such building or premises are situated;
  - (c) publish the order in the Gazette; and
  - (d) publish the order in one English newspaper circulating daily in Hong Kong and two Chinese newspapers circulating daily in Hong Kong.
- (4) An order made under section 8A(1)—
- (a) which is published under subsection (3)(c) and (d)—
    - (i) on the same day takes effect on that day;
    - (ii) on different days takes effect on the latest of such days; or
  - (b) takes effect on such later date (if any) as may be specified in it,

notwithstanding that an appeal has been or may be made against the proscription under section 8D.

**8C. Prohibition of participating in the activities of proscribed organization**

15

- (1) Any person who—
  - (a) is or acts as an office-bearer or professes to be or claims to be an office-bearer of;
  - (b) manages or assists in the management of;
  - (c) is or acts as a member of;
  - (d) attends a meeting of; or
  - (e) pays money to or gives any other form of aid to, a proscribed organization is guilty of an offence and is liable on conviction to a fine at level 6 and to imprisonment for 3 years.
- (2) It is a defence for a person charged with an offence under subsection (1) if he proves that at the time of the alleged offence he did not know and had no reason to believe that the organization in question has been proscribed under section 8A.

- (3) 在不損害第(2)款的原則下——
- (a) 就身為受取締組織的幹事或以受取締組織幹事身分行事而被控犯第(1)款所訂罪行的人如證明他已採取所有合理步驟，以終止該幹事身分；
  - (b) 就身為受取締組織的成員或以受取締組織成員身分行事而被控犯第(1)款所訂罪行的人如證明他已採取所有合理步驟，以終止該成員身分，
- 即可以此作為免責辯護。

#### 15 8D. 上訴反對取締

(1) 凡有組織根據第 8A 條被取締，任何因該項取締而感到受屈的該組織的幹事或成員可在該項取締生效後 30 天內，針對該項取締向原訟法庭提出上訴。

(2) 根據第(1)款提出上訴及作出任何附帶作為不得就第 8C 條而言視為以幹事或成員身分行事。

(3) 凡有人根據第(1)款針對某項取締提出上訴，原訟法庭——

- (a) 如信納以下事項，須推翻該項取締——
    - (i) 保安局局長沒有在該項取締中正確地應用法律；
    - (ii) 有關證據不足以證明有關組織符合第 8A(2)(a)、(b) 或 (c) 條；或
    - (iii) 有關證據不足以令到相信——
      - (A) 為國家安全利益的目的，該項取締是必要的；及
      - (B) 該項取締與該目的是相稱的，屬有理可據的合理信念；或
  - (b) 如不信納以上事項，須駁回該宗上訴。
- (4) 根據第(3)款被推翻的取締，須當作從來沒有作出。

(3) Without prejudice to subsection (2), it is a defence for a person charged with an offence under subsection (1)—

- (a) in relation to his being or acting as an office-bearer of a proscribed organization if he proves that he had taken all reasonable steps to cease to be such office-bearer;
- (b) in relation to his being or acting as a member of a proscribed organization if he proves that he had taken all reasonable steps to cease to be such member.

#### 8D. Appeal against proscription

15

(1) Any office-bearer or member of an organization proscribed under section 8A who is aggrieved by the proscription may appeal to the Court of First Instance against the proscription within 30 days after the proscription takes effect.

(2) Lodging an appeal under subsection (1) and doing any incidental act shall not be regarded for the purposes of section 8C as acting as an office-bearer or member.

(3) On an appeal lodged under subsection (1) against a proscription, the Court of First Instance shall—

- (a) if it is satisfied that—
  - (i) the Secretary for Security has not correctly applied the law in the proscription;
  - (ii) the evidence is insufficient to prove that the organization in question falls within section 8A(2)(a), (b) or (c); or
  - (iii) the evidence is insufficient to justify a reasonable belief that the proscription—
    - (A) is necessary in the interests of national security; and
    - (B) is proportionate for such purpose, set aside the proscription; or
- (b) if it is not so satisfied, dismiss the appeal.

(4) A proscription set aside under subsection (3) shall be deemed to have never been made.

(5) 如在任何於原訟法庭進行的法律程序的過程中，原訟法庭應律政司司長的申請而信納將會在該法律程序的過程中提出的證據或作出的陳述若被發表，便可能會損害國家安全，原訟法庭可命令所有公眾人士或任何部分的公眾人士在聆訊的任何部分中不得在場，以避免該等發表。

(6) 在聆訊上訴時，原訟法庭可接納根據第 8E 條訂立的規則所規定的證據。

### 15 8E. 終審法院首席法官可為上訴訂立規則

(1) 終審法院首席法官可訂立規則，就以下事宜作出規定——

- (a) 第 8D 條所指的上訴的提出、聆訊和撤回；
- (b) 關於該等上訴的訟費；
- (c) 關乎該等上訴的聆訊的實務和程序；
- (d) 證據的可接納與否；及
- (e) 該等上訴的聆訊所附帶的或引起的其他事宜。

(2) 在根據本條訂立規則時，終審法院首席法官尤須顧及——

- (a) 確使屬上訴標的之取締獲妥善覆核的需要；及
- (b) 確使資料不致在損害國家安全的情況下被披露的需要。

(3) 根據本條訂立的規則可訂定條文——

- (a) 令法律程序可在上訴人沒有獲提供有關的取締的理由的全部細節的情況下進行；
- (b) 令原訟法庭可在任何人(包括上訴人或他委任的任何法律代表)缺席的情況下進行法律程序；及
- (c) 令原訟法庭可向上訴人提供一份在他缺席時獲取的證據的撮要。

(5) If in the course of any proceedings before the Court of First Instance the Court is satisfied, upon application by the Secretary for Justice, that the publication of any evidence to be given or any statement to be made in the course of the proceedings might prejudice national security, the Court may order that all or any portion of the public shall be excluded during any part of the hearing so as to avoid such publication.

(6) In the hearing of an appeal, the Court of First Instance may admit such evidence as may be provided for in rules made under section 8E.

### 8E. Chief Justice may make rules for appeals

(1) The Chief Justice may make rules to provide for—

- (a) the lodgement, hearing and withdrawal of appeals under section 8D;
- (b) costs in respect of such appeals;
- (c) the practice and procedure concerning the hearing of such appeals;
- (d) admissibility of evidence; and
- (e) such other matters which are incidental to or arise out of the hearing of such appeals.

(2) In making rules under this section, the Chief Justice shall have regard, in particular, to—

- (a) the need to secure that proscriptions which are the subject of appeals are properly reviewed; and
- (b) the need to secure that information is not disclosed to the detriment of national security.

(3) Rules made under this section may make provision—

- (a) enabling proceedings to take place without the appellant being given full particulars of the reasons for the proscription in question;
- (b) enabling the Court of First Instance to hold proceedings in the absence of any person, including the appellant and any legal representative appointed by him; and
- (c) enabling the Court of First Instance to give the appellant a summary of any evidence taken in his absence.

(4) 凡根據本條訂立的規則令原訟法庭可在上訴人或他委任的任何法律代表缺席的情況下進行法律程序，該等規則須就以下事宜訂定條文——

- (a) 委任一名法律執業者為上訴人的利益而行使的權力；及
- (b) 該法律執業者的職能及責任。

9. 對社團名稱的限制 [不予選錄]

9A-9B. (已廢除)

10. 社團詳情的更改 [不予選錄]

11. 社團名單 [不予選錄]

12. 要求提供資料及文件 [不予選錄]

13. 社團停止存在 [不予選錄]

14. 社團的解散 [不予選錄]

14A. 將社團從名單上刪除

- (1) (已廢除)
- (2) 凡任何註冊社團或獲豁免社團其後成為附表所列明的人，社團事務主任可就該社團的書面申請，將該社團從根據第 11 條備存的名單上刪除。

(4) Where rules made under this section enable the Court of First Instance to hold proceedings in the absence of the appellant and any legal representative appointed by him, the rules shall make provision for—

- (a) a power to appoint a legal practitioner to act in the interests of the appellant; and
- (b) the function and responsibility of such legal practitioner.

9. Restrictions on names of societies [*Not excerpted*]

9A-9B. (*Repealed*)

10. Changes of particulars of a society [*Not excerpted*]

11. List of societies [*Not excerpted*]

12. Requests for information and documents [*Not excerpted*]

13. Cessation of existence of a society [*Not excerpted*]

14. Dissolution of a society [*Not excerpted*]

14A. Removing a society from the list

- (1) (*Repealed*)
- (2) Where a registered society or an exempted society has subsequently become a person listed in the Schedule, the Societies Officer may, upon application in writing by the society, remove the society from the list kept under section 11.

(3) 凡禁止任何社團或分支機構運作或繼續運作的命令已根據第 8(2) 條在憲報刊登，社團事務主任須在該項命令生效後，在切實可行範圍內盡快將該社團或該分支機構從根據第 11 條備存的名單上刪除；但如該項命令其後依據第 8(7) 條所指的上訴被撤銷，則社團事務主任須在切實可行範圍內盡快將該社團或該分支機構重新列入該名單內。

附表第 8 段

(4) 凡任何社團或分支機構成為受取締組織，社團事務主任須在該項取締生效後，在切實可行範圍內盡快將該社團或分支機構從根據第 11 條備存的名單上刪除，但如該項取締其後根據第 8D(3) 條被推翻，則社團事務主任須在切實可行範圍內盡快將該社團或該分支機構重新列入該名單內。

15. 社團須提交的資料 [不予選錄]

16. 負責提供資料的人 [不予選錄]

17. (已廢除)

18. 非法社團

(1) 就本條例而言，“非法社團”(unlawful society)指——

(a) 三合會社團，不論該社團是否註冊社團或獲豁免社團，亦不論該社團是否屬本地社團；或

(b) 根據第 8 條作出的命令所適用的社團，有關命令可就社團本身或其分支機構作出，並屬有效的命令。

(2) (已廢除)

(3) Where an order prohibiting the operation or continued operation of a society or a branch has been published in the Gazette under section 8(2), the Societies Officer shall, as soon as practicable after the order comes into effect, remove the society or the branch from the list kept under section 11 but where subsequently, the order is revoked pursuant to an appeal under section 8(7), the Societies Officer shall as soon as practicable restore the society or the branch to the list.

**(4) Where a society or a branch becomes a proscribed organization, the Societies Officer shall, as soon as practicable after the proscription takes effect, remove the society or the branch from the list kept under section 11 but where subsequently, the proscription is set aside under section 8D(3), the Societies Officer shall as soon as practicable restore the society or the branch to the list.**

Schedule,  
para. 8

15. Information to be furnished by societies [*Not excerpted*]

16. Persons responsible for supplying information [*Not excerpted*]

17. (*Repealed*)

18. Unlawful societies

(1) For the purposes of this Ordinance, “unlawful society” (非法社團) means—

(a) a triad society, whether or not such society is a registered society or an exempted society and whether or not such society is a local society; or

(b) a society in respect of which, or in respect of whose branch, an order made under section 8 is in force.

(2) (*Repealed*)

(3) 凡使用任何三合會儀式，或採用或使用任何三合會名銜或術語的社團，均當作為三合會社團。

## 19. 非法社團幹事等的罰則

(1) 除第(2)款另有規定外，任何非法社團的幹事或任何自稱或聲稱是非法社團幹事的人，以及任何管理或協助管理非法社團的人，均屬犯罪，一經循公訴程序定罪，可處罰款 \$100,000 及監禁 3 年。

(2) 任何三合會社團的幹事或任何自稱或聲稱是三合會社團幹事的人，以及任何管理或協助管理三合會社團的人，均屬犯罪，一經循公訴程序定罪，可處罰款 \$1,000,000 及監禁 15 年。

## 20. 成員身分等

(1) 除第(2)款另有規定外，任何人如屬非法社團的成員，或以非法社團成員身分行事，或參加非法社團的集會，或向非法社團付款或給予援助，或為非法社團的目的而付款或給予援助，即屬犯罪，一經循公訴程序定罪——

(a) 如屬首次就該項罪行被定罪，可處罰款 \$20,000 及監禁 12 個月；及

(b) 如屬第二次或其後就該項罪行被定罪，可處罰款 \$50,000 及監禁 2 年。

(2) 任何人如屬三合會社團的成員，或以三合會社團成員身分行事，或自稱或聲稱是三合會社團的成員，或參加三合會社團的集會，或向三合會社團付款或給予援助，或為三合會社團的目的而付款或給予援助，或保管或控制或被發現管有屬於或關於三合會社團或三合會社團任何分支機構的任何簿冊、帳目、字據、

(3) Every society which uses any triad ritual or which adopts or makes use of any triad title or nomenclature shall be deemed to be a triad society.

## 19. Penalties on office-bearer, etc. of an unlawful society

(1) Save as is provided in subsection (2), any office-bearer or any person professing or claiming to be an office-bearer and any person managing or assisting in the management of any unlawful society shall be guilty of an offence and shall be liable on conviction on indictment to a fine of \$100,000 and to imprisonment for 3 years.

(2) Any office-bearer or any person professing or claiming to be an office-bearer and any person managing or assisting in the management of any triad society shall be guilty of an offence and shall be liable on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 15 years.

## 20. Membership, etc.

(1) Save as is provided in subsection (2), any person who is or acts as a member of an unlawful society or attends a meeting of an unlawful society or who pays money or gives any aid to or for the purposes of an unlawful society shall be guilty of an offence and shall be liable on conviction on indictment—

(a) in the case of a first conviction for that offence to a fine of \$20,000 and to imprisonment for 12 months; and

(b) in the case of a second or subsequent conviction for that offence to a fine of \$50,000 and to imprisonment for 2 years.

(2) Any person who is or acts as a member of a triad society or professes or claims to be a member of a triad society or attends a meeting of a triad society or who pays money or gives any aid to or for the purposes of the triad society or is found in possession of or has the custody or

成員名單、印章、旗幟或徽章，則不論該社團或該分支機構是否在香港成立，該人亦屬犯罪，一經循公訴程序定罪——

- (a) 如屬首次就該項罪行被定罪，可處罰款 \$100,000 及監禁 3 年；及
- (b) 如屬第二次或其後就該項罪行被定罪，可處罰款 \$250,000 及監禁 7 年。

附表第 9 段 21. 容許非法社團或受取締組織在處  
所內集會的人

附表第 9 段 (1) 除第 (2) 款另有規定外，任何人明知而容許非法社團 [或非法社團]、受取締組織、非法社團成員或受取締組織成員的集會在屬於他或由他佔用或控制的任何房屋、建築物或地方舉行，即屬犯罪，一經循公訴程序定罪，如屬首次就該項罪行被定罪，可處罰款 \$50,000 及監禁 12 個月，如屬第二次或其後就該項罪行被定罪，可處罰款 \$100,000 及監禁 2 年。

(2) 任何人明知而容許三合會社團或三合會社團成員的集會在屬於他或由他佔用或控制的任何房屋、建築物或地方舉行，即屬犯罪，一經循公訴程序定罪，如屬首次就該項罪行被定罪，可處罰款 \$100,000 及監禁 3 年，如屬第二次或其後就該項罪行被定罪，可處罰款 \$200,000 及監禁 5 年。

control of any books, accounts, writing, lists of members, seals, banners or insignia of or relating to any triad society or to any branch of a triad society whether or not such society or branch is established in Hong Kong, shall be guilty of an offence and shall be liable on conviction on indictment—

- (a) in the case of a first conviction for that offence to a fine of \$100,000 and to imprisonment for 3 years; and
- (b) in the case of a second or subsequent conviction for that offence to a fine of \$250,000 and to imprisonment for 7 years.

21. Persons allowing unlawful society or  
**proscribed organization** on premises

Schedule,  
para. 9

(1) Save as is provided in subsection (2), any person who knowingly allows a meeting of an unlawful society **or a proscribed organization**, or of members of an unlawful society **or a proscribed organization**, to be held in any house, building or place belonging to or occupied by him, or over which he has control, shall be guilty of an offence and shall be liable on conviction on indictment in the case of a first conviction for that offence, to a fine of \$50,000 and to imprisonment for 12 months and in the case of a second or subsequent conviction for that offence, to a fine of \$100,000 and to imprisonment for 2 years.

Schedule,  
para. 9

Schedule,  
para. 9

(2) Any person who knowingly allows a meeting of a triad society, or of members of a triad society, to be held in any house, building or place belonging to or occupied by him, or over which he has control, shall be guilty of an offence and shall be liable on conviction on indictment in the case of a first conviction for that offence, to a fine of \$100,000 and to imprisonment for 3 years and in the case of a second or subsequent conviction for that offence, to a fine of \$200,000 and to imprisonment for 5 years.

附表  
第 10 段

## 22. 煽惑他人成為非法社團或受取締組織成員等的罰則

附表  
第 10 段

(1) 除第 (2) 款另有規定外，任何人煽惑、誘使或邀請他人成為非法社團或受取締組織成員或協助管理非法社團或受取締組織，或對他人使用暴力、作出威脅或恐嚇以誘使該人成為非法社團或受取締組織成員或協助管理非法社團或受取締組織，即屬犯罪，一經循公訴程序定罪，可處罰款 \$50,000 及監禁 2 年。

附表  
第 10 段

(2) 任何人煽惑、誘使或邀請他人成為三合會社團成員或協助管理三合會社團，或對他人使用暴力、作出威脅或恐嚇以誘使該人成為三合會社團成員或協助管理三合會社團，即屬犯罪，一經循公訴程序定罪，可處罰款 \$250,000 及監禁 5 年。

附表  
第 11 段

## 23. 為非法社團或受取締組織牟取社團費或會費或援助的罰則

附表  
第 11 段

(1) 除第 (2) 款另有規定外，任何人為非法社團 [的目的而向他人牟取或企圖為非法社團的目的而向他人牟取社團] 或受取締組織的目的，或企圖為非法社團或受取締組織的目的，而向他人牟取社團費或會費或援助，即屬犯罪，一經循公訴程序定罪，可處罰款 \$50,000 及監禁 2 年。

(2) 任何人為三合會社團的目的而向他人牟取或企圖為三合會社團的目的而向他人牟取社團費或援助，即屬犯罪，一經循公訴程序定罪，可處罰款 \$250,000 及監禁 5 年。

## 22. Penalty for inciting, etc. [ , ] a person to become a member of an unlawful society or a proscribed organization

Schedule,  
para. 10

(1) Save as is provided in subsection (2), any person who incites, induces or invites another person to become a member of or assist in the management of an unlawful society **or a proscribed organization** and any person who uses any violence, threat or intimidation towards any other person in order to induce him to become a member or to assist in the management of an unlawful society **or a proscribed organization** shall be guilty of an offence and shall be liable on conviction on indictment to a fine of \$50,000 and to imprisonment for 2 years.

Schedule,  
para. 10

Schedule,  
para. 10

(2) Any person who incites, induces or invites another person to become a member of or assist in the management of a triad society and any person who uses any violence, threat or intimidation towards any other person in order to induce him to become a member or to assist in the management of a triad society shall be guilty of an offence and shall be liable on conviction on indictment to a fine of \$250,000 and to imprisonment for 5 years.

## 23. Penalty for procuring subscription or aid for an unlawful society or a proscribed organization

Schedule,  
para. 11

(1) Save as is provided in subsection (2), any person who procures or attempts to procure from any other person any subscription or aid for the purposes of an unlawful society **or a proscribed organization** shall be guilty of an offence and shall be liable on conviction on indictment to a fine of \$50,000 and to imprisonment for 2 years.

Schedule,  
para. 11

(2) Any person who procures or attempts to procure from any other person any subscription or aid for the purposes of a triad society shall be guilty of an offence and shall be liable on conviction on indictment to a fine of \$250,000 and to imprisonment for 5 years.

24. 被裁定犯第 19 或 20 條所訂罪行的人的法律責任  
[不予選錄]

25. 對已被禁制社團的幹事成為其他  
社團幹事的限制

(1) 凡在根據第 8 條作出而禁止任何社團或分支機構運作或繼續運作的命令屬有效時，保安局局長可應社團事務主任的建議，作出命令，規定該社團或該分支機構的幹事如無社團事務主任的書面同意，在 5 年期間內不得成為任何其他社團的幹事。

(2) 凡根據第 (1) 款作出命令，即使就該項命令有任何上訴根據第 (3) 款提出，該項命令須在切實可行範圍內盡快送達上述幹事，並須在該項命令送達該幹事的日期生效。

(3) 任何人如因根據第 (1) 款作出的任何命令而感到受屈，可在獲送達該項命令的日期起計 30 天內，向行政長官會同行政會議上訴，而行政長官會同行政會議可確認、更改或撤銷該項命令。

(4) 任何人違反根據第 (1) 款作出的命令，即屬犯罪，一經循公訴程序定罪，可處罰款 \$50,000 及監禁 3 年。

26. (已廢除)

26A–26N. [只與洗脫三合會會籍有關，故不予選錄]

27. 推定 [不予選錄]

28. 三合會社團的存在等的推定 [不予選錄]

24. Liability of person convicted of an offence under section 19 or 20 [Not excerpted]

25. Restriction on office-bearers of a prohibited society becoming office-bearers of other societies

(1) Where an order made under section 8 prohibiting the operation or continued operation of a society or a branch is effective, the Secretary for Security may, on the recommendation of the Societies Officer, make an order that an office-bearer of the society or the branch shall not become an office-bearer of any other society for a period of 5 years without the consent in writing of the Societies Officer.

(2) An order made under subsection (1) shall as soon as practicable be served on the office-bearer and shall take effect on the day when the order is served on him notwithstanding any appeal against the order under subsection (3).

(3) A person who is aggrieved by an order made under subsection (1) may appeal to the Chief Executive in Council within 30 days from the date of service of the order on him and the Chief Executive in Council may confirm, vary or revoke the order.

(4) A person who contravenes an order made under subsection (1) shall be guilty of an offence and shall be liable on conviction on indictment to a fine of \$50,000 and to imprisonment for 3 years.

26. (Repealed)

26A–26N. [Not excerpted because they relate only to triad renunciation]

27. Presumptions [Not excerpted]

28. Presumption of existence of triad society, etc. [Not excerpted]

29-30. (已廢除)

31. 社團事務主任等進入設置為集會地點的地方或處所的權力

(1) 除第(2)款另有規定外，社團事務主任如合理地相信在根據本條例履行其職能方面有此需要，可在任何合理時間進入他有理由相信是任何社團或其任何成員設置為或用作為集會地點或業務地點的地方或處所。

(2) 如任何地方或處所或其中的任何部分是用作居住用途的，則不得根據第(1)款進入該地方或處所或該部分，但如裁判官根據經宣誓而作的告發，信納社團事務主任在根據本條例履行其職能方面需要進入該地方或處所或該部分，並在此情況下發出手令，則凡憑藉該手令而進入該地方或處所或該部分，均屬例外。

32. 在特殊情況下進入的權力

如裁判官根據經宣誓而作的告發，信納有合理理由相信任何社團或分支機構正用作或經營作某用途，以致禁止該社團或該分支機構的運作或繼續運作是維護國家安全或公共安全、公共秩序或保護他人的權利和自由所需要者，則他可發出手令，授權社團事務主任及該手令所指明的其他人進入和搜查相信是用作該社團或該分支機構集會地點或業務地點的任何地方或處所，並搜查在其內發現的人或從其內逃出的人，以取得該社團或該分支機構正用作上述用途的證據，以及檢取或安排檢取社團事務主任有合理

29-30. (Repealed)

31. Power of Societies Officer, etc., to enter place or premises kept as place of meeting

(1) Subject to subsection (2), the Societies Officer may, where he reasonably believes that it is necessary so to do in connection with the performance of his functions under this Ordinance, at all reasonable times enter into any place or premises which he has reason to believe is or are kept or used by any society or any of its members as a place of meeting or place of business.

(2) No place or premises or any part thereof which is used for dwelling purposes shall be entered into under subsection (1) except by virtue of a warrant issued by a magistrate, where such magistrate is satisfied by information on oath that it is necessary for the Societies Officer to enter into the place or premises or part in connection with the performance of his functions under this Ordinance.

32. Power of entry in special cases

A magistrate may, if satisfied by information on oath that there is reasonable ground for believing that a society or a branch is being used or operated for any purpose that makes the prohibition of the operation or continued operation of the society or the branch necessary in the interests of national security or to public safety or public order (*ordre public*) or the protection of the rights and freedoms of others, issue a warrant authorizing the Societies Officer and such other persons as may be specified in the warrant to enter into and search any place or premises believed to be used as the place of meeting or place of business of the society or the branch and search the persons found therein or escaping therefrom for evidence that the society or the branch is being used for such purpose and seize or cause to be seized all documents or articles which the Societies Officer has reasonable cause to believe to be capable

因由相信根據本條例就該社團或該分支機構所提出的罪行檢控中能作為證據的所有文件或物品。

### 33. 進入和搜查的權力

(1) 任何督察級或督察級以上的警務人員，如有理由相信在任何住宅房屋或其他建築物或在任何地方內，正舉行任何非法社團的集會或身為非法社團成員的人的集會，或藏有、備存或存放屬於任何非法社團的簿冊、帳目、字據、成員名單、印章、旗幟、徽章、武器或其他物品，則可在有協助或沒有協助的情況下以及在有合理需要時使用武力的情況下，進入該房屋、建築物或地方，並可逮捕或安排逮捕所有在其內發現而他合理因由相信是與該非法社團有聯繫的人，以及搜查該房屋、建築物或地方和檢取或安排檢取他有合理因由相信是屬於任何非法社團或在任何方面與任何非法社團相關的所有簿冊、帳目、字據、成員名單、印章、旗幟、徽章、武器及其他物品。

(2) 所有如此逮捕的人和所有如此檢取的物品均可予以扣留羈押，並可帶到或交到裁判官席前依法處理。

### 34. (已廢除)

### 35. 檢控須取得同意

除非已取得律政司司長的事先書面同意，否則任何人不得被檢控本條例所訂的罪行，或被控犯根據本條例訂立的任何規則所訂的罪行，但根據第 19、20、24 及 25 條條文被控的人和根據第 33 條條文被逮捕的人，則屬例外。

of being evidence in the prosecution of an offence under this Ordinance in connection with the society or the branch.

### 33. Powers of entry and search

(1) Any police officer of or above the rank of inspector may, with or without assistance, using force, if reasonably necessary, enter into any dwelling-house or other building, or into any place in which he has reason to believe that a meeting of any unlawful society, or of persons who are members of an unlawful society, is being held, or that any books, accounts, writings, lists of members, seals, banners, insignia, arms or other articles belonging to any unlawful society are concealed, kept or deposited, and arrest or cause to be arrested all persons found in such house, building or place whom he has reasonable cause to believe are associated with the unlawful society and search such house, building or place, and seize or cause to be seized all books, accounts, writings, lists of members, seals, banners, insignia, arms and other articles which he has reasonable cause to believe to belong to any unlawful society or to be in any way connected therewith.

(2) All persons so arrested and all articles so seized may be detained in custody and brought before a magistrate to be dealt with according to law.

### 34. (Repealed)

### 35. Consent to prosecution

Except in the case of persons charged under the provisions of sections 19, 20, 24 and 25 and of persons arrested under the provisions of section 33, no person shall be charged with an offence under this Ordinance or any rule made thereunder unless the prior consent in writing of the Secretary for Justice has been obtained.

### 36. 沒收

屬於非法社團的任何簿冊、帳目、字據、旗幟、徽章或其他動產，一經裁判官發出命令，均須予以沒收和交由社團事務主任按其認為適當的方式處置。

#### 36A. 通知的送達 [不予選錄]

### 37. (已廢除)

### 38. 對舉報人的保護

除下文另有規定外——

- (a) 根據本條例提出的告發，在任何民事或刑事法律程序中均不得接納為證據；
- (b) 任何證人均無義務亦不獲准披露在本條例下的舉報人的姓名或名稱及地址，或述及可能導致該舉報人身分被揭露的事宜；及
- (c) 在根據本條例提出的任何民事或刑事法律程序中，作為證據或可予查閱的任何簿冊、文件或文據，如載有任何記項，而該記項中有該舉報人的姓名或名稱或描述，或該記項可能導致該舉報人身分被揭露，則法庭或裁判官須安排將所有有關段落遮蓋或塗去，惟僅以保護該舉報人身分不致被揭露所需者為限：

但在根據本條例提出的任何刑事法律程序中，法庭或裁判官對案件作出全面研訊後，如信納嚴格強制執行本條條文相當可能會造成審判不公，則可規定出示告發原文，並可准許查詢和可規定就該舉報人作出全面的披露。

### 36. Forfeiture

Any books, accounts, writings, banners, insignia or other movable property belonging to any unlawful society shall upon order of a magistrate be forfeited and given to the Societies Officer for disposal in such manner as he may see fit.

#### 36A. Service of notices [Not excerpted]

### 37. (Repealed)

### 38. Protection of informers

Except as is hereinafter provided—

- (a) no information laid under this Ordinance shall be admitted in evidence in any civil or criminal proceedings whatsoever;
- (b) no witness shall be obliged or permitted to disclose the name and address of any informer under this Ordinance or to state any matter which might lead to his discovery; and
- (c) if any books, documents or papers which are evidence or liable to inspection in any civil or criminal proceedings whatsoever under this Ordinance contained any entry in which any informer is named or described or which might lead to his discovery, the Court or magistrate shall cause all such passages to be concealed from view or to be obliterated so far as may be necessary to protect the informer from discovery but no further:

Provided that if in any criminal proceedings under this Ordinance the Court or magistrate after full inquiry into the case is satisfied that the strict enforcement of the provisions of this section would be likely to cause a miscarriage of justice, the Court or magistrate may require the production of the original information and may permit inquiry and may require full disclosure concerning the informer.

39. 證據 [不予選錄]
40. (已廢除)
41. 規則 [不予選錄]
42. 過渡性條文 [不予選錄]
43. 額外的過渡安排 [不予選錄]

附表  
第 12(a) 段

附表

[[第 2 條]]

[第 2 及 8A(5)(f) 條]

附表  
第 12(b) 段

除在與取締組織有關連的情況下  
本條例不適用的人

- (1) 根據《公司條例》(第 32 章) 註冊的公司。
- (2) 根據《合作社條例》(第 33 章) 註冊的合作社。
- (3) 根據《職工會條例》(第 332 章) 登記的職工會或職工會聯會。
- (4) (a) 全部或部分會務是在校舍內進行，並完全或主要由未滿 21 歲而正在任何學校接受小學樹育或中學樹育的人所組成的協會。  
(b) 就本項而言，“小學樹育”(primary education)、“中學樹育”(secondary education)、“校舍”(school premises) 及“學校”(school) 具有《樹育條例》(第 279 章) 第 3 條給予該等詞語的涵義。
- (5) 任何依據或根據任何條例或其他適用於香港的法例組成的公司或組織。

39. Evidence [Not excerpted]
40. (Repealed)
41. Rules [Not excerpted]
42. Transitional [Not excerpted]
43. Further transitional arrangements [Not excerpted]

SCHEDULE

[[S. 2]]

[ss. 2 & 8A(5)(f)]

Schedule,  
para. 12(a)

PERSONS TO WHICH THE ORDINANCE DOES NOT  
APPLY EXCEPT IN CONNECTION  
WITH PROSCRIPTION OF  
ORGANIZATION

Schedule,  
para. 12(b)

- (1) Any company registered under the Companies Ordinance (Cap. 32).
- (2) Any co-operative society registered under the Co-operative Societies Ordinance (Cap. 33).
- (3) Any trade union or any trade union federation registered under the Trade Unions Ordinance (Cap. 332).
- (4) (a) An association the affairs of which are conducted wholly or partly in any school premises and which consists wholly or mainly of persons under the age of 21 years who are undergoing primary education or secondary education in any school.  
(b) For the purposes of this item, “primary education”(小學教育), “school”(學校), “school premises”(校舍) and “secondary education”(中學教育) have the meanings assigned to them by section 3 of the Education Ordinance (Cap. 279).
- (5) Any company or association constituted pursuant to or under any Ordinance or other legislation applicable to Hong Kong.

- (5A) 任何公司或組織，而該公司或組織在緊接《1999 年法律適應化修改 (第 3 號) 條例》(1999 年第 13 號) 生效日期前是根據《英廷敕書》、《英皇制誥》或任何英國法令組成的公司或組織，並在緊接該生效日期前是本地社團。
- (6) 純粹為進行合法營業而組成並根據任何其他條例註冊的公司、組織或合夥。
- (7) (已廢除)
- (8) 根據《華人廟宇條例》(第 153 章) 註冊的華人廟宇。
- (9) 根據《儲蓄互助社條例》(第 119 章) 註冊的儲蓄互助社。
- (10) 根據《建築物管理條例》(第 344 章) 註冊的法團。
- (11) 民政事務局長為施行本條例而藉書面通知批准的處所擁有人或佔用人組職。
- (12) 符合以下規定的組織或團體——
- (a) 該組織或團體是純粹為康樂或訓練目的而組成的；
- (b) 該組織或團體是完全或主要在社區或青年中心進行活動的；及
- (c) 該組織或團體是經社會福利署署長批准而成立並於成立後繼續獲此批准的。
- (13) 符合以下規定的組織——
- (a) 該組織的一名或多於一名董事、受託人或擔任其他職位的人是根據任何條例成立為法團的；或
- (b) 管理該組織的委員會或其他團體是根據任何條例成立為法團的。
- (14) 《銀會經營 (禁止) 條例》(第 262 章) 第 2 條所界定並符合該條例第 5(2) 條規定的銀會的經營人及會眾。
- (15) (已廢除)
- (16) 沒有成立為法團而符合以下規定的信託——

- (5A) Any company or association which was, immediately before the commencement of the Adaptation of Laws (No. 3) Ordinance 1999 (13 of 1999), a company or association constituted under Royal Charter, Royal Letters Patent or any Imperial Act and was, immediately before that commencement, a local society.
- (6) Any company, association or partnership formed for the sole purpose of carrying on any lawful business and registered under any other Ordinance.
- (7) (*Repealed*)
- (8) Any Chinese temple registered under the Chinese Temples Ordinance (Cap. 153).
- (9) Any credit union registered under the Credit Unions Ordinance (Cap. 119).
- (10) Any corporation registered under the Building Management Ordinance (Cap. 344).
- (11) Any association of owners or occupiers of premises which is approved for the purposes of this Ordinance by the Secretary for Home Affairs by notice in writing.
- (12) Any association or group of persons which—
- (a) is formed for the sole purpose of recreation or training;
- (b) conducts its activities wholly or largely in a Community or Youth Centre; and
- (c) was formed with and continues to have the approval of the Director of Social Welfare.
- (13) Any association of which—
- (a) one or more of the directors, trustees or other office holders; or
- (b) the committee or board or other body having the management of the association, is or are incorporated by any Ordinance.
- (14) The operator of, and participants in, any chit fund, as defined in section 2 of the Chit-Fund Businesses (Prohibition) Ordinance (Cap. 262), which complies with section 5(2) of that Ordinance.
- (15) (*Repealed*)
- (16) An unincorporated trust—

- (a) 該信託屬公眾性質並純粹是為慈善目的而成立的；或
- (b) 該信託純粹是為參與根據《稅務條例》(第 112 章) 第 87A 條批准的退休計劃而成立的。

- (a) of a public character established solely for charitable purposes; or
- (b) established solely for the purpose of engaging in a retirement scheme approved under section 87A of the Inland Revenue Ordinance (Cap. 112).

## 受建議修訂影響的其他條文

### 《釋義及通則條例》(第 1 章)

#### 3. 詞語和詞句的釋義

附表第 1 段 “中央人民政府”(Central People’s Government) 指中華人民共和國中央人民政府；

### 《公司條例》(第 32 章)

附表第 2 段 291AAA. 處長須將受取締公司的名稱自登記冊中剔除

(1) 凡某公司根據《社團條例》(第 151 章) 第 8A 條被取締，處長須——

- (a) 將該公司的名稱自登記冊中剔除；及
- (b) 在憲報刊登有關該項除名的公告，

而當憲報刊登該公告時，該公司即告解散。

(2) 如處長信納針對該項取締採取法律行動的權利尚未用盡，他可押後根據第 (1) 款採取行動。

## Other provisions affected by the proposed amendments

### Interpretation and General Clauses Ordinance (Cap. 1)

#### 3. Interpretation of words and expressions

“Central People’s Government” (中央人民政府) means the Central People’s Government of the People’s Republic of China;

Schedule,  
para. 1

### Companies Ordinance (Cap. 32)

291AAA. Registrar shall strike proscribed company off register

Schedule,  
para. 2

(1) Where a company is proscribed under section 8A of the Societies Ordinance (Cap. 151), the Registrar shall—

- (a) strike its name off the register; and
- (b) publish a notice thereof in the Gazette,

and upon the publication of the notice the company shall be dissolved.

(2) The Registrar may defer taking action under subsection (1) if he is satisfied that the right to take legal action against the proscription has not been exhausted.

## 《退休金條例》(第 89 章)

### 15. 經定罪等後退休金、酬金或津貼 可予取消、暫停支付或扣減

#### (1) 凡——

##### (a) 已獲批予退休金或津貼的人員——

- (i) 被裁定犯了任何與任職於政府的公職服務有關的罪行，而該罪行乃行政長官核證為已對香港造成嚴重損害或可能令人對公職服務大失信心者；
- (ii) 被裁定犯了《防止賄賂條例》(第 201 章) 第 II 部所訂的罪行，而該罪行乃與該人過往任職於政府的公職服務有關者；或
- (iii) 被裁定犯了《刑事罪行條例》(第 200 章) 第 2 [條所訂的叛逆罪] (叛國)、2A (顛覆)、2B (分裂國家) 或 9A(2)(a) (因煽惑叛國、顛覆或分裂國家而屬煽動叛亂) 條所訂罪行；或

##### (b) 被裁定犯了 (a) 段所提述的罪行的人員，遭政府行使紀律懲處權迫令退休，

該人員可能不獲批予退休金、酬金或津貼，又或該人員已獲批予的退休金或津貼，可被取消、暫停支付或扣減，視屬何情況而定。

附表第 3 段

## Pensions Ordinance (Cap. 89)

### 15. Pension, gratuity or allowance may be cancelled, suspended or reduced on conviction, etc.

#### (1) Where—

##### (a) an officer to whom a pension or allowance has been granted—

- (i) is convicted of any offence in connection with the public service under the Government, being an offence which is certified by the Chief Executive to have been gravely injurious to Hong Kong or to be liable to lead to serious loss of confidence in the public service;
- (ii) is convicted of any offence under Part II of the Prevention of Bribery Ordinance (Cap. 201), being an offence related to the person's previous public service under the Government; or
- (iii) is convicted of [treason under section 2] **an offence under section 2 (treason), 2A (subversion), 2B (secession) or 9A(2)(a) (sedition by inciting commission of treason, subversion or secession)** of the Crimes Ordinance (Cap. 200); or

##### (b) an officer is compulsorily retired in the exercise of disciplinary powers of punishment by the Government following a conviction of any offence referred to in paragraph (a),

the pension or allowance which has been granted to him may be cancelled, suspended or reduced, or he may not be granted a pension, gratuity or allowance, as the case may be.

Schedule,  
para. 3

(2) 如人員在具有資格領取退休金、酬金或津貼的情況下退休後，在獲批予退休金、酬金或津貼前，一如第(1)(a)款所指明般被定罪及判處，則任何其後批予該人員的退休金、酬金或津貼，均可予取消、暫停支付或扣減。

(3) 在符合第15A條的規定下，根據第(1)或(2)款取消、暫停支付、扣減或拒絕批予退休金、津貼或酬金的權力，須由指定人員行使。

(4) 凡指定人員根據本條拒絕向某人員或某人批予退休金、津貼或酬金，則該退休金、津貼或酬金(視屬何情況而定)即據此不得批予該人員或該人。

(5)-(7) (已廢除)

## 《郵政署條例》(第98章)

### 32. 禁寄物品

- (1) 任何人不得投寄、交付郵遞或藉郵遞寄送——
- (a) 任何包含或裝載可能使郵務人員蒙受危險或可能使其他郵包受污或受損的東西的郵包；
  - (b) 任何爆炸性物質、易燃物質或危險物質；
  - (c) 任何活的或已死的動物或昆蟲，但屬於根據本條例所訂規例而規定者除外；
  - (d) (已廢除)
  - (e) 任何屬《危險藥物條例》(第134章)適用的鴉片或其他藥物；
  - (f) 任何淫褻、不道德、不雅、令人反感或帶永久形式誹謗的文字、圖片或其他東西；

(2) If after the retirement of an officer in circumstances in which he is eligible for a pension, gratuity or allowance but before the pension, gratuity or allowance is granted he is convicted and sentenced as specified in subsection (1)(a), any pension, gratuity or allowance eventually granted to him may be cancelled, suspended or reduced.

(3) Subject to section 15A, the power under subsection (1) or (2) to cancel, suspend, reduce or refuse to grant a pension, allowance or gratuity shall be exercisable by a designated officer.

(4) Where, under this section, a designated officer refuses to grant a pension, allowance or gratuity to an officer or person, a pension, allowance or gratuity, as the case may be, shall accordingly not be granted to that officer or person.

(5)-(7) (*Repealed*)

## Post Office Ordinance (Cap. 98)

### 32. Prohibited articles

- (1) No person shall post, tender for posting or send by post—
- (a) any postal packet consisting of or containing anything which might expose postal officials to danger or which might soil or damage any other postal packet;
  - (b) any explosive, inflammable or dangerous substance;
  - (c) any animal or insect, live or dead, except as provided for in any regulations made under this Ordinance;
  - (d) (*Repealed*)
  - (e) any opium or any other drug to which the Dangerous Drugs Ordinance (Cap. 134) applies;
  - (f) any obscene, immoral, indecent, offensive or libellous writing, picture or other thing;

(g) 任何在香港或在目的地國家(但該國家須為萬國郵政聯盟成員)屬於禁止輸入或流通的東西；

*[(h) 任何關於煽動罪的成文法則所指的任何煽動性刊物；]*

(i) 在無合法權限或辯解下裝載或帶有任何模仿或表示郵資印花的物品的任何郵包；

(j) 看來是以郵資印花預付郵資的任何郵包，但其實該郵資印花已用以或看似是已用以預付其他郵遞品的郵資；

(k) 模仿任何郵政當局所發行的任何信封、包裝物、卡片、表格或文件的任何物品；

(l) 帶有模仿任何郵政當局所用的任何字樣、字母或其他標記的物品的任何郵包；

(m) 在無合法權限下帶有任何字樣、字母或其他標記而旨在傳達下述印象的任何郵包，即該郵包是為女皇陛下政府或為香港政府寄出的；

(n) 與非法獎券活動有關的任何獎券活動彩票、文件或其他東西，但在香港以外地方推廣、進行或管理的獎券活動除外；或

(o) *(已廢除)*

(p) 根據本條例或任何其他條例所訂規例禁止藉郵遞寄送的任何東西。

(2)–(3) *[不予選錄]*

(4) *(已廢除)*

(5)–(6) *[不予選錄]*

(g) anything whatsoever of which the importation or circulation is forbidden in Hong Kong or in the country of destination (provided that such country is included in the Universal Postal Union);

*[(h) any seditious publication within the meaning of any enactment relating to sedition;]*

(i) any postal packet which without lawful authority or excuse contains or bears any imitation or representation of any postage stamp;

(j) any postal packet which purports to be prepaid with any postage stamp which in fact has been used or appears to have been used to prepay any other postal article;

(k) any imitation of any envelope, wrapper, card, form or document issued by any postal authority;

(l) any postal packet bearing any imitation of any words, letters or other marks used by any postal authority;

(m) any postal packet bearing without lawful authority any words, letters or other marks calculated to convey the impression that such postal packet has been sent on Her Majesty's service or on Government service;

(n) any lottery ticket, document or other thing relating to an unlawful lottery, other than a lottery promoted, conducted or managed outside Hong Kong; or

(o) *(Repealed)*

(p) anything the sending of which by post is prohibited by any regulation made under this or any other Ordinance.

(2)–(3) *[Not excerpted]*

(4) *(Repealed)*

(5)–(6) *[Not excerpted]*

## 《退休金利益條例》(第 99 章)

### 29. 經定罪等後退休金利益可予取消、暫停支付或扣減

(1) 凡某已獲批予退休金的人員——

- (a) 被裁定犯了任何與其任職於政府的公職服務相關的罪行，而該罪行是行政長官核證為已對香港造成嚴重損害或可能令人對公職服務大失信心者；
- (b) 被裁定犯了《防止賄賂條例》(第 201 章) 第 II 部所訂的任何罪行，而該罪行是關乎該人過往任職於政府的公職服務的；或
- (c) 被裁定犯了《刑事罪行條例》(第 200 章) 第 2 [條所訂的叛逆] (叛國)、 2A (顛覆)、 2B (分裂國家) 或 9A(2)(a) (因煽惑叛國、顛覆或分裂國家而屬煽動叛亂) 條所訂罪行，

則有關的退休金可予取消、暫停支付或扣減。

(2) 如任何人員在具有資格領取退休金利益的情況下退休後但在批予退休金利益前，一如第 (1) 款所指明般被定罪及判處，則任何終於批予該人員的退休金利益，均可予取消、暫停支付或扣減。

(3) 凡某人員在被裁定犯了第 (1) 款所提述的罪行後遭政府行使紀律懲處權而迫令退休，其可獲批予的延付退休金可予取消、暫停支付或扣減，或不會獲得批予延付退休金。

(4) 在符合第 29A 條的規定下，根據第 (1)、(2) 或 (3) 款取消、暫停支付、扣減或拒絕批予退休金利益的權力，須由指定人員行使。

附表第 5 段

## Pension Benefits Ordinance (Cap. 99)

### 29. Pension benefits may be cancelled, suspended or reduced on conviction, etc.

(1) Where an officer to whom pension has been granted—

- (a) is convicted of any offence in connection with the public service under the Government, being an offence which is certified by the Chief Executive to have been gravely injurious to Hong Kong or to be liable to lead to serious loss of confidence in the public service;
- (b) is convicted of any offence under Part II of the Prevention of Bribery Ordinance (Cap. 201), being an offence related to the person's previous public service under the Government; or
- (c) is convicted of [treason under section 2] **an offence under section 2 (treason), 2A (subversion), 2B (secession) or 9A(2)(a) (sedition by inciting commission of treason, subversion or secession)** of the Crimes Ordinance (Cap. 200),

the pension may be cancelled, suspended or reduced.

(2) If after the retirement of an officer in circumstances in which he is eligible for pension benefits but before the pension benefits are granted he is convicted and sentenced as specified in subsection (1), any pension benefits eventually granted to him may be cancelled, suspended or reduced.

(3) Where an officer is compulsorily retired in the exercise of disciplinary powers of punishment by the Government following a conviction of any offence referred to in subsection (1), the deferred pension which may be granted to him may be cancelled, suspended or reduced, or he may not be granted a deferred pension.

(4) Subject to section 29A, the power under subsection (1), (2) or (3) to cancel, suspend, reduce or refuse to grant pension benefits shall be exercisable by a designated officer.

Schedule,  
para. 5

(5) 凡指定人員根據本條拒絕向任何人批予延付退休金，即據此而不得批予該人延付退休金。

(6)–(8) (*已廢除*)

### 《刑事訴訟程序條例》(第 221 章)

#### 9. 關於常規與程序的規則及命令

(1)–(2) [*不予選錄*]

附表  
第 16 段

(3) 在符合本條例的條文以及適用於所有刑事訟案及事宜(包括叛[*逆罪或隱匿叛逆*]國罪的審訊)的常規與程序的規則、命令及任何其他成文法則(包括任何關於陪審團的成文法則)的規定下，該等常規與程序須盡量與不時及當其時在英格蘭施行於類似案件者相同。

(4) [*不予選錄*]

#### 9G. 在特別情況下可拒絕被控人保釋

(1) 法庭如覺得有實質理由相信(不論假若准予保釋會否根據第 9D(2) 條施加條件作規限)被控人會有下列行為，則無須准予被控人保釋——

- (a) 不按照法庭的指定歸押；或
- (b) 在保釋期間犯罪；或
- (c) 干擾證人或破壞或妨礙司法公正。

(2)–(9) [*不予選錄*]

(10) 被控人如被控告——

- (a) 謀殺罪；或

(5) Where, under this section, a designated officer refuses to grant a deferred pension to a person, a deferred pension shall accordingly not be granted to that person.

(6)–(8) (*Repealed*)

### Criminal Procedure Ordinance (Cap. 221)

#### 9. Rules and orders as to practice and procedure

(1)–(2) [*Not excerpted*]

(3) Subject to the provisions of this Ordinance and to such rules and orders and any other enactment (including any enactment relating to juries) applicable thereto, the practice and procedure in all criminal causes and matters (including trials for treason [*or misprision of treason*]) shall be, as nearly as possible, the same as the practice and procedure from time to time and for the time being in force for similar cases in England.

(4) [*Not excerpted*]

#### 9G. An accused person may be refused bail in particular circumstances

(1) The court need not admit an accused person to bail if it appears to the court that there are substantial grounds for believing, whether or not an admission were to be subject to conditions under section 9D(2), that the accused person would—

- (a) fail to surrender to custody as the court may appoint; or
- (b) commit an offence while on bail; or
- (c) interfere with a witness or pervert or obstruct the course of justice.

(2)–(9) [*Not excerpted*]

(10) An accused person charged with—

- (a) murder; or

Schedule,  
para. 16

(b) 《刑事罪行條例》(第 200 章) 第 2 [條所訂的叛逆罪]、2A、2B 或 9A(2)(a) 條所訂罪行，則只可在法官的命令下才可獲准保釋。

(11) [不予選錄]

#### 10A. 在移交的法律程序中文件的送達

(1) 凡依據一項根據《區域法院條例》(第 336 章) 第 77A 條作出的移交令(在本條提述為“移交令”)，任何法律程序根據該條第(6)款移交法院審訊，而凡律政司司長已依據第 14(1)(aa) 條提起法律程序，則除第(2)款另有規定外，律政司司長須於針對被控人的公訴書提出後 21 天或之前將以下文件交付司法常務官，並將其送達被控人(除非該等文件已送達被控人)——

- (a) 公訴書文本一份；
- (b) 控方擬在審訊時傳召的證人的陳述書文本；
- (c) 所有文件證物的文本；及
- (d) 證物清單一份。

(2) 凡律政司司長認為在第(1)款指明的期間內遵從該款的規定並不切實可行，律政司司長可——

- (a) 在移交令作出時，向作出該命令的區域法院法官申請；或
- (b) 最遲在已編定的審訊日期 21 天前，向一名法官申請，

將該期間延展；而該區域法院法官或該法官(視屬何情況而定)如信納被控人不會因此而蒙受損害，則可批給他認為合理的延展。

(3) 第(1)(b)款所提述的證人陳述書——

- (a) 須由作出該陳述書的人簽署；

(b) [*treason under section 2*] **an offence under section 2, 2A, 2B or 9A(2)(a)** of the Crimes Ordinance (Cap. 200),

shall be admitted to bail only upon the order of a judge.

(11) [*Not excerpted*]

#### 10A. Service of documents in transferred proceedings

(1) Where pursuant to an order for transfer made under section 77A of the District Court Ordinance (Cap. 336) (in this section referred to as an “order of transfer”) any proceedings stand transferred to the court for trial under subsection (6) of that section and where the Secretary for Justice has instituted proceedings pursuant to section 14(1)(aa), he shall, not more than 21 days after an indictment is preferred against the accused person, but subject to subsection (2), deliver to the Registrar and, unless they have already been served, serve on the accused person——

- (a) a copy of the indictment;
- (b) copies of the statements of those witnesses whom the prosecution intends to call at the trial;
- (c) copies of all documentary exhibits; and
- (d) a list of the exhibits.

(2) Where the Secretary for Justice considers that it will not be practicable to comply with the requirements in subsection (1) within the period specified in that subsection, he may apply——

- (a) upon the making of the order of transfer, to the District Court judge who makes the order; or
- (b) at least 21 days before the date fixed for trial, to a judge,

for an extension of that period, and the District Court judge or the judge, as the case may be, may, if he is satisfied that the accused person is not prejudiced thereby, grant such extension as he considers reasonable.

(3) A statement of a witness referred to in subsection (1)(b) shall——

- (a) be signed by the person making it;

- (b) 須載有證人的聲明，表明陳述書盡其所知所信是真實的，而他在作出該陳述書時，亦知悉故意作出他明知是虛假或並不相信是真實的陳述，可令他遭受刑事檢控；
- (c) 如並非用英文寫成，則須附有英文譯本；如並非用中文寫成，則須附有中文譯本；
- (d) 如由 21 歲以下的人作出，則須述明該人的年齡；及
- (e) 須宣稱已用作出該陳述書的人在作出該陳述書時所用的語言向該人覆讀或已由該人閱讀。

(4) 如第 (1)(c) 款所提述的文件證物並非用英文寫成，則須附有根據《證據條例》(第 8 章) 第 27 條經核證的英文譯本，而如並非用中文寫成，則須附有中文譯本，但如區域法院法官或法官應在區域法院或法庭提出的申請並基於所表明之因而另有指示，則屬例外。

(5) 第 (1)(d) 款所提述的證物清單中述及的證物，須在第 (1)(b) 款所提述的證人陳述書內清楚地予以識別，並須給予被控人或其大律師或律師合理機會以查驗該證物。

(6) 根據第 (1) 或 (2) 款作出的任何文件的送達，不因沒有遵從第 (3)、(4) 或 (5) 款的任何規定而致無效，但如法官信納被控人因該等規定不獲遵從而蒙受損害，則作別論。

(7) 本條就依據第 13C(1) 條進行的法律程序而適用，猶如——

- (a) 在第 (1) 款中，在“條提起”之前的所有字句由下文取代——

- (b) contain a declaration by the witness to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that wilfully making a statement which he knows to be false or does not believe to be true may render him liable for a criminal prosecution;
- (c) if in a language other than English, be accompanied by an English translation and, if in a language other than Chinese, by a Chinese translation;
- (d) if made by a person under 21, give his age; and
- (e) purport to have been read over to the person who made the statement in the language used by that person in making the statement or to have been read by that person.

(4) A documentary exhibit referred to in subsection (1)(c) shall, if written in a language other than English, be accompanied by an English translation certified under section 27 of the Evidence Ordinance (Cap. 8) and, if written in a language other than Chinese, be accompanied by a Chinese translation, unless on an application made in the District Court the District Judge or, on an application made in the court, the judge, directs otherwise on cause shown.

(5) An exhibit which is mentioned in a list of exhibits referred to in subsection (1)(d) shall be clearly identified in a statement of a witness referred to in subsection (1)(b) and the accused person or his counsel or solicitor shall be given reasonable opportunity to examine such exhibit.

(6) Failure to comply with any requirement in subsection (3), (4) or (5) shall not render the service of any documents under subsection (1) or (2) ineffective unless the judge is satisfied that the accused person is prejudiced by such failure.

**(7) This section applies in relation to proceedings conducted pursuant to section 13C(1) as if—**

- (a) in subsection (1), everything before “, he shall” is substituted by—**

Schedule,  
para. 18

“(1) 凡依據第 13C(1) 條有任何法律程序移交法院審訊而律政司司長已依據<sup>16</sup> 第 14(1)(a)”；

- (b) 在第 (2) 款中，兩度出現的“區域法院法官”均由“裁判官”取代；及
- (c) 在第 (4) 款中，“區域法院法官或法官應在區域法院或”由“裁判官應向他作出的申請或法官應在”取代。

附表  
第 19 段

### 13C. 關於《刑事罪行條例》第 18E 條及《官方機密條例》第 24A 條的法律程序

(1) 凡被控人根據《刑事罪行條例》(第 200 章) 第 18E(1) 或 (2) 條或《官方機密條例》(第 521 章) 第 24A(1) 或 (2) 條選擇在原訟法庭受審——

- (a) 有關案件須在猶如他是根據<sup>17</sup> 《裁判官條例》(第 227 章) 第 80C(4) 條被交付審訊的情況下進行；
- (b) <sup>18</sup> 第 10 條不適用於該案件；及
- (c) 被控人如被裁定犯該罪行，須由主審法官判刑，但主審法官判處的刑罰，不得重於假使被控人被裁判官裁定犯該罪行該裁判官便可判處的刑罰。

(2) 凡被控人根據《刑事罪行條例》(第 200 章) 第 18E(3) 條或《官方機密條例》(第 521 章) 第 24A(3) 條選擇在原訟法庭受審——

<sup>16</sup> 《刑事訴訟程序條例》(第 221 章) 第 14 條，見附錄第 11 段。

<sup>17</sup> 《裁判官條例》(第 227 章) 第 80C 條，見附錄第 12 段。

<sup>18</sup> 《刑事訴訟程序條例》(第 221 章) 第 10 條，見附錄第 10 段。

“(1) Where pursuant to section 13C(1) any proceedings stand transferred to the court for trial and where the Secretary for Justice has instituted proceedings pursuant to<sup>16</sup>section 14(1)(a)”;

- (b) in subsection (2), “District Court judge” is substituted in both places where it appears by “magistrate”; and
- (c) in subsection (4), “in the District Court the District Judge” is substituted by “to the magistrate he”.

### 13C. Proceedings relating to section 18E of the Crimes Ordinance and section 24A of the Official Secrets Ordinance

(1) Where an accused elects under section 18E(1) or (2) of the Crimes Ordinance (Cap. 200) or section 24A(1) or (2) of the Official Secrets Ordinance (Cap. 521) to stand trial before the Court of First Instance——

- (a) the case shall proceed as if he is committed for trial under<sup>17</sup>section 80C(4) of the Magistrates Ordinance (Cap. 227);
- (b) <sup>18</sup>section 10 shall not apply to the case; and
- (c) the accused shall, if he is convicted of the offence, be sentenced by the trial judge, but the trial judge shall not impose a penalty heavier than the penalty that could have been imposed by a magistrate had the accused been convicted of the offence before the magistrate.

(2) Where an accused elects under section 18E(3) of the Crimes Ordinance (Cap. 200) or section 24A(3) of the Official Secrets Ordinance (Cap. 521) to stand trial before the Court of First Instance——

<sup>16</sup> For section 14 of the Criminal Procedure Ordinance (Cap. 221), see paragraph 11 in the Appendix.

<sup>17</sup> For section 80C of the Magistrates Ordinance (Cap. 227), see paragraph 12 in the Appendix.

<sup>18</sup> For section 10 of the Criminal Procedure Ordinance (Cap. 221), see paragraph 10 in the Appendix.

- (a) 有關案件須在猶如已有命令根據<sup>19</sup>《區域法院條例》(第 336 章)第 77A(4) 條作出將有關法律程序移交原訟法庭的情況下進行；及
- (b) 被控人如被裁定犯該罪行，須由主審法官判刑，但主審法官判處的刑罰，不得重於假使被控人被區域法院裁定犯該罪行區域法院法官便可判處的刑罰。

#### 14A. 罪行的審訊

(1) 凡條例中任何條文訂出罪行或達致訂出罪行，該罪行只可循簡易程序審訊，除非——

附表  
第 20(1) 段

*[(a) 該罪行聲明為叛逆罪；]*

- (b) 該條文載有“循公訴程序”等字；或
- (c) (已廢除)
- (d) 該罪行已按照《裁判官條例》(第 227 章)第 IV 部移交區域法院審理。

(2) 凡條例中任何條文訂出罪行或達致訂出罪行，且——

附表  
第 20(2) 段

*[(a) 該罪行聲明為叛逆罪；或]*

- (b) 載有“循公訴程序”等字，則在不抵觸第 (4) 款的條文下，該罪行只可循公訴程序審訊。
- (3) (已廢除)
- (4)–(5) [不予選錄]

<sup>19</sup> 《區域法院條例》(第 336 章)第 77A 條，見附錄第 14 段。

- (a) the case shall proceed as if an order has been made under <sup>19</sup>section 77A(4) of the District Court Ordinance (Cap. 336) for the transfer of the proceedings to the Court of First Instance; and
- (b) the accused shall, if he is convicted of the offence, be sentenced by the trial judge, but the trial judge shall not impose a penalty heavier than the penalty that could have been imposed by a judge of the District Court had the accused been convicted of the offence before the District Court.

#### 14A. Trial of offences

(1) Where any provision in any Ordinance creates, or results in the creation of, an offence, the offence shall be triable summarily only, unless—

*[(a) the offence is declared to be treason;]*

- (b) the words “upon indictment” or “on indictment” appear; or
- (c) (Repealed)
- (d) the offence is transferred to the District Court in accordance with Part IV of the Magistrates Ordinance (Cap. 227).

Schedule,  
para. 20(1)

(2) Where any provision in any Ordinance creates, or results in the creation of, an offence and—

*[(a) the offence is declared to be treason; or]*

- (b) subject to subsection (4), the words “upon indictment” or “on indictment” appear, the offence shall be triable only upon indictment.
- (3) (Repealed)
- (4)–(5) [Not excerpted]

Schedule,  
para. 20(2)

<sup>19</sup> For section 77A of the District Court Ordinance (Cap. 336), see paragraph 14 in the Appendix.

## 51. 罪行的審訊

(1) [不予選錄]

附表  
第 21 段

(2) 如在審訊任何並非[叛逆罪]/《刑事罪行條例》(第 200 章) 第 2、2A、2B 或 9A(2)(a) 條所訂罪行的罪行而提出的告發、指控或公訴書時，經證明被控人於該罪行無罪，但告發、指控或公訴書中的指稱(不論明示或隱含地)構成或包括屬主審法院司法管轄權範圍內的另一罪行的指稱，則可裁斷被控人就該另一罪行有罪，或可裁斷被控人就假若有明確控告該另一罪行的告發、指控或公訴書時他可被裁斷有罪的罪行有罪。

(3) 就第(2)款而言，一項罪行的指稱，須視為包括企圖犯該罪行的指稱；凡任何人被控告企圖犯某罪行或被控告犯任何在犯某罪行之前所作的襲擊或其他行為，而不是被控告既遂罪行，則即使顯示他就既遂罪行有罪，仍可就他所被控告的罪行將他定罪。

(4)-(7) [不予選錄]

## 65F. 法律程序的移交

(1) 凡有公訴書針對某被控人提出，在該被控人被公訴提控前，律政司司長可向法院申請一項將針對該被控人的法律程序移交裁判官席前循簡易程序處理或移交區域法院的命令。

(2) 根據第(1)款提出的申請，須藉動議向法官提出，而動議的通知須附有列明申請理由的誓章作支持。

(3) 動議通知及誓章的文本，須在通知指明是聆訊動議的日期前 21 天或之前送達被控人，但如法官另有指示，則屬例外。

## 51. Trial of offences

(1) [Not excerpted]

(2) If on the trial of any information, charge or indictment for any offence other than [treason] **an offence under section 2, 2A, 2B or 9A(2)(a) of the Crimes Ordinance (Cap. 200)** it is proved that the accused is not guilty of that offence but the allegations in the information, charge or indictment amount to or include, whether expressly or by implication, an allegation of another offence falling within the jurisdiction of the court of trial, he may be found guilty of that other offence or of an offence of which he could be found guilty on an information, charge or indictment specifically charging that other offence.

(3) For the purposes of subsection (2) any allegation of an offence shall be taken as including an allegation of attempting to commit that offence; and where a person is charged with attempting to commit an offence or with any assault or other act preliminary to an offence but not with the completed offence, then he may be convicted of the offence charged notwithstanding that he is shown to be guilty of the completed offence.

(4)-(7) [Not excerpted]

## 65F. Transfer of proceedings

(1) Where an indictment is preferred against an accused person and before he is arraigned, the Secretary for Justice may apply to the court for an order that the proceedings against the accused person be transferred before a magistrate to be dealt with summarily or to be transferred to the District Court.

(2) Any application under subsection (1) shall be made to a judge by way of motion, notice of which shall be supported by an affidavit showing the grounds on which the application is made.

(3) A copy of the notice of motion and the affidavit shall be served on the accused person not less than 21 days before the date named in the notice for hearing the motion, unless the judge otherwise directs.

(4) 在接獲根據第(1)款提出的申請後，法官如顧及司法公正的原則而認為適合，可作出批准申請的命令(在本條及第65G條提述為“移交令”)或拒絕申請，而在批准或拒絕申請的情況下，均可就訟費作出其認為適當的命令。

附表  
第22段

(4A) 如有關被控人反對移交，法官須拒絕根據第(1)款提出的將就《刑事罪行條例》(第200章)第9A(2)(b)或9C條或《官方機密條例》(第521章)第13、14、15、16、16A、17、18、19或20條所訂罪行進行的法律程序移交的申請。

(5)-(14) [不予選錄]

## 91. 隱瞞罪行的罰則

(1) 如某人犯可逮捕的罪行，而任何其他人知悉或相信有人已犯該罪行或另一可逮捕的罪行，並知悉或相信他有在確保罪犯就該罪行而被檢控或定罪方面可能有關鍵性幫助的資料，但接受或同意接受任何不披露該資料的代價，即屬有罪，如循公訴程序定罪，可處監禁2年。

(2) 如某人明知而向任何人作出虛報，內容傾向於顯示已有人犯某罪行，或傾向於對任何人或財產的安全引起憂慮，或傾向顯示他有對警方的調查具關鍵作用的資料，因而導致任何警力的浪費，即屬有罪，一經定罪，可處罰款\$2,000及監禁6個月。

(3) 除經律政司司長同意外，不得就第(1)款所訂的罪行提起法律程序。

附表  
第23段

(4) 除本條所訂者外，有代價地就罪行[(叛逆罪除外)]不予檢控或作出任何妨礙檢控的行為，並非一項罪行。

(4) On an application being made under subsection (1), the judge may, if he considers it fit having regard to the interests of justice, make an order allowing the application (in this section and section 65G referred to as an “order of transfer”), or refuse the application and may in either case make such order as to costs as he considers appropriate.

**(4A) The judge shall refuse an application under subsection (1) to transfer proceedings for an offence under section 9A(2)(b) or 9C of the Crimes Ordinance (Cap. 200) or section 13, 14, 15, 16, 16A, 17, 18, 19 or 20 of the Official Secrets Ordinance (Cap. 521) if the accused objects to the transfer.**

(5)-(14) [Not excerpted]

## 91. Penalties for concealing offences

(1) If a person has committed an arrestable offence, any other person who, knowing or believing that the offence or some other arrestable offence has been committed, and that he has information which might be of material assistance in securing the prosecution or conviction of an offender for it, accepts or agrees to accept for not disclosing that information any consideration shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 2 years.

(2) If a person causes any wasteful employment of the police by knowingly making to any person a false report tending to show that an offence has been committed, or to give rise to apprehension for the safety of any person or property, or tending to show that he has information material to any police inquiry he shall be guilty of an offence and shall be liable on conviction to a fine of \$2,000 and to imprisonment for 6 months.

(3) No prosecution shall be instituted for an offence under subsection (1) except with the consent of the Secretary for Justice.

(4) The compounding of an offence [other than treason] shall not be an offence otherwise than under this section.

Schedule,  
para. 22

Schedule,  
para. 23

(5) (已廢除)

100. 已婚婦女遭丈夫脅迫的推定的  
廢除

附表  
第 24 段

任何關於妻子於丈夫在場時所犯的罪行是遭丈夫脅迫而犯的法律推定，在此予以廢除，但在妻子被控告犯並非 [叛逆罪或謀殺罪] 謀殺罪或《刑事罪行條例》(第 200 章) 第 2、2A、2B 或 9A(2)(a) 條所訂罪行的任何其他罪行時，如證明該罪行是於丈夫在場時遭丈夫脅迫而犯的，即為好的免責辯護。

《刑事案件法律援助規則》(第 221 章，附屬法例)

附表  
第 25 段

13. [死] 極刑案件的法律援助

(1) 即使本部有任何規定，凡任何人——

附表  
第 25 段

(a) 就謀殺、[叛逆或使用暴力的海盜行為] 使用暴力的海盜行為或《刑事罪行條例》(第 200 章) 第 2 (叛國)、2A (顛覆)、2B (分裂國家) 或 9A(2)(a) (因煽惑叛國、顛覆或分裂國家而屬煽動叛亂) 條所訂罪行的控罪而被交付審訊；

附表  
第 25 段

(b) 就謀殺、[叛逆或使用暴力的海盜行為] 使用暴力的海盜行為或《刑事罪行條例》(第 200 章) 第 2 (叛國)、2A (顛覆)、2B (分裂國家) 或 9A(2)(a) (因煽惑叛國、顛覆或分裂國家而屬煽動叛亂) 條所訂罪行的控罪被定罪並打算就該定罪提出上訴；或

(5) (Repealed)

100. Abolition of presumption of coercion  
of married woman by husband

Any presumption of law that an offence committed by a wife in the presence of her husband is committed under the coercion of the husband is hereby abolished, but on a charge against a wife for any offence other than [treason or murder] **murder or an offence under section 2, 2A, 2B or 9A(2)(a) of the Crimes Ordinance (Cap. 200)** it shall be a good defence to prove that the offence was committed in the presence of, and under the coercion of, the husband.

Schedule,  
para. 24

Legal Aid in Criminal Cases Rules (Cap. 221 sub. leg.)

13. Legal aid in capital cases

(1) Notwithstanding anything contained in this Part, where a person—

(a) is committed for trial upon a charge of murder, [treason or piracy with violence] **piracy with violence or an offence under section 2 (treason), 2A (subversion), 2B (secession) or 9A(2)(a) (sedition by inciting commission of treason, subversion or secession) of the Crimes Ordinance (Cap. 200);**

Schedule,  
para. 25

(b) is convicted of a charge of murder, [treason or piracy with violence] **piracy with violence or an offence under section 2 (treason), 2A (subversion), 2B (secession) or 9A(2)(a) (sedition by inciting commission of treason, subversion or secession) of the Crimes Ordinance (Cap. 200)** and proposes to appeal therefrom; or

Schedule,  
para. 25

(c) 擬在涉及謀殺、**[叛逆或使用暴力的海盜行為]** 使用暴力的海盜行為或《刑事罪行條例》(第 200 章) 第 2 (叛國)、2A (顛覆)、2B (分裂國家) 或 9A(2)(a) (因煽惑叛國、顛覆或分裂國家而屬煽動叛亂) 條所訂罪行的控罪的法律程序中，反對向終審法院提出的上訴或向終審法院上訴的許可申請，

署長在考慮被控人或上訴人的財務資源後，可給予他法律援助證書或上訴援助證書 (視乎情況所需而定)，並如被控人或上訴人的財務資源並無超逾第 4 條指明的有關款額，則須如此行事。

(2)-(3) *[不予選錄]*

### 《裁判官條例》(第 227 章)

附表 2 [第 91 及 92 條]

#### 第 I 部

1. 任何可處死刑的罪行。
2. 任何可處終身監禁的罪行 (違反《盜竊罪條例》(第 210 章) 第 10 或 12 條，或違反《刑事罪行條例》(第 200 章) 第 VIII 部的罪行除外)。
3. 違反《刑事罪行條例》(第 200 章) 第 21 或 22 條的任何罪行。

*[4. 隱匿叛逆。*

*5. 違反《刑事罪行條例》(第 200 章) 第 I 及 II 部的任何罪行。]*

6. 褻瀆神明及宗樹罪行。
7. 撰寫、印刷或發布褻瀆神明、煽動性或誹謗名譽的永久形式誹謗，但《誹謗條例》(第 21 章) 第 16 條所訂定者除外。

(c) wishes to oppose an appeal to, or an application for leave to appeal to, the Court of Final Appeal in proceedings involving a charge of murder, ***[treason or piracy with violence]*** **piracy with violence or an offence under section 2 (treason), 2A (subversion), 2B (secession) or 9A(2)(a) (sedition by inciting commission of treason, subversion or secession) of the Crimes Ordinance (Cap. 200),**

the Director may, having considered the financial resources of the accused person or appellant, grant him a legal aid certificate or an appeal aid certificate, as the case may require, and shall do so if his financial resources do not exceed the relevant amounts specified in rule 4.

(2)-(3) *[Not excerpted]*

### Magistrates Ordinance (Cap. 227)

SECOND SCHEDULE [ss. 91 & 92]

#### PART I

1. Any offence which is punishable with death.
2. Any offence (except an offence against section 10 or 12 of the Theft Ordinance (Cap. 210), or an offence against Part VIII of the Crimes Ordinance (Cap. 200)) which is punishable with imprisonment for life.
3. Any offence against section 21 or 22 of the Crimes Ordinance (Cap. 200).

*[4. Misprision of treason.*

*5. Any offence against Part I or Part II of the Crimes Ordinance (Cap. 200).]*

6. Blasphemy and offences against religion.
7. Composing, printing or publishing blasphemous, seditious or defamatory libels, except as provided by section 16 of the Defamation Ordinance (Cap. 21).

8. 危害種族罪及任何串謀或煽惑犯危害種族罪。
9. 酷刑。

## 第 II 部

1. 在宣誓下作假證供及唆使他人宣誓下作假證供。
2. 使或唆使他人發假誓，而該項發假誓是可作為在宣誓下作假證供懲處的。
3. 違反與破產人有關的法律條文的任何罪行。
4. 重婚。
5. 賄賂。
6. (已廢除)
7. 違反《盜竊罪條例》(第 210 章) 第 22(1) 條的罪行。

## 第 III 部

[第 88 條]

1. 任何可處死刑的罪行。
2. 任何可處終身監禁的罪行，但以下罪行除外——  
違反《入境條例》(第 115 章) 第 37C、37D、37O 或 37P 條的罪行，違反《刑事罪行條例》(第 200 章) 第 53 或 123 條的罪行，違反《刑事罪行條例》(第 200 章) 第 VIII 部的罪行，違反《危險藥物條例》(第 134 章) 第 4 或 6 條的罪行，違反《盜竊罪條例》(第 210 章) 第 10 或 12 條的罪行，違反《侵害人身罪條例》(第 212 章) 第 17、28 或 29 條的罪行，或違反《火器及彈藥條例》(第 238 章) 第 16、17 或 18 條的罪行。
3. 違反《刑事罪行條例》(第 200 章) 第 21 或 22 條的任何罪行。
4. 隱匿叛逆。
5. 違反《刑事罪行條例》(第 200 章) 第 I 及 II 部的任何罪行。]
6. 褻瀆神明及宗槨罪行。

附表  
第 26(2) 段

8. Genocide and any conspiracy or incitement to commit genocide.
9. Torture.

## PART II

1. Perjury and subornation of perjury.
2. Making or suborning any other person to make a false oath punishable as perjury.
3. Any offence against the provisions of the laws relating to bankrupts.
4. Bigamy.
5. Bribery.
6. (Repealed)
7. An offence against section 22(1) of the Theft Ordinance (Cap. 210).

## PART III

[s. 88]

1. Any offence which is punishable with death.
2. Any offence which is punishable with imprisonment for life except an offence against section 37C, 37D, 37O or 37P of the Immigration Ordinance (Cap. 115), an offence against section 53 or 123 of the Crimes Ordinance (Cap. 200), an offence against Part VIII of the Crimes Ordinance (Cap. 200), an offence against section 4 or 6 of the Dangerous Drugs Ordinance (Cap. 134), an offence against section 10 or 12 of the Theft Ordinance (Cap. 210), section 17, 28 or 29 of the Offences against the Person Ordinance (Cap. 212) or section 16, 17 or 18 of the Firearms and Ammunition Ordinance (Cap. 238).
3. Any offence against section 21 or 22 of the Crimes Ordinance (Cap. 200).
4. Misprision of treason.
5. Any offence against Part I or Part II of the Crimes Ordinance (Cap. 200).]
6. Blasphemy and offences against religion.

Schedule,  
para. 26(2)

7. 撰寫、印刷或發布褻瀆神明、煽動性或誹謗名譽的永久形式誹謗。

8. 危害種族罪及任何串謀或煽惑犯危害種族罪。

### 《桉育條例》(第 279 章)

#### 31. 取消校董註冊的理由

(1) 署長可在以下情況取消任何學校校董的註冊——

(a) 如該 [人在任何社團或分支機構中屬《社團條例》(第 151 章) 第 2 條所界定的幹事，而該社團或該分支機構的註冊或註冊豁免已根據該條例第 5D 條取消，或保安局局長已根據該條例第 8 條禁止該社團或該分支機構運作或繼續運作；] 人——

(i) 在任何社團或分支機構中擔任《社團條例》(第 151 章) 第 2 條所界定的幹事，而——

(A) 該社團或分支機構的註冊或註冊豁免已根據該條例第 5D 條取消；或

(B) 該社團或分支機構的運作或繼續運作已被保安局局長根據該條例第 8 條禁止；或

(ii) 在任何組織中擔任該條例第 2 條所界定的幹事，而該組織已根據該條例第 8A 條被取締；

(b)-(f) [不予選錄]

(2) [不予選錄]

(3) (已廢除)

7. Composing, printing or publishing blasphemous, seditious or defamatory libels.

8. Genocide and any conspiracy or incitement to commit genocide.

### Education Ordinance (Cap. 279)

#### 31. Grounds for cancellation of registration of manager

(1) The Director may cancel the registration of a manager of a school—

(a) if the person has been an office-bearer, as defined in section 2 of the Societies Ordinance (Cap. 151), [of any society or a branch which has had its registration or exemption from registration cancelled under section 5D, or its operation or continued operation prohibited by the Secretary for Security under section 8 of that Ordinance;] of—

(i) any society or a branch which has had—

(A) its registration or exemption from registration cancelled under section 5D of that Ordinance; or

(B) its operation or continued operation prohibited by the Secretary for Security under section 8 of that Ordinance; or

(ii) any organization which has been proscribed under section 8A of that Ordinance;

(b)-(f) [Not excerpted]

(2) [Not excerpted]

(3) (Repealed)

Schedule,  
para. 27

附表  
第 27 段

## 《退休金利益(司法人員)條例》(第 401 章)

### 31. 經定罪等後退休金利益可予取消、暫停支付或扣減

(1) 凡某已獲批予退休金的人員——

- (a) 被裁定犯了任何與任職於政府的公職服務相關的罪行，而該罪行是行政長官核證為已對香港造成嚴重損害或可能令人對公職服務大失信心者；
- (b) 被裁定犯了《防止賄賂條例》(第 201 章) 第 II 部所訂的某項罪行，而該罪行是關乎該人過往任職於政府的公職服務的；或
- (c) 被裁定犯了《刑事罪行條例》(第 200 章) 第 2 [條所訂的叛逆] (叛國)、 2A (顛覆)、 2B (分裂國家) 或 9A(2)(a) (因煽惑叛國、顛覆或分裂國家而屬煽動叛亂) 條所訂罪行，

則有關的退休金可予取消、暫停支付或扣減。

(2) 如任何人員在具有資格領取退休金利益的情況下退休後但在批予退休金利益前，一如第 (1) 款所指明般被定罪及判處，則任何終於批予該人員的退休金利益，均可予取消、暫停支付或扣減。

(3) 凡某人員在被裁定犯了第 (1) 款所提述的罪行後遭行使紀律懲處權而迫令退休，其可獲批予的延付退休金可予取消、暫停支付或扣減，或不會獲得批予延付退休金。

(4) 為施行第 (1)、(2) 及 (3) 款，指定人員在符合第 32 條的規定下，可決定以下事項——

- (a) 退休金利益是否須取消、暫停支付或扣減，或不得批予 (視屬何情況而定)；

## Pension Benefits (Judicial Officers) Ordinance (Cap. 401)

### 31. Pension benefits may be cancelled, suspended or reduced on conviction, etc.

(1) Where an officer to whom a pension has been granted—

- (a) is convicted of an offence in connection with public service under the Government, and that offence is certified by the Chief Executive to have been gravely injurious to Hong Kong or to be liable to lead to serious loss of confidence in the public service;
- (b) is convicted of an offence under Part II of the Prevention of Bribery Ordinance (Cap. 201), and that offence is related to the person's previous public service under the Government; or
- (c) is convicted of [*treason under section 2*] **an offence under section 2 (treason), 2A (subversion), 2B (secession) or 9A(2)(a) (sedition by inciting commission of treason, subversion or secession)** of the Crimes Ordinance (Cap. 200),

the pension may be cancelled, suspended or reduced.

(2) If after the retirement of an officer in circumstances in which he is eligible for pension benefits but before the pension benefits are granted he is convicted as specified in subsection (1), and sentenced, any pension benefits eventually granted to him may be cancelled, suspended or reduced.

(3) Where an officer is compulsorily retired in the exercise of disciplinary powers following a conviction of any offence referred to in subsection (1), the deferred pension which may be granted to him may be cancelled, suspended or reduced, or he may not be granted a deferred pension.

(4) For the purposes of subsections (1), (2) and (3), a designated officer may, subject to section 32, determine—

- (a) whether pension benefits shall be cancelled, suspended or reduced, or shall not be granted, as the case may be;

- (b) 開始取消、暫停支付或扣減退休金利益的日期；及
- (c) 如屬扣減退休金利益，則決定所扣減的款額，但  
不超逾退休金利益的 25% 為限。

### 《有組織及嚴重罪行條例》(第 455 章)

#### 5. 搜查的權限

(1) 為偵查下述事項，獲授權人可向原訟法庭或區域法院申請，要求就指明的處所根據本條發出手令——

- (a) 有組織罪行；
- (b) 已犯或被懷疑已犯有組織罪行的人從有組織罪行的得益；
- (c) 已犯或被懷疑已犯指明的罪行的人從該罪行的得益。

(2) 法庭接獲該項申請後，如信納——

- (a) 就某處所內的物料根據第 3(6) 條施加的要求未予遵從；或
- (b) 根據第 4 條就處所內的物料發出的命令，未予遵從；或
- (c) 已符合第 (3)(a)、(c) 及 (d) 款或第 (3)(b)、(c) 及 (d) 款的條件；或
- (d) 已符合第 (4)(a)、(c) 及 (d) 款或第 (4)(b)、(c) 及 (d) 款的條件，

可簽發手令，授權獲授權人進入處所搜查。

- (b) the date from which pension benefits shall be cancelled, suspended or reduced; and
- (c) in the case of a reduction in pension benefits, the amount of the reduction not exceeding 25% of the pension benefits.

### Organized and Serious Crimes Ordinance (Cap. 455)

#### 5. Authority for search

(1) An authorized officer may, for the purpose of an investigation into—

- (a) an organized crime;
- (b) the proceeds of organized crime of any person who has committed or is suspected of having committed an organized crime;
- (c) the proceeds of a specified offence of any person who has committed, or is suspected of having committed, that specified offence,

apply to the Court of First Instance or the District Court for a warrant under this section in relation to specified premises.

(2) On such application the court may issue a warrant authorizing an authorized officer to enter and search the premises if it is satisfied—

- (a) that a requirement imposed under section 3(6) in relation to material on the premises has not been complied with; or
- (b) that an order made under section 4 in relation to material on the premises has not been complied with; or
- (c) that the conditions in subsection (3)(a), (c) and (d) or subsection (3)(b), (c) and (d) are fulfilled; or
- (d) that the conditions in subsection (4)(a), (c) and (d) or subsection (4)(b), (c) and (d) are fulfilled.

- (3) 第 (2)(c) 款所指的條件是——
- (a) (如偵查是針對某有組織罪行的) 有合理理由懷疑有人已犯該有組織罪行；
  - (b) 如偵查是針對某人從有組織罪行或指明的罪行的得益的——
    - (i) 該人已犯有組織罪行或該指明的罪行，或有合理理由懷疑該人已犯有組織罪行或該指明的罪行；及
    - (ii) 有合理理由懷疑該人已從有組織罪行或該指明的罪行中獲利；
  - (c) 就該處所內任何物料而言，已符合第 4(4)(c) 及 (d) 條的條件；
  - (d) 由於下列原因，不適宜根據該條就該物料發出命令——
    - (i) 如要聯絡任何有權提交有關物料的人，並不切實可行；或
    - (ii) 如要聯絡任何有權准許別人取覽有關物料的人，或任何有權准許別人進入有關物料所在的處所的人，並不切實可行；或
    - (iii) 除非獲授權人能立即取覽有關物料，否則與該項申請有關的偵查可能受到嚴重妨害。

- (3) The conditions referred to in subsection (2)(c) are—
- (a) where the investigation is into an organized crime, that there are reasonable grounds for suspecting that the organized crime has been committed;
  - (b) where the investigation is into the proceeds of organized crime or a specified offence of a person—
    - (i) that the person has committed an organized crime or that specified offence, or that there are reasonable grounds for suspecting that he has committed an organized crime or that specified offence; and
    - (ii) that there are reasonable grounds for suspecting that the person has benefited from organized crime or that specified offence;
  - (c) that the conditions in section 4(4)(c) and (d) are fulfilled in relation to any material on the premises;
  - (d) that it would not be appropriate to make an order under that section in relation to the material because—
    - (i) it is not practicable to communicate with any person entitled to produce the material; or
    - (ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated; or
    - (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless an authorized officer could secure immediate access to the material.

- (4) 第(2)(d)款所指的條件是——
- (a) (如偵查是針對某有組織罪行的)有合理理由懷疑有人已犯該有組織罪行；
  - (b) 如偵查是針對某人從有組織罪行或指明的罪行的得益的——
    - (i) 該人已犯有組織罪行或該指明的罪行，或有合理理由懷疑該人已犯有組織罪行或該指明的罪行；及
    - (ii) 有合理理由懷疑該人已從有組織罪行或該指明的罪行中獲利；
  - (c) 有合理理由懷疑該處所內相當可能藏有與該申請所關的偵查有關的物料，而在提出申請時不能就該物料作詳細說明；
  - (d)
    - (i) 如要聯絡任何有權准許別人進入該處所的人，並不切實可行；或
    - (ii) 除非出示手令，否則不會獲准進入該處所；或
    - (iii) 除非獲授權人到達該處所時能立即進入該處所，否則該項申請所關的偵查可能受到嚴重妨害。

- (4) The conditions referred to in subsection (2)(d) are—
- (a) where the investigation is into an organized crime, that there are reasonable grounds for suspecting that the organized crime has been committed;
  - (b) where the investigation is into the proceeds of organized crime or a specified offence of a person—
    - (i) that the person has committed an organized crime or that specified offence, or that there are reasonable grounds for suspecting that he has committed an organized crime or that specified offence; and
    - (ii) that there are reasonable grounds for suspecting that the person has benefited from organized crime or that specified offence;
  - (c) that there are reasonable grounds for suspecting that there is on the premises material which is likely to be relevant to the investigation for the purpose of which the application is made, but that the material cannot at the time of the application be particularized;
  - (d) that—
    - (i) it is not practicable to communicate with any person entitled to grant entry to the premises; or
    - (ii) entry to the premises will not be granted unless a warrant is produced; or
    - (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless an authorized officer arriving at the premises could secure immediate entry to them.

(5) 凡獲授權人執行根據本條簽發的手令進入處所後，可扣押及扣留任何相當可能與該手令所關的偵查有關的物料，但享有法律特權的品目則除外。

(6) 任何人阻撓或妨礙獲授權人執行根據本條簽發的手令，即屬犯罪——

(a) 循公訴程序定罪後，可處罰款 \$250,000 及監禁 2 年；或

(b) 循簡易程序定罪後，可處第 5 級罰款及監禁 6 個月。

(7) 獲授權人可將根據本條扣押的任何物料攝影或複印。

(8) 即使《釋義及通則條例》(第 1 章) 第 83 條已有規定，但在符合本條的規定下，法庭可根據本條發出手令，授權為搜尋或扣押被知為或被懷疑是新聞材料的物料的目的而進入處所。

(9) 第 (8) 款並不就屬以下條文所訂罪行的有組織罪行或指明的罪行而適用——

(a) 《社團條例》(第 151 章) 第 8C 條 (參加受取締組織的活動)；

(b) 《刑事罪行條例》(第 200 章) 第 2 (叛國)、2A (顛覆)、2B (分裂國家)、9A (煽動叛亂) 或 9C (處理煽動性刊物) 條；或

(c) 《官方機密條例》(第 521 章) 第 13、14、15、16、16A、17、18、19 或 20 條，

據此，根據本條進行的關於該等有組織罪行或指明的罪行的進入、搜查、搜身或檢取，均受《釋義及通則條例》(第 1 章) 第 83 條及該條例第 XII 部其他條文規限。

(5) Where an authorized officer has entered premises in the execution of a warrant issued under this section, he may seize and retain any material, other than items subject to legal privilege, which is likely to be relevant to the investigation for the purpose of which the warrant was issued.

(6) Any person who hinders or obstructs an authorized officer in the execution of a warrant issued under this section commits an offence and is liable—

(a) on conviction upon indictment to a fine of \$250,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(7) An authorized officer may photograph or make copies of any material seized under this section.

(8) Notwithstanding section 83 of the Interpretation and General Clauses Ordinance (Cap. 1), but subject to this section, a warrant may be issued under this section authorizing entry to premises for the purpose of searching for or seizing material which is known or suspected to be journalistic material.

**(9) Subsection (8) does not apply in relation to an organized crime or a specified offence which is an offence under—**

(a) section 8C (participating in the activities of proscribed organization) of the Societies Ordinance (Cap. 151);

(b) section 2 (treason), 2A (subversion), 2B (secession), 9A (sedition) or 9C (handling seditious publication) of the Crimes Ordinance (Cap. 200); or

(c) section 13, 14, 15, 16, 16A, 17, 18, 19 or 20 of the Official Secrets Ordinance (Cap. 521),

**and accordingly entry, search and seizure under this section concerning such organized crime or specified offence are subject to section 83 of the Interpretation and General Clauses Ordinance (Cap. 1) and other provisions of Part XII of that Ordinance.**

附表  
第 29 段

Schedule,  
para. 29

附表 1 [第 2、8 及 31 條]

與“有組織罪行”及“指明的罪行”  
的定義有關的罪行

普通法罪行

1. 謀殺
2. 綁架
3. 非法禁錮
4. 串謀妨礙司法公正

法定罪行

罪行

述要\*

	5-8. [不予選錄]	
	9. 《社團條例》 (第 151 章)	
附表第 30(1)(a) 段	第 8C 條	參加受取締組織的活動
	第 19 條	對非法社團職員等的懲罰
附表第 30(1)(b) 段	第 21 條	允許非法社團或受取締組織在樓宇內 舉行會議
附表第 30(1)(b) 段	第 22 條	煽惑他人成為非法社團或受取締組織 成員等
	10. [不予選錄]	
	11. 《刑事罪行條例》 (第 200 章)	
附表 第 30(2) 段	第 2 條	叛國
附表 第 30(2) 段	第 2A 條	顛覆
附表 第 30(2) 段	第 2B 條	分裂國家

SCHEDULE 1 [ss. 2, 8 & 31]

OFFENCES RELEVANT TO DEFINITIONS OF  
“ORGANIZED CRIME” AND  
“SPECIFIED OFFENCE”

Common law offences

1. murder
2. kidnapping
3. false imprisonment
4. conspiracy to pervert the course of justice

Statutory offences

Offence

Description\*

	5-8. [Not excerpted]	
	9. Societies Ordinance (Cap. 151)	
	section 8C	<b>participating in the activities of proscribed organization</b>
	section 19	penalties on an office-bearer, etc. of an unlawful society
	section 21	allowing a meeting of an unlawful society <b>or proscribed organization</b> to be held on premises
	section 22	inciting etc., a person to become a member of an unlawful society <b>or proscribed organization</b>
	10. [Not excerpted]	
	11. Crimes Ordinance (Cap. 200)	
	section 2	<b>treason</b>
	section 2A	<b>subversion</b>
	section 2B	<b>secession</b>

Schedule,  
para.  
30(1)(a)

Schedule,  
para.  
30(1)(b)

Schedule,  
para.  
30(1)(b)

Schedule,  
para. 30(2)  
Schedule,  
para. 30(2)  
Schedule,  
para. 30(2)

	罪行	述要*
附表 第 30(2) 段	第 9A 條	煽動叛亂
附表 第 30(2) 段	第 9C 條	處理煽動性刊物
附表 第 30(2) 段	第 18 條	非法操練
	第 24 條	蓄意威脅他人
	第 25 條	襲擊他人意圖導致其作出或不作出某些作為
	第 53 條	引起可能危害生命財產的爆炸
	第 54 條	企圖引起爆炸或製造、藏有炸藥意圖危害生命或令財物受損
	第 55 條	製造或管有炸藥
	第 60 條	摧毀或損壞財產
	第 61 條	威脅將財產摧毀或損壞
	第 71 條	偽造
	第 75(1) 條	管有虛假文書意圖不軌
	第 98(1) 條	仿製鈔票及硬幣意圖不軌
	第 100(1) 條	保管或控制仿製鈔票及硬幣意圖不軌
	第 105 條	輸入及輸出仿製鈔票及硬幣
	第 118 條	強姦
	第 119 條	以威脅促使他人與人性交
	第 120 條	以欺詐促使他人與人性交
	第 129 條	販運人口進入或離開香港
	第 130 條	控制他人為使其作出非法的性行為或賣淫
	第 131 條	導致他人賣淫

Offence	Description*	
<b>section 9A</b>	<b>sedition</b>	Schedule, para. 30(2)
<b>section 9C</b>	<b>handling seditious publication</b>	Schedule, para. 30(2)
<b>section 18</b>	<b>unlawful drilling</b>	Schedule, para. 30(2)
section 24	threatening a person with intent	
section 25	assaulting with intent to cause certain acts to be done or omitted	
section 53	causing explosion likely to endanger life or property	
section 54	attempt to cause explosion, or making or keeping explosive with intent to endanger life or property	
section 55	making or possession of explosive	
section 60	destroying or damaging property	
section 61	threats to destroy or damage property	
section 71	forgery	
section 75(1)	possessing a false instrument with intent	
section 98(1)	counterfeiting notes and coins with intent	
section 100(1)	custody or control of counterfeit notes and coins with intent	
section 105	importation and exportation of counterfeit notes and coins	
section 118	rape	
section 119	procurement of person by threats	
section 120	procurement of person by false pretences	
section 129	trafficking to or from Hong Kong in persons	
section 130	control over person for purpose of unlawful sexual act or prostitution	
section 131	causing prostitution of person	

罪行	述要*
第 134 條	禁錮他人於賣淫場所或為使其作出非法的性行為
第 137 條	依靠賣淫收入為生
第 139 條	經營賣淫場所

12-18. [不予選錄]

\* 備註：本附表就各罪行所作的簡單述要僅供參考用。

### 《香港藝術發展局條例》(第 472 章)

#### 3. 發展局的設立

- (1) 現設立一個名為“香港藝術發展局”的法團。
- (2) 發展局可起訴及被起訴。
- (3) 發展局由以下人士組成——
  - (a) 主席一名、副主席一名及不超過 22 名其他成員，各人均由行政長官委任，任期不超過 3 年；
  - (b)-(c) (已廢除)
  - (d) 民政事務局局长或其代表；
  - (e) 衞生署署長或其代表；及
  - (f) 康樂及文化事務署署長或其代表。
- (4) 第 (3)(a) 款所指的其他成員可包括最多 10 名由根據第 (5) 款指明的團體或團體組合提名的人，而為此目的每一該等團體或團體組合可就其代表的每一藝術範疇提名不超過 1 人，而每人均須是行政長官認為在該人被提名的藝術範疇中有經驗的人。

Offence	Description*
section 134	detention of person for unlawful sexual act or in vice establishment
section 137	living on earnings of prostitution
section 139	keeping a vice establishment

12-18. [Not excerpted]

\* Note: The short description of offences in this Schedule is for ease of reference only.

### Hong Kong Arts Development Council Ordinance (Cap. 472)

#### 3. Establishment of the Council

- (1) There is established a body corporate called the Hong Kong Arts Development Council.
- (2) The Council may sue and be sued.
- (3) The Council shall consist of—
  - (a) a Chairman, a Vice-chairman and not more than 22 other members, each of whom shall be appointed by the Chief Executive for a term not exceeding 3 years;
  - (b)-(c) (Repealed)
  - (d) the Secretary for Home Affairs or his representative;
  - (e) the Director of Education or his representative; and
  - (f) the Director of Leisure and Cultural Services or his representative.
- (4) The other members referred to in subsection (3)(a) may include up to 10 persons nominated by organizations or groups of organizations specified under subsection (5), and each such organization or group of organizations may nominate for this purpose not more than 1 person for each of the interests represented by that organization or group of organizations, and each such person shall, in the opinion of the Chief Executive, be experienced in the interest for which he has been nominated.

(5) 行政長官可藉憲報公告為第(4)款的目的指明最多10個團體或團體組合，而且每一團體或團體組合均須是行政長官認為能代表一個或多個以下的藝術範疇——

- (a) 文學藝術；
- (b) 音樂；
- (c) 舞蹈；
- (d) 戲劇；
- (e) 視覺藝術；
- (f) 電影藝術；
- (g) 藝術行政；
- (h) 藝術教育；
- (i) 藝術評論；
- (j) 戲曲。

(6) 以下人士並無資格獲行政長官根據第(3)(a)款予以委任或根據第(4)款被提名——

(a)-(l) [不予選錄]

(m) 被裁定犯了[叛逆罪]《刑事罪行條例》(第200章)第2(叛國)、2A(顛覆)、2B(分裂國家)或9A(2)(a)(因煽惑叛國、顛覆或分裂國家而屬煽動叛亂)條所訂罪行的人。

(7)-(10) [不予選錄]

### 《監管釋囚規例》(第475章，附屬法例)

附表 1 [第 2 條]

指明罪行  
普通法罪行

1-2. [不予選錄]

(5) The Chief Executive may by notice in the Gazette specify for the purposes of subsection (4) up to 10 organizations or groups of organizations each of which shall, in the opinion of the Chief Executive, be representative of one or more of the following interests—

- (a) literary arts;
- (b) music;
- (c) dance;
- (d) drama;
- (e) visual arts;
- (f) film arts;
- (g) arts administration;
- (h) arts education;
- (i) arts criticism;
- (j) Chinese opera (Xiqu).

(6) The following persons are not eligible for appointment by the Chief Executive under subsection (3)(a) or nomination under subsection (4)—

(a)-(l) [Not excerpted]

(m) a person who has been convicted of [treason] an offence under section 2 (treason), 2A (subversion), 2B (secession) or 9A(2)(a) (sedition by inciting commission of treason, subversion or secession) of the Crimes Ordinance (Cap. 200).

(7)-(10) [Not excerpted]

### Post-Release Supervision of Prisoners Regulation (Cap. 475 sub. leg.)

SCHEDULE 1 [s. 2]

SPECIFIED OFFENCES

Common law offences

1-2. [Not excerpted]

## 法定罪行

罪行	說明 *
3. 《社團條例》 (第 151 章)	
第 19(1)、(2) 條	身為或聲稱是非法社團職員
第 20(2) 條	身為或自稱是三合會社團的成員
附表 第 31 段 第 21(1)、(2) 條	容許非法社團或受取締組織在建築物 內活動
附表 第 31 段 第 22(1)、(2) 條	煽惑他人成為非法社團或受取締組織 成員等
附表 第 31 段 第 23(1)、(2) 條	為非法社團 [牟取社團] 或受取締組織 牟取社團費或會費或援助
第 24 條	違反因根據《社團條例》(第 151 章) 第 19 或 20 條被定罪而作出的命令
第 25 條	違反根據《社團條例》(第 151 章) 第 8 條作出的禁令

4-7. [不予選錄]

\* 註：本附表內各罪行的簡略說明只為方便參考。

## Statutory offences

Offence	Description*	
3. Societies Ordinance (Cap. 151)		
section 19(1), (2)	being or claiming to be an office-bearer of an unlawful society	
section 20(2)	being or professing to be a member of triad society	
section 21(1), (2)	allowing unlawful society <b>or</b> <b>proscribed organization</b> in building	Schedule, para. 31
section 22(1), (2)	inciting, etc., a person to become a member of an unlawful society <b>or</b> <b>proscribed organization</b>	Schedule, para. 31
section 23(1), (2)	procuring a subscription or aid for an unlawful society <b>or proscribed</b> <b>organization</b>	Schedule, para. 31
section 24	contravention of an order made on a previous conviction under section 19 or 20 of the Societies Ordinance (Cap. 151)	
section 25	contravention of a prohibition order under section 8 of the Societies Ordinance (Cap. 151)	

4-7. [Not excerpted]

\* Note: The short description of offences in this Schedule is  
for ease of reference only.

## 《立法會條例》(第 542 章)

### 39. 喪失獲提名為候選人或當選為議員的資格的情況

(1) 任何人如有以下情況，即喪失在選舉中獲提名為候選人的資格及當選為議員的資格——

- (a) 是——
- (i) 司法人員；或
  - (ii) 訂明的公職人員；或
  - (iii) 立法會的人員或立法會管理委員會的職員；或
- (b) 已在香港或任何其他地方被判處死刑或監禁(不論如何稱述)，但——
- (i) 既未服該刑罰或主管當局用以替代該項刑罰的其他懲罰；而
  - (ii) 亦未獲赦免；或
- (c) 已被裁定犯 [叛逆罪] 《刑事罪行條例》(第 200 章) 第 2(叛國)、2A(顛覆)、2B(分裂國家) 或 9A(2)(a) (因煽惑叛國、顛覆或分裂國家而屬煽動叛亂) 條所訂罪行；或
- (d) 在提名當日或選舉當日正因服刑而受監禁；或
- (e) 在不局限 (b) 段的原則下，被裁定或曾被裁定犯以下罪行，而選舉於或將於其被定罪日期後的 5 年內舉行——
- (i) 任何罪行(不論是在香港或是在任何其他地方被定罪)，並就該罪行被判處為期超逾 3 個月而又不得選擇以罰款代替的監禁(不論是否獲得緩刑)；或

附表  
第 35(b) 段

## Legislative Council Ordinance (Cap. 542)

### 39. When person is disqualified from being nominated as a candidate and from being elected as a Member

(1) A person is disqualified from being nominated as a candidate at an election, and from being elected as a Member, if the person—

- (a) is—
- (i) a judicial officer; or
  - (ii) a prescribed public officer; or
  - (iii) an officer of the Legislative Council or a member of staff of The Legislative Council Commission; or
- (b) has, in Hong Kong or any other place, been sentenced to death or imprisonment (by whatever name called) and has not either—
- (i) served the sentence or undergone such other punishment as a competent authority may have been substituted for the sentence; or
  - (ii) received a free pardon; or
- (c) has been convicted of [treason] **an offence under section 2 (treason), 2A (subversion), 2B (secession) or 9A(2)(a) (sedition by inciting commission of treason, subversion or secession) of the Crimes Ordinance (Cap. 200)**; or
- (d) on the date of nomination, or of the election, is serving a sentence of imprisonment; or
- (e) without limiting paragraph (b), where the election is to be held or is held within 5 years after the date of the person's conviction, is or has been convicted—
- (i) in Hong Kong or any other place, of an offence for which the person has been sentenced to imprisonment, whether suspended or not, for a term exceeding 3 months without the option of a fine; or

Schedule,  
para. 35(b)

- (ii) 在違反《選舉(舞弊及非法行為)條例》(第 554 章)的情況下作出舞弊或非法行為；或
  - (iii) 《防止賄賂條例》(第 201 章)第 II 部所訂的罪行；或
  - (iv) 根據《選舉管理委員會條例》(第 541 章)訂立並正有效的規例所訂明的任何罪行；或
  - (f) 因本條例或任何其他法律的施行而——
    - (i) 無資格在選舉中成為候選人或當選為議員；或
    - (ii) 喪失在選舉中成為候選人或當選為議員的資格；或
  - (g) 是香港以外地方的政府的代表或該政府的受薪政府人員；或
  - (h) 是香港以外任何地方的國家級、地區級或市級立法機關、議院或議會(中華人民共和國的全國或地方人民代表大會或人民協商機構除外)的成員；或
  - (i) 是未獲解除破產的人，或於過去 5 年內在沒有向債權人全數償還債務的情況下，獲解除破產、作出自願安排或與其債權人達成債務重整協議的人。
- (2)–(5) [不予選錄]

#### 40. 獲提名的候選人須遵從的規定

- (1) 除非符合以下條件，否則任何人不得獲有效提名為某選區或選舉界別選舉的候選人或為選舉委員會選舉的候選人——

- (ii) of having engaged in corrupt or illegal conduct in contravention of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554); or
  - (iii) of an offence against Part II of the Prevention of Bribery Ordinance (Cap. 201); or
  - (iv) of any offence prescribed by regulations in force under the Electoral Affairs Commission Ordinance (Cap. 541); or
  - (f) is—
    - (i) ineligible to be a candidate, or to be elected as a Member, at the election; or
    - (ii) disqualified from being a candidate, or from being elected as a Member, at the election, because of the operation of this or any other law; or
  - (g) is a representative or salaried functionary of a government of a place outside Hong Kong; or
  - (h) is a member of any national, regional or municipal legislature, assembly or council of any place outside Hong Kong, other than a people's congress or people's consultative body of the People's Republic of China, whether established at the national or local level; or
  - (i) is an undischarged bankrupt or, within the previous 5 years, has either obtained a discharge in bankruptcy or has entered into a composition with the person's creditors or a voluntary arrangement, in either case without paying the creditors in full.
- (2)–(5) [Not excerpted]

#### 40. What requirements are to be complied with by persons nominated as candidates

- (1) A person is not validly nominated as a candidate for an election for a constituency, or by the Election Committee, unless—

- (a) [不予選錄]
- (b) 提名表格載有或附有——
- (i) 一項示明該人會擁護《基本法》和保證效忠香港特別行政區的聲明；及
  - (ii) 一項關於該人的國籍以及他是否有中華人民共和國以外的國家的居留權的聲明；及
  - (iii) 一項由該人作出的採用承諾形式的誓言，表明他如獲選則不會在其任期內作出任何引致他有以下情況的事情——
    - (A) 成為——
      - (I) 第 39(5) 條所指的訂明的公職人員；或
      - (II) 立法會的人員或立法會管理委員會的職員；
    - (B) 在香港或任何其他地方被判處死刑；
    - (C) 被裁定犯 [叛逆罪]《刑事罪行條例》(第 200 章) 第 2 (叛國)、 2A (顛覆)、 2B (分裂國家) 或 9A(2)(a) (因煽惑叛國、 顛覆或分裂國家而屬煽動叛亂) 條所訂罪行；
    - (D) 被裁定犯以下罪行——
      - (I) 在違反《選舉 (舞弊及非法行為) 條例》(第 554 章) 的情況下作出舞弊或非法行為；或
      - (II) 《防止賄賂條例》(第 201 章) 第 II 部所訂的罪行；或

- (a) [Not excerpted]
- (b) the nomination form includes or is accompanied by—
- (i) a declaration to the effect that the person will uphold the Basic Law and pledge allegiance to the Hong Kong Special Administrative Region; and
  - (ii) a declaration as to the person's nationality and as to whether or not the person has a right of abode in a country other than the People's Republic of China; and
  - (iii) a promissory oath given by the person to the effect that, if elected, he or she will not do anything during his or her term of office that results in his or her—
    - (A) becoming—
      - (I) a prescribed public officer within the meaning of section 39(5); or
      - (II) an officer of the Legislative Council or a member of staff of The Legislative Council Commission;
    - (B) being sentenced to death in Hong Kong or any other place;
    - (C) being convicted of [treason] **an offence under section 2 (treason), 2A (subversion), 2B (secession) or 9A(2)(a) (sedition by inciting commission of treason, subversion or secession) of the Crimes Ordinance (Cap. 200);**
    - (D) being convicted—
      - (I) of having engaged in corrupt or illegal conduct in contravention of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554); or
      - (II) of an offence against Part II of the Prevention of Bribery Ordinance (Cap. 201); or

(III) 根據《選舉管理委員會條例》(第 541 章) 訂立並正有效的規例所訂明的任何罪行；

- (E) 由於本法例或任何其他法例的實施而喪失在選舉中獲選為議員的資格；
- (F) 成為香港以外地方的政府的代表或該政府的受薪政府人員；
- (G) 成為香港以外任何地方的國家級、地區級或市級立法機關、議院或議會(中華人民共和國的全國或地方人民代表大會或人民協商機構除外)的成員；
- (H) 成為中央人民政府或任何其他國家或地區的武裝部隊的成員；或
- (I) (如是某功能界別選出的議員) 不再與有關功能界別有密切聯繫。

(2) 該人必須簽署該等聲明。

(3) 按金須為《規例》為施行本條而訂明的款額。

### 《區議會條例》(第 547 章)

#### 14. 喪失委任議員資格的情況

(1) 任何人如有以下情況，即喪失獲委任為委任議員及擔任委任議員的資格——

(III) of any offence prescribed by regulations in force under the Electoral Affairs Commission Ordinance (Cap. 541);

- (E) being disqualified from being elected as a Member at an election because of the operation of this or any other law;
- (F) becoming a representative or salaried functionary of a government of a place outside Hong Kong;
- (G) becoming a member of any national, regional or municipal legislature, assembly or council of any place outside Hong Kong, other than a people's congress or people's consultative body of the People's Republic of China, whether established at the national or local level;
- (H) becoming a member of the armed forces of the Central People's Government or any other country or territory; or
- (I) in the case of a Member elected for a functional constituency, ceasing to have a substantial connection with the constituency.

(2) The person must sign the declarations.

(3) The deposit is to be of such an amount as is prescribed by the regulations for the purposes of this section.

### District Councils Ordinance (Cap. 547)

#### 14. Disqualification of appointed members

(1) A person is disqualified for appointment and from holding office as an appointed member, if the person—

- (a) 是——
- (i) 司法人員；或
  - (ii) 訂明公職人員；或
- (b) 已在香港或任何其他地方被判處死刑或監禁（不論如何稱述），但——
- (i) 既未服該刑罰或主管當局用以替代該項刑罰的其他懲罰；而
  - (ii) 亦未獲赦免；或
- (c) 已被裁定犯 **[叛逆罪]**《刑事罪行條例》(第 200 章) 第 2 (叛國)、 2A (顛覆)、 2B (分裂國家) 或 9A(2)(a) (因煽惑叛國、顛覆或分裂國家而屬煽動叛亂) 條所訂罪行；或
- (d) 在不局限 (b) 段的原則下，自任期擬開始之日起計之前的 5 年內曾被裁定犯以下罪行，或在任期開始後，被裁定犯以下罪行——
- (i) 任何罪行（不論是在香港或是在任何其他地方被定罪），並就該罪行被判處為期超逾 3 個月而又不得選擇以罰款代替的監禁（不論是否獲得緩刑）；或
  - (ii) 在違反《選舉（舞弊及非法行為）條例》(第 554 章)的情況下作出舞弊或非法行為；或
  - (iii) 《防止賄賂條例》(第 201 章) 第 II 部所訂的罪行；或
  - (iv) 根據《選舉管理委員會條例》(第 541 章) 訂立並正有效的規例所訂明的任何罪行；或
- (e) 是香港以外地方的政府的代表或該政府的受薪政府人員；或

- (a) is—
- (i) a judicial officer; or
  - (ii) a prescribed public officer; or
- (b) has, in Hong Kong, or any other place, been sentenced to death or imprisonment (by whatever name called) and has not either—
- (i) served the sentence or undergone such other punishment as a competent authority may have substituted for the sentence; or
  - (ii) received a free pardon; or
- (c) has been convicted of **[treason]** **an offence under section 2 (treason), 2A (subversion), 2B (secession) or 9A(2)(a) (sedition by inciting commission of treason, subversion or secession) of the Crimes Ordinance (Cap. 200);** or
- (d) without limiting paragraph (b), where the term of office is to begin within 5 years after the date of the person's conviction, has been convicted, or is convicted after the beginning of the term of office—
- (i) in Hong Kong or any other place, of an offence for which the person has been sentenced to imprisonment, whether suspended or not, for a term exceeding 3 months without the option of a fine; or
  - (ii) of having engaged in corrupt or illegal conduct in contravention of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554); or
  - (iii) of an offence against Part II of the Prevention of Bribery Ordinance (Cap. 201); or
  - (iv) of any offence prescribed by regulations in force under the Electoral Affairs Commission Ordinance (Cap. 541); or
- (e) is a representative or a salaried functionary of the government of a place outside Hong Kong; or

- (f) 是香港以外任何地方的國家級、地區級或市級立法機關、議院或議會(中華人民共和國的全國或地方人民代表大會或人民協商機構除外)的成員；或
- (g) 是未獲解除破產的人，或於過去 5 年內在沒有向債權人全數償還債務的情況下，獲解除破產或與其債權人訂立《破產條例》(第 6 章)所指的自願安排的人。

(2)-(7) [不予選錄]

#### 19. 喪失當然議員資格的情況

(1) 身為鄉事委員會主席的人如有以下情況，即喪失擔任當然議員的資格——

- (a) 是——
  - (i) 司法人員；或
  - (ii) 訂明公職人員；或
- (b) 已在香港或任何其他地方被判處死刑或監禁(不論如何稱述)，但——
  - (i) 既未服該刑罰或主管當局用以替代該項刑罰的其他懲罰；而
  - (ii) 亦未獲赦免；或
- (c) 已被裁定犯 [叛逆罪]《刑事罪行條例》(第 200 章) 第 2(叛國)、2A(顛覆)、2B(分裂國家)或 9A(2)(a)(因煽惑叛國、顛覆或分裂國家而屬煽動叛亂) 條所訂罪行；或

附表  
第 35(c) 段

- (f) is a member of any national, regional or municipal legislature, assembly or council of any place outside Hong Kong, other than a people's congress or people's consultative body of the People's Republic of China, whether established at the national level or local level; or
- (g) is an undischarged bankrupt or, within the previous 5 years, has either obtained a discharge in bankruptcy or has entered into a voluntary arrangement within the meaning of the Bankruptcy Ordinance (Cap. 6) with the person's creditors, in either case without paying the creditors in full.

(2)-(7) [Not excerpted]

#### 19. Disqualification of ex officio members

(1) A person who is a Chairman of a Rural Committee is disqualified from holding office as an ex officio member, if the person—

- (a) is—
  - (i) a judicial officer; or
  - (ii) a prescribed public officer; or
- (b) has, in Hong Kong, or any other place, been sentenced to death or imprisonment (by whatever name called) and has not either—
  - (i) served the sentence or undergone such other punishment as a competent authority may have substituted for the sentence; or
  - (ii) received a free pardon; or
- (c) has been convicted of [treason] **an offence under section 2 (treason), 2A (subversion), 2B (secession) or 9A(2)(a) (sedition by inciting commission of treason, subversion or secession) of the Crimes Ordinance (Cap. 200); or**

Schedule,  
para. 35(c)

- (d) 在不局限 (b) 段的原則下，自任期擬開始之日起計之前的 5 年內曾被裁定犯以下罪行，或在任期開始後，被裁定犯以下罪行——
- (i) 任何罪行 (不論是在香港或是在任何其他地方被定罪)，並就該罪行被判處為期超逾 3 個月而又不得選擇以罰款代替的監禁 (不論是否獲得緩刑)；或
  - (ii) 在違反《選舉 (舞弊及非法行為) 條例》(第 554 章) 的情況下作出舞弊或非法行為；或
  - (iii) 《防止賄賂條例》(第 201 章) 第 II 部所訂的罪行；或
  - (iv) 根據《選舉管理委員會條例》(第 541 章) 訂立並正有效的規例所訂明的任何罪行；或
- (e) 是香港以外地方的政府的代表或該政府的受薪政府人員；或
- (f) 是香港以外任何地方的國家級、地區級或市級立法機關、議院或議會 (中華人民共和國的全國或地方人民代表大會或人民協商機構除外) 的成員；或
- (g) 是未獲解除破產的人，或於過去 5 年內在沒有向債權人全數償還債務的情況下，獲解除破產或與其債權人訂立《破產條例》(第 6 章) 所指的自願安排的人。

(2)–(6) [不予選錄]

- (d) without limiting paragraph (b), where the term of office is to begin within 5 years after the date of the person's conviction, has been convicted, or is convicted after the beginning of the term of office—
- (i) in Hong Kong or any other place, of an offence for which the person has been sentenced to imprisonment, whether suspended or not, for a term exceeding 3 months without the option of a fine; or
  - (ii) of having engaged in corrupt or illegal conduct in contravention of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554); or
  - (iii) of an offence against Part II of the Prevention of Bribery Ordinance (Cap. 201); or
  - (iv) of any offence prescribed by regulations in force under the Electoral Affairs Commission Ordinance (Cap. 541); or
- (e) is a representative or a salaried functionary of the government of a place outside Hong Kong; or
- (f) is a member of any national, regional or municipal legislature, assembly or council of any place outside Hong Kong, other than a people's congress or people's consultative body of the People's Republic of China, whether established at the national level or local level; or
- (g) is an undischarged bankrupt or, within the previous 5 years, has either obtained a discharge in bankruptcy or has entered into a voluntary arrangement within the meaning of the Bankruptcy Ordinance (Cap. 6) with the person's creditors, in either case without paying the creditors in full.

(2)–(6) [Not excerpted]

21. 喪失獲提名為候選人及當選  
為民選議員的資格的情況

(1) 任何人如有以下情況，即喪失在選舉中獲提名為候選人的資格及當選為民選議員的資格——

- (a) 是——
- (i) 司法人員；或
  - (ii) 訂明公職人員；或
- (b) 已在香港或任何其他地方被判處死刑或監禁（不論如何稱述），但——
- (i) 既未服該刑罰或主管當局用以替代該項刑罰的其他懲罰；而
  - (ii) 亦未獲赦免；或
- (c) 已被裁定犯 **[叛逆罪]**《刑事罪行條例》(第 200 章) 第 2 (叛國)、 2A (顛覆)、 2B (分裂國家) 或 9A(2)(a) (因煽惑叛國、顛覆或分裂國家而屬煽動叛亂) 條所訂罪行；或
- (d) 在提名當日或選舉當日，正因服刑而受監禁；或
- (e) 在不局限 (b) 段的原則下，被裁定或曾被裁定犯以下罪行，而選舉於或將於其被定罪日期後的 5 年內舉行——
- (i) 任何罪行（不論是在香港或是在任何其他地方被定罪），並就該罪行被判處為期超逾 3 個月而又不得選擇以罰款代替的監禁（不論是否獲得緩刑）；或
  - (ii) 在違反《選舉（舞弊及非法行為）條例》(第 554 章) 的情況下作出舞弊或非法行為；或

附表  
第 35(c) 段

21. When person is disqualified from being  
nominated as a candidate and from  
being elected as an elected member

(1) A person is disqualified from being nominated as a candidate at an election, and from being elected as an elected member, if the person—

- (a) is—
- (i) a judicial officer; or
  - (ii) a prescribed public officer; or
- (b) has, in Hong Kong, or any other place, been sentenced to death or imprisonment (by whatever name called) and has not either—
- (i) served the sentence or undergone such other punishment as a competent authority may have substituted for the sentence; or
  - (ii) received a free pardon; or
- (c) has been convicted of **[treason] an offence under section 2 (treason), 2A (subversion), 2B (secession) or 9A(2)(a) (sedition by inciting commission of treason, subversion or secession) of the Crimes Ordinance (Cap. 200)**; or
- (d) on the date of nomination, or of the election, is serving a sentence of imprisonment; or
- (e) without limiting paragraph (b), where the election is to be held or is held within 5 years after the date of the person's conviction, is or has been convicted—
- (i) in Hong Kong or any other place, of an offence for which the person has been sentenced to imprisonment, whether suspended or not, for a term exceeding 3 months without the option of a fine; or
  - (ii) of having engaged in corrupt or illegal conduct in contravention of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554); or

Schedule,  
para. 35(c)

- (iii) 《防止賄賂條例》(第 201 章) 第 II 部所訂的罪行；或
- (iv) 根據《選舉管理委員會條例》(第 541 章) 訂立並正有效的規例所訂明的任何罪行；或

(f)-(i) [不予選錄]

(2)-(3) [不予選錄]

#### 24. 喪失民選議員資格的情況

(1) 任何民選議員如有以下情況，即喪失擔任議員的資格——

- (a) 成為——
  - (i) 司法人員；或
  - (ii) 訂明公職人員；或
- (b) 已在香港或任何其他地方被判處死刑或監禁(不論如何稱述)，但——
  - (i) 既未服該刑罰或主管當局用以替代該項刑罰的其他懲罰；而
  - (ii) 亦未獲赦免；或
- (c) 已被裁定犯[叛逆罪]《刑事罪行條例》(第 200 章) 第 2(叛國)、2A(顛覆)、2B(分裂國家)或 9A(2)(a)(因煽惑叛國、顛覆或分裂國家而屬煽動叛亂) 條所訂罪行；或
- (d) 在不局限 (b) 段的原則下，在當選後被裁定犯以下罪行——
  - (i) 任何罪行(不論是在香港或是在任何其他地方被定罪)，並就該罪行被判處為期超逾 3 個月而又不得選擇以罰款代替的監禁(不論是否獲得緩刑)；或
  - (ii) 在違反《選舉(舞弊及非法行為)條例》(第 554 章)的情況下作出舞弊或非法行為；或

附表  
第 35(c) 段

- (iii) of an offence against Part II of the Prevention of Bribery Ordinance (Cap. 201); or
- (iv) of any offence prescribed by regulations in force under the Electoral Affairs Commission Ordinance (Cap. 541); or

(f)-(i) [Not excerpted]

(2)-(3) [Not excerpted]

#### 24. Disqualification of elected members

(1) An elected member is disqualified from holding office if the member—

- (a) becomes—
  - (i) a judicial officer; or
  - (ii) a prescribed public officer; or
- (b) has, in Hong Kong, or any other place, been sentenced to death or imprisonment (by whatever name called) and has not either—
  - (i) served the sentence or undergone such other punishment as a competent authority may have substituted for the sentence; or
  - (ii) received a free pardon; or
- (c) has been convicted of **[treason] an offence under section 2 (treason), 2A (subversion), 2B (secession) or 9A(2)(a) (sedition by inciting commission of treason, subversion or secession) of the Crimes Ordinance (Cap. 200)**; or
- (d) without limiting paragraph (b), after being elected, is convicted—
  - (i) in Hong Kong or any other place, of an offence for which the person has been sentenced to imprisonment, whether suspended or not, for a term exceeding 3 months without the option of a fine; or
  - (ii) of having engaged in corrupt or illegal conduct in contravention of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554); or

Schedule,  
para. 35(c)

- (iii) 《防止賄賂條例》(第 201 章) 第 II 部所訂的罪行；或
- (iv) 根據《選舉管理委員會條例》(第 541 章) 訂立並正有效的規例所訂明的任何罪行；或
- (e) 是香港以外地方的政府的代表或該政府的受薪政府人員；或
- (f) 是香港以外任何地方的國家級、地區級或市級立法機關、議院或議會(中華人民共和國的全國或地方人民代表大會或人民協商機構除外)的成員；或
- (g) 是未獲解除破產的人，或於過去 5 年內在沒有向債權人全數償還債務的情況下，獲解除破產或與其債權人訂立《破產條例》(第 6 章) 所指的自願安排的人。

(2)–(8) [不予選錄]

### 《行政長官選舉條例》(第 569 章)

#### 14. 喪失獲提名為候選人的資格

在不損害《選舉管理委員會條例》(第 541 章) 第 13(1)(c) 條的原則下，任何人如有以下情況，即喪失獲提名為候選人的資格——

- (a) 是行政長官，並且是連續第二屆擔任行政長官；
- (b) 是《司法人員推薦委員會條例》(第 92 章) 第 2 條所界定的司法人員；
- (c) 是訂明公職人員；

- (iii) of an offence against Part II of the Prevention of Bribery Ordinance (Cap. 201); or
- (iv) of any offence prescribed by regulations in force under the Electoral Affairs Commission Ordinance (Cap. 541); or
- (e) is a representative or a salaried functionary of the government of a place outside Hong Kong; or
- (f) is a member of any national, regional or municipal legislature, assembly or council of any place outside Hong Kong, other than a people's congress or people's consultative body of the People's Republic of China, whether established at the national level or local level; or
- (g) is an undischarged bankrupt or, within the previous 5 years, has either obtained a discharge in bankruptcy or has entered into a voluntary arrangement within the meaning of the Bankruptcy Ordinance (Cap. 6) with the person's creditors, in either case without paying the creditors in full.

(2)–(8) [Not excerpted]

### Chief Executive Election Ordinance (Cap. 569)

#### 14. Disqualification from being nominated

Without prejudice to section 13(1)(c) of the Electoral Affairs Commission Ordinance (Cap. 541), a person is disqualified from being nominated as a candidate if—

- (a) he is the Chief Executive and holds the office of the Chief Executive for the second consecutive term;
- (b) he is a judicial officer as defined by section 2 of the Judicial Officers Recommendation Commission Ordinance (Cap. 92);
- (c) he is a prescribed public officer;

- (d) 根據《破產條例》(第 6 章) 被判定破產，而且並未根據該條例第 30A 或 30B 條獲解除破產；
- (e) 持有不屬以下證件的護照或相類旅行證件——
  - (i) 根據《香港特別行政區護照條例》(第 539 章) 發出的香港特別行政區護照；
  - (ii) 《入境條例》(第 115 章) 所指的身分證明書；或
  - (iii) 由中華人民共和國任何部分的主管當局發出，並授權持有人進入中華人民共和國任何部分的任何入境證；
- (f) 已在香港或任何其他地方被判處死刑，但——
  - (i) 既未服該刑罰或主管當局用以替代該項刑罰的其他懲罰；而
  - (ii) 亦未獲赦免；
- (g) 已被裁定犯 *[叛逆罪]* 《刑事罪行條例》(第 200 章) 第 2 (叛國)、 2A (顛覆)、 2B (分裂國家) 或 9A(2)(a) (因煽惑叛國、顛覆或分裂國家而屬煽動叛亂) 條所訂罪行；
- (h) 在提名日期前的 5 年內曾被裁定犯以下罪行——
  - (i) 任何罪行 (不論是在香港或是在任何其他地方被定罪)，並就該罪行被判處為期超逾 3 個月而又不得選擇以罰款代替的監禁 (不論是否獲得緩刑)；
  - (ii) 在違反《選舉 (舞弊及非法行為) 條例》(第 554 章) 的情況下作出舞弊行為或非法行為；

- (d) he is adjudged bankrupt under the Bankruptcy Ordinance (Cap. 6) and has not been discharged under section 30A or 30B of that Ordinance;
- (e) he holds a passport or similar travel document other than—
  - (i) a Hong Kong Special Administrative Region Passport issued under the Hong Kong Special Administrative Region Passports Ordinance (Cap. 539);
  - (ii) a certificate of identity within the meaning of the Immigration Ordinance (Cap. 115); or
  - (iii) any entry permit issued by an authority in any part of the People's Republic of China which authorizes its holder to enter any part of the People's Republic of China;
- (f) he has, in Hong Kong or any other place, been sentenced to death and has not either—
  - (i) served the sentence or undergone such other punishment as a competent authority may have substituted for the sentence; or
  - (ii) received a free pardon;
- (g) he has been convicted of *[treason]* **an offence under section 2 (treason), 2A (subversion), 2B (secession) or 9A(2)(a) (sedition by inciting commission of treason, subversion or secession) of the Crimes Ordinance (Cap. 200)**;
- (h) he has been convicted—
  - (i) in Hong Kong or any other place, of an offence for which the person has been sentenced to imprisonment, whether suspended or not, for a term exceeding 3 months without the option of a fine;
  - (ii) of having engaged in corrupt conduct or illegal conduct in contravention of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554);

- (iii) 《防止賄賂條例》(第 201 章) 第 II 部所訂的罪行；或
- (iv) 為施行本段而訂立的《選管會規例》所訂明的任何罪行；或
- (i) 當其時是根據《精神健康條例》(第 136 章) 被裁斷為因精神上無行為能力而無能力處理和管理其財產及事務。

- (iii) of an offence against Part II of the Prevention of Bribery Ordinance (Cap. 201); or
- (iv) of any offence prescribed by the EAC Regulations made for the purposes of this paragraph, within the 5 years before the date of nomination; or
- (i) he is found for the time being under the Mental Health Ordinance (Cap. 136) to be incapable, by reason of mental incapacity, of managing and administering his property and affairs.

## 附錄

### 1. 《釋義及通則條例》(第 1 章) 第 3 條包括下列定義——

“文件”(document) 指任何刊物及以字母、字樣、數字或符號的形式，或以超過一種上述的形式在任何物質上書寫、表達或描述的任何資料；

“中國公民”(Chinese citizen, Chinese national) 指根據載於《1997 年全國性法律公布》(1997 年第 379 號法律公告) 附表 4 中的《中華人民共和國國籍法》具有中國國籍的人；

“外國”(foreign country, foreign state) 指中華人民共和國以外的國家；

“刊物”(publication) 指——

(a) 一切書寫和印刷的物品；

(b) 可藉機械、電子或電力方法來產生、重複產生、表達或傳遞語言文字或意念的任何唱片、紀錄帶、導線、排孔卷帶、電影片膠卷或其他裝置；

(c) 任何東西，不論其性質是否有如上述，凡載有可見物象，或由於其形態、形狀或以任何形式，可以產生、重複產生、表達或傳遞語言文字或意念者；及

(d) (a)、(b) 和 (c) 段定義所指刊物的每一份製成本和複製本；

“香港永久性居民”、“香港特別行政區永久性居民”(Hong Kong permanent resident, permanent resident of the Hong Kong Special Administrative Region) 指屬《入境條例》(第 115 章) 附表 1 指明的界別或種類的人。

## Appendix

### 1. Section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) includes the following definitions—

“Chinese citizen” and “Chinese national” (中國公民) mean a person who has Chinese nationality under the Nationality Law of the People’s Republic of China in Schedule 4 to the Promulgation of National Laws 1997;

“document” (文件) means any publication and any matter written, expressed or described upon any substance by means of letters, characters, figures or marks, or by more than one of these means;

“foreign country” and “foreign state” (外國) mean a country or state other than the People’s Republic of China;

“Hong Kong permanent resident” and “permanent resident of the Hong Kong Special Administrative Region” (香港永久性居民、香港特別行政區永久性居民) mean a person who belongs to a class or description of persons specified in Schedule 1 to the Immigration Ordinance (Cap. 115);

“publication” (刊物) means—

(a) all written and printed matter;

(b) any record, tape, wire, perforated roll, cinematograph film or other contrivance by means of which any words or ideas may be mechanically, electronically or electrically produced, reproduced, represented or conveyed;

(c) anything whether of a similar nature to the foregoing or not, containing any visible representation, or by its form, shape, or in any manner, capable of producing, reproducing, representing or conveying words or ideas; and

(d) every copy and reproduction of any publication as defined in paragraphs (a), (b) and (c) of this definition.

2. 《釋義及通則條例》(第 1 章) 第 XII 部第 82 條的內容如下——

**82. “新聞材料”的涵義**

(1) 在符合第 (2) 款的規定下，在本部中，“新聞材料”(journalistic material) 指為新聞傳播的目的而取得或製備的任何材料。

(2) 就本部而言，如材料由某人管有，而該人是為新聞傳播的目的而取得或製備該材料的，該材料方屬新聞材料。

(3) 凡某人自另一人處收取材料，而該另一人的意願為該收取材料的人須為新聞傳播的目的而使用該材料，則該收取材料的人須被視為是為該目的而取得該材料。

3. 《釋義及通則條例》(第 1 章) 第 83 條的內容如下——

**83. 進入處所及搜查或檢取的權力**

凡任何條例的條文賦權予任何人進入任何處所及搜查該處所或任何在該處所發現的人或檢取任何材料(不論是一般的或特定的種類，亦不論是否在該條文內使用“材料”一詞)，或授權發出賦權予任何人作出以上作為的手令或令狀，則如無明文的相反規定，該條文不得解釋為賦權予任何人或授權發出手令或令狀以賦權予任何人為搜尋或檢取被知為或被懷疑是新聞材料的材料的目的而進入處所。

4. 《電訊條例》(第 106 章) 第 27A 條的內容如下——

**27A. 藉電訊而在未獲授權下取用電腦資料**

(1) 任何人藉着電訊，明知而致使電腦執行任何功能，從而在未獲授權下取用該電腦所保有的任何程式或數據，即屬犯罪，一經定罪，可處罰款 \$20,000。

2. Section 82 of Part XII of the Interpretation and General Clauses Ordinance (Cap. 1) reads as follows—

**82. Meaning of “journalistic material”**

(1) Subject to subsection (2), in this Part “journalistic material” (新聞材料) means any material acquired or created for the purposes of journalism.

(2) Material is only journalistic material for the purposes of this Part if it is in the possession of a person who acquired or created it for the purposes of journalism.

(3) A person who receives material from someone who intends that the recipient shall use it for the purposes of journalism is to be taken to have acquired it for those purposes.

3. Section 83 of the Interpretation and General Clauses Ordinance (Cap. 1) reads as follows—

**83. Power to enter and search or seize**

A provision in any Ordinance which confers on, or authorizes the issue of a warrant conferring on, any person the power to enter any premises and to search the premises or any person found on the premises or to seize any material (whether of a general or particular kind and whether or not the word “material” is used in that provision) shall not, in the absence of an express provision to the contrary, be construed as conferring, or authorizing the issue of a warrant conferring, a power to enter premises where such entry is for the purpose of searching for or seizing material which is known or suspected to be journalistic material.

4. Section 27A of the Telecommunications Ordinance (Cap. 106) reads as follows—

**27A. Unauthorized access to computer by telecommunications**

(1) Any person who, by telecommunications, knowingly causes a computer to perform any function to obtain unauthorized access to any program or data held in a computer commits an offence and is liable on conviction to a fine of \$20,000.

(2) 就第(1)款而言——

(a) 該人的意圖不一定要針對——

- (i) 任何個別程式或數據；
- (ii) 任何個別種類的程式或數據；或
- (iii) 任何個別電腦所保有的程式或數據；

(b) 任何人如無權控制對電腦所保有的程式或數據的有關種類的取用，且有下述情況，則他對電腦所保有的任何程式或數據的該類取用，即屬未獲授權——

- (i) 他未獲有此權利的人授權，使他獲得對該電腦所保有的程式或數據的該類取用；
- (ii) 他不相信自己已獲如此授權；及
- (iii) 他不相信若他曾申請適當的授權，則他本已獲如此授權。

(3) 第(1)款的效力，並不損害關於檢查、搜查或檢取權力的任何法律。

(4) 儘管有《裁判官條例》(第227章)第26條的規定，關於本條所訂罪行的法律程序，可在發生該罪行的3年內或檢控人發現該罪行的6個月內(以最先屆滿的期間為準)任何時間提出。

5. 《刑事罪行條例》(第200章)第159A條的內容如下——

#### 159A. 串謀罪

(1) 除本部條文另有規定外，如任何人與任何其他人士達成作出某項行為的協議，而該項協議如按照他們的意圖得以落實，即出現以下的情況——

- (a) 該項行為必會構成或涉及協議的一方或多於一方犯一項或多於一項罪行；或

(2) For the purposes of subsection (1)—

(a) the intent of the person need not be directed at—

- (i) any particular program or data;
- (ii) a program or data of a particular kind; or
- (iii) a program or data held in a particular computer;

(b) access of any kind by a person to any program or data held in a computer is unauthorized if he is not entitled to control access of the kind in question to the program or data held in the computer and—

- (i) he has not been authorized to obtain access of the kind in question to the program or data held in the computer by any person who is so entitled;
- (ii) he does not believe that he has been so authorized; and
- (iii) he does not believe that he would have been so authorized if he had applied for the appropriate authority.

(3) Subsection (1) has effect without prejudice to any law relating to powers of inspection, search or seizure.

(4) Notwithstanding section 26 of the Magistrates Ordinance (Cap. 227), proceedings for an offence under this section may be brought at any time within 3 years of the commission of the offence or within 6 months of the discovery of the offence by the prosecutor, whichever period expires first.

5. Section 159A of the Crimes Ordinance (Cap. 200) reads as follows—

#### 159A. The offence of conspiracy

(1) Subject to the following provisions of this Part, if a person agrees with any other person or persons that a course of conduct shall be pursued which, if the agreement is carried out in accordance with their intentions, either—

- (a) will necessarily amount to or involve the commission of any offence or offences by one or more of the parties to the agreement; or

(b) 若非存在某些致令不可能犯該罪行或任何該等罪行的事實，該項行為即會構成或涉及犯該罪行或該等罪行，則該人即屬串謀犯該罪行或該等罪行。

(2) 凡任何罪行是犯該罪行的人在不知悉犯該罪行所需的任何特定事實或情況下仍可招致關於該罪行的法律責任的，則除非該人及協議中至少有其他一方意圖使該事實或情況於構成該罪行的行為發生時存在，或知道該事實或情況將會於該行為發生時存在，否則該人不得憑藉第(1)款而被裁定串謀犯該罪行。

(3) 在本條中，“罪行”指任何可在香港審訊的罪行，並包括謀殺，即使有關的謀殺如按照協議各方的意圖而作出該項謀殺便不可在香港審訊亦然。

6. 《刑事罪行條例》(第 200 章) 第 159G 條的內容如下——

**159G. 企圖犯罪**

(1) 如任何意圖犯本條所適用的罪行的人作出的某項作為已超乎只屬犯該罪行的預備作為者，則該人即屬企圖犯該罪行。

(2) 雖則有關的事實顯示犯本條所適用的罪行並不可能，任何人仍可被裁定企圖犯該罪行。

(3) 凡有人被控犯某項罪行，則即使該人並無被控企圖犯該罪行，亦可被裁定企圖犯該罪行。

(4) 在任何個案中，凡——

(a) 除根據本款外，某人的意圖不會被視為構成犯罪的意圖；  
但

(b) would do so but for the existence of facts which render the commission of the offence or any of the offences impossible,

he is guilty of conspiracy to commit the offence or offences in question.

(2) Where liability for any offence may be incurred without knowledge on the part of the person committing it of any particular fact or circumstance necessary for the commission of the offence, a person shall nevertheless not be guilty of conspiracy to commit that offence by virtue of subsection (1) unless he and at least one other party to the agreement intend or know that that fact or circumstance shall or will exist at the time when the conduct constituting the offence is to take place.

(3) In this section “offence” means any offence triable in Hong Kong and includes murder notwithstanding that the murder in question would not be so triable if committed in accordance with the intentions of the parties to the agreement.

6. Section 159G of the Crimes Ordinance (Cap. 200) reads as follows—

**159G. Attempting to commit an offence**

(1) A person who, intending to commit an offence to which this section applies, does an act that is more than merely preparatory to the commission of the offence is guilty of attempting to commit the offence.

(2) A person may be guilty of attempting to commit an offence to which this section applies even though the facts are such that the commission of the offence is impossible.

(3) Where a person is charged with an offence, he may be convicted of having attempted to commit that offence even though he was not charged with the attempt.

(4) In any case where—

(a) apart from this subsection a person’s intention would not be regarded as having amounted to an intent to commit an offence; but

(b) 該個案的事實如是一如他所相信者，他的意圖即會被視為構成犯罪的意圖，  
則就第(1)款而言，他須被視為已具有犯該罪行的意圖。

(5) 本條適用於任何假若完成的話即會屬可在香港審訊的罪行，但協助、湊唆、慫使或促使致犯該罪行則除外。

7. 《刑事罪行條例》(第 200 章) 第 161 條的內容如下——

**161. 有犯罪或不誠實意圖而取用電腦**

(1) 任何人有下述意圖或目的而取用電腦——

- (a) 意圖犯罪 (不論是在取用電腦的同時或在日後任何時間)；
- (b) 不誠實地意圖欺騙 (不論是在取用電腦的同時或在日後任何時間)；
- (c) 目的在於使其本人或他人不誠實地獲益 (不論是在取用電腦的同時或在日後任何時間)；或
- (d) 不誠實地意圖導致他人蒙受損失 (不論是在取用電腦的同時或在日後任何時間)，

即屬犯罪，一經循公訴程序定罪，可處監禁 5 年。

(2) 就第(1)款而言，“獲益”(gain)及“損失”(loss)的適用範圍須解釋作不單擴及金錢或其他財產上的獲益或損失，亦擴及屬暫時性或永久性的任何該等獲益或損失；而且——

- (a) “獲益”(gain)包括保有已有之物的獲益，以及取得未有之物的獲益；及
- (b) “損失”(loss)包括沒有取得可得之物的損失，以及失去已有之物的損失。

(b) if the facts of the case had been as he believed them to be, his intention would be so regarded, then, for the purposes of subsection (1), he shall be regarded as having had an intent to commit that offence.

(5) This section applies to any offence which, if it were completed, would be triable in Hong Kong other than aiding, abetting, counselling or procuring the commission of an offence.

7. Section 161 of the Crimes Ordinance (Cap. 200) reads as follows—

**161. Access to computer with criminal or dishonest intent**

(1) Any person who obtains access to a computer—

- (a) with intent to commit an offence;
- (b) with a dishonest intent to deceive;
- (c) with a view to dishonest gain for himself or another;
- or
- (d) with a dishonest intent to cause loss to another,

whether on the same occasion as he obtains such access or on any future occasion, commits an offence and is liable on conviction upon indictment to imprisonment for 5 years.

(2) For the purposes of subsection (1) “gain” (獲益) and “loss” (損失) are to be construed as extending not only to gain or loss in money or other property, but as extending to any such gain or loss whether temporary or permanent; and—

- (a) “gain” (獲益) includes a gain by keeping what one has, as well as a gain by getting what one has not; and
- (b) “loss” (損失) includes a loss by not getting what one might get, as well as a loss by parting with what one has.

8. 《防止賄賂條例》(第 201 章) 第 4 條的內容如下——

#### 4. 賄賂

(1) 任何人(不論在香港或其他地方)無合法權限或合理辯解,向任何公職人員提供任何利益,作為該公職人員作出以下行為的誘因或報酬,或由於該公職人員作出以下行為而向他提供任何利益,即屬犯罪——

- (a) 作出或不作出,或曾經作出或不作出任何憑其公職人員身分而作的作為;
- (b) 加速、拖延、妨礙或阻止,或曾經加速、拖延、妨礙或阻止由本人作出或由其他公職人員作出任何憑其本人或該其他人員的公職人員身分而作的作為;或
- (c) 協助、優待、妨礙或拖延,或曾經協助、優待、妨礙或拖延任何人與公共機構間往來事務的辦理。

(2) 任何公職人員(不論在香港或其他地方)無合法權限或合理辯解,索取或接受任何利益,作為他作出以下行為的誘因或報酬,或由於他作出以下行為而索取或接受任何利益,即屬犯罪——

- (a) 作出或不作出,或曾經作出或不作出任何憑其公職人員身分而作的作為;
- (b) 加速、拖延、妨礙或阻止,或曾經加速、拖延、妨礙或阻止由本人作出或由其他公職人員作出任何憑其本人或該其他人員的公職人員身分而作的作為;或
- (c) 協助、優待、妨礙或拖延,或曾經協助、優待、妨礙或拖延任何人與公共機構間往來事務的辦理。

8. Section 4 of the Prevention of Bribery Ordinance (Cap. 201) reads as follows—

#### 4. Bribery

(1) Any person who, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, offers any advantage to a public servant as an inducement to or reward for or otherwise on account of that public servant's—

- (a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant;
- (b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by that public servant or by any other public servant in his or that other public servant's capacity as a public servant; or
- (c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body,

shall be guilty of an offence.

(2) Any public servant who, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his—

- (a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant;
- (b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by himself or by any other public servant in his or that other public servant's capacity as a public servant; or
- (c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body,

shall be guilty of an offence.

(3) 非官方僱員的公職人員如有所屬公共機構的許可而索取或接受任何利益，且該項許可符合第(4)款的規定，則該公職人員及提供該利益的人均不算犯本條所訂罪行。

(4) 就第(3)款而言，許可須為書面形式，並且——

(a) 須在提供、索取或接受利益之前給予；或

(b) 在利益未經事先許可而已提供或接受的情況下，須於該利益提供或接受之後在合理可能範圍內盡早申請及給予，

同時，公共機構在給予該許可之前須顧及申請的有關情況，該許可方具有第(3)款所訂效力。

9. 《盜竊罪條例》(第210章)第9、10及11條的內容如下——

#### 9. 盜竊罪

任何人犯盜竊罪，即屬犯罪，循公訴程序定罪後，可處監禁10年。

#### 10. 搶劫罪

(1) 任何人如偷竊，而在緊接偷竊之前或在偷竊時，為偷竊而向任何人使用武力，或使或試圖使任何人害怕會在當時當地受到武力對付，即屬犯搶劫罪。

(2) 任何人犯搶劫罪，或意圖搶劫而襲擊他人，即屬犯罪，循公訴程序定罪後，可處終身監禁。

#### 11. 入屋犯法罪

(1) 任何人如作出下列事項，即屬犯入屋犯法罪——

(3) If a public servant other than a Crown servant solicits or accepts an advantage with the permission of the public body of which he is an employee being permission which complies with subsection (4), neither he nor the person who offered the advantage shall be guilty of an offence under this section.

(4) For the purposes of subsection (3) permission shall be in writing and—

(a) be given before the advantage is offered, solicited or accepted; or

(b) in any case where an advantage has been offered or accepted without prior permission, be applied for and given as soon as reasonably possible after such offer or acceptance,

and for such permission to be effective for the purposes of subsection (3), the public body shall, before giving such permission, have regard to the circumstances in which it is sought.

9. Sections 9, 10 and 11 of the Theft Ordinance (Cap. 210) read as follows—

#### 9. Theft

Any person who commits theft shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 10 years.

#### 10. Robbery

(1) A person commits robbery if he steals, and immediately before or at the time of doing so, and in order to do so, he uses force on any person or puts or seeks to put any person in fear of being then and there subjected to force.

(2) Any person who commits robbery, or an assault with intent to rob, shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for life.

#### 11. Burglary

(1) A person commits burglary if—

- (a) 作為侵入者進入任何建築物或其部分，意圖犯第(2)款所述的任何罪行；或
  - (b) 作為侵入者在進入任何建築物或其部分後，偷竊或企圖偷竊在該建築物或其部分內的任何東西，或使或企圖使在該處的任何人的身體受到嚴重傷害。
- (2) 第(1)(a)款所提述的罪行是——
- (a) 偷竊在該建築物或其部分內的任何東西；
  - (b) 使在該處的任何人的身體受到嚴重傷害，或強姦在該處的婦女；及
  - (c) 非法損壞該建築物或其內任何東西。
- (3) 第(1)及(2)款中對建築物的提述，亦適用於有人居住的車輛或船隻，而不論在任何該等車輛或船隻居住的人是否在該車輛或船隻內，該提述仍適用。
- (3A) 第(2)(c)款中對非法損壞建築物內的任何東西的提述，包括——
- (a) 非法地導致該建築物內任何電腦，以並非該電腦的擁有人或他人代該擁有人所設立的電腦運作方式運作，即使該非法行為並不損害該電腦或在該電腦內所保存的程序的運作，亦不損害在該電腦內所保存的數據的可靠性；
  - (b) 非法地更改或刪除該建築物內任何電腦或該建築物內任何電腦貯存媒介所保存的任何程序或數據；及
  - (c) 非法地將任何程序或數據加入該建築物內任何電腦或該建築物內任何電腦貯存媒介內。
- (4) 任何人犯入屋犯法罪，即屬犯罪，循公訴程序定罪後，可處監禁 14 年。

- (a) he enters any building or part of a building as a trespasser and with intent to commit any such offence as is mentioned in subsection (2); or
  - (b) having entered any building or part of a building as a trespasser he steals or attempts to steal anything in the building or that part of it or inflicts or attempts to inflict on any person therein any grievous bodily harm.
- (2) The offences referred to in subsection (1)(a) are—
- (a) stealing anything in the building or part of a building in question;
  - (b) inflicting on any person therein any grievous bodily harm or raping any woman therein; and
  - (c) doing unlawful damage to the building or anything therein.
- (3) References in subsections (1) and (2) to a building shall apply also to an inhabited vehicle or vessel, and shall apply to any such vehicle or vessel at times when the person having a habitation in it is not there as well as at times when he is.
- (3A) The reference in subsection (2)(c) to doing unlawful damage to anything in a building includes—
- (a) unlawfully causing a computer in the building to function other than as it has been established by or on behalf of its owner to function, notwithstanding that the unlawful action may not impair the operation of the computer or a program held in the computer or the reliability of data held in the computer;
  - (b) unlawfully altering or erasing any program, or data, held in a computer in the building or in a computer storage medium in the building; and
  - (c) unlawfully adding any program or data to the contents of a computer in the building or a computer storage medium in the building.
- (4) Any person who commits burglary shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 14 years.

10. 《刑事訴訟程序條例》(第 221 章) 第 10 條的內容如下——

**10. 發回案件作簡易程序處理的權力**

在收到《裁判官條例》(第 227 章) 第 86(1) 條所提述的文件後，如律政司司長認為被控人本不應被交付審訊，而案件本應循簡易程序處理，則可在收到該等文件後的任何時間(但須在公訴書提出前)將案件發回裁判官，指示將案件循簡易程序處理，並作出他認為恰當的其他指示。

11. 《刑事訴訟程序條例》(第 221 章) 第 14 條的內容如下——

**14. 由律政司司長提起法律程序**

(1) 律政司司長如認為適合提起刑事法律程序，須於下列期限內，針對被控人提起他看來是合法和恰當的在法院的法律程序——

(a) 如屬根據《裁判官條例》(第 227 章) 第 80C(4) 條交付審訊的案件，則於交付審訊的 7 天之內；

(aa) 凡屬依據一項根據《區域法院條例》(第 336 章) 第 77A 條作出的移交令，法律程序根據該條第 (6) 款移交法院審訊的案件，於移交令作出的 21 天之內；及

(b) 如屬任何其他案件，則於收到關於該案件的各项文件時。

(2) 除第 16 條另有規定外，任何法庭不得查訊法律程序是否於第 (1)(a) 或 (aa) 款指明的期限內提起。

10. Section 10 of the Criminal Procedure Ordinance (Cap. 221) reads as follows—

**10. Power to refer back to be dealt with summarily**

If after receipt of the documents referred to in section 86(1) of the Magistrates Ordinance (Cap. 227) the Secretary for Justice is of opinion that the accused person should not have been committed for trial but that the case should have been dealt with summarily, the Secretary for Justice may, at any time after such receipt, but before an indictment is preferred, refer back the case to the magistrate with directions to deal with the case accordingly, and with such other directions as he may think proper.

11. Section 14 of the Criminal Procedure Ordinance (Cap. 221) reads as follows—

**14. Institution of proceedings by Secretary for Justice**

(1) The Secretary for Justice, if he sees fit to institute criminal proceedings, shall institute such proceedings in the court against the accused person as to him may seem legal and proper—

(a) in the case of a committal for trial under section 80C(4) of the Magistrates Ordinance (Cap. 227), within 7 days of such committal;

(aa) in any case where pursuant to an order of transfer made under section 77A of the District Court Ordinance (Cap. 336), proceedings stand transferred to the court for trial under subsection (6) of that section, within 21 days of the order; and

(b) in any other case, on receipt of the documents relating to the case.

(2) Subject to section 16, no court shall inquire into whether or not proceedings have been instituted within the period specified in subsection (1)(a) or (aa).

12. 《裁判官條例》(第 227 章) 第 80C 條的內容如下——

### 80C. 提訊日的程序

(1) 被控人在提訊日出庭或被帶到裁判官席前時，如第 80B(1) 條的規定已獲遵行，則檢控官須將該條所指的文件正本提交法庭，然後裁判官須通知被控人——

- (a) 檢控官尋求將他交付原訟法庭審判；及
- (b) 除非他選擇在初級偵訊中就控罪進行聆訊，或如多於一項控罪時選擇就其中任何控罪如此進行聆訊，否則便會在沒有上述偵訊的情況下被交付審判，

而被控人須隨即被問及是否選擇在初級偵訊中就其控罪進行聆訊及可作此選擇。

(2) 如被控人選擇在初級偵訊中就其控罪進行聆訊，或憑藉第 (5) 款被當作已作出該項選擇，則裁判官須——

- (a) 通知被控人在進行偵訊時，其陳述書已根據第 80B(1) 條送達被控人的控方證人將不會被傳召出庭作證，而其書面陳述則會獲收取為證據，除非被控人在當時或在進行偵訊前不少於 7 天之時，將他意欲傳召該證人的要求通知裁判官及檢控官；及
- (b) 在不損害被控人其後給予通知的任何權利的原則下，確定被控人希望在聆訊時傳召那些控方證人，及確定被控人是否希望傳召他自己的證人，

而在此之後，初級偵訊即須按照第 81、81A、82、83、84 及 85 條的條文進行。

12. Section 80C of the Magistrates Ordinance (Cap. 227) reads as follows—

### 80C. Procedure on return day

(1) When the accused appears or is brought before the magistrate on the return day the prosecutor shall, if the requirements of section 80B(1) are satisfied, hand into court the originals of the documents referred to in that section and the magistrate shall then inform the accused that—

- (a) the prosecutor seeks his committal; and
- (b) unless he elects to have the charge heard at a preliminary inquiry or, in the event of there being more than one charge, any of those charges so heard, he will be committed without such an inquiry,

and the accused shall, thereupon, be asked whether or not he elects to have the charge against him heard at a preliminary inquiry; and the accused may make such an election.

(2) If the accused elects or is, by virtue of subsection (5), deemed to have elected, to have the charge against him heard at a preliminary inquiry the magistrate shall—

- (a) inform the accused that at the inquiry a witness for the prosecution whose statement was served on him under section 80B(1) will not be called to give evidence and his written statement will be received in evidence unless the accused, either then or not less than 7 days before the inquiry, notifies the magistrate and prosecutor of his desire to have the witness called; and
- (b) ascertain, without prejudice to any right of the accused to give notice thereafter, what prosecution witnesses the accused wishes to have called at the hearing and whether or not the accused wishes to call any witnesses of his own,

and thereafter the preliminary inquiry shall be conducted in accordance with the provisions of sections 81, 81A, 82, 83, 84 and 85.

(3) 如被控人不選擇在初級偵訊中就其控罪進行聆訊，亦無憑藉第(5)款被當作已作出該項選擇，則裁判官須通知被控人——

- (a) 他無須就控罪發言，但他可承認控罪，而承認控罪會導致他就控罪被交付判處；
- (b) 除非他承認控罪，否則他會在沒有初級偵訊的情況下，立即就控罪被交付審訊；及
- (c) 在交付審訊後，他只有一次以案中並無對他不利的表面證據為理由而向法官申請釋放的權利。

(4) 在遵從第(3)款的條文規定後，裁判官須採取以下行動——

- (a) 除非被控人為一名少年，或有關罪行是可判處死刑的罪行，否則裁判官須確定被控人是否意欲承認控罪，如被控人意欲認罪，第81B條條文即適用；及
- (b) 如被控人為一名少年，或有關罪行是可判處死刑的罪行，或被控人當時不認罪及沒有根據第81B(2)條被交付判處，則裁判官須將被控人交付審訊。

(5) 凡被控人選擇就其被控的一項控罪進行聆訊，則如控罪超過一項，該選擇須當作對所有控罪作出。

13. 《裁判官條例》(第227章)第88條的內容如下——

#### 88. 某些可公訴罪行的移交

(1) 即使本條例其他條文有任何規定，除第(3)款另有規定外，任何人如在裁判官席前被控任何可公訴罪行，而該可公訴罪行並不包括在附表2第III部所指明的類別內，則裁判官在律政司司長或其代表提出申請後——

(3) If the accused does not elect, and is not deemed to have elected by virtue of subsection (5), to have the charge against him heard at a preliminary inquiry, the magistrate shall inform the accused that—

- (a) he is not obliged to say anything in respect of the charge but that he may plead guilty to the charge and that such a plea will result in his being committed for sentence on that charge;
- (b) unless he pleads guilty to charge, he will forthwith be committed for trial on that charge without an inquiry; and
- (c) after committal for trial he has the right to apply once only to a judge for discharge on the grounds that there is no prima facie case against him.

(4) After complying with the provisions of subsection (3), the magistrate shall then—

- (a) except where the accused is a juvenile or the offence is punishable by death, ascertain if the accused desires to plead guilty to the charge and, if he does so desire, the provisions of section 81B shall apply; and
- (b) if the accused is a juvenile or if the offence is punishable by death or if the accused does not then plead guilty and is not committed for sentence under section 81B(2), commit the accused for trial.

(5) An election by the accused to have a charge against him heard shall be deemed, if there is more than one charge, to relate to all charges.

13. Section 88 of the Magistrates Ordinance (Cap. 227) reads as follows—

#### 88. Transfer of certain indictable offences

(1) Notwithstanding anything contained in any other provision of this Ordinance but subject to subsection (3), whenever any person is accused before a magistrate of any indictable offence not included in any of the categories specified in Part III of the Second Schedule, the magistrate, upon application made by or on behalf of the Secretary for Justice—

- (a) 須作出命令，將與該可公訴罪行有關的控罪或申訴移交區域法院；及
- (b) 如該人亦被控任何只可循簡易程序審訊的罪行，則可作出命令，將與該項簡易程序罪行有關的控罪或申訴移交區域法院。

(2) 根據第 (1) 款作出的申請，可以口頭方式在公開法庭作出或以書面方式作出。

(3) 第 (1) 款不適用於依據《刑事訴訟程序條例》(第 221 章) 第 65F 條或《區域法院條例》(第 336 章) 第 77A 條移交由裁判官循簡易程序處理的任何法律程序，或依據《區域法院條例》(第 336 章) 第 77A 條移交作初級偵訊的任何法律程序。

#### 14. 《區域法院條例》(第 336 章) 第 77A 條的內容如下——

##### 77A. 法律程序的移交

(1) 在區域法院席前進行的任何法律程序中，凡針對被控人的控罪書已根據第 75(3)(a) 條交付，則在控方或由他人代控方作出開審陳詞之前，或在並無作出該陳詞的情況下，在控方傳召第一個證人提供證據前，律政司司長可向區域法院申請命令，要求將法律程序移交原訟法庭或移交裁判官席前循簡易程序處理。

(2) 根據第 (1) 款的申請須藉動議向法官提出，而動議的通知書須附有列明申請理由的誓章作支持。

(3) 該動議通知書及誓章的文本須在該通知書上指明為該動議的聆訊日期不少於 21 天前送達被控人，但如法官給予許可另作處理，則屬例外。

- (a) shall make an order transferring the charge or complaint in respect of the indictable offence to the District Court; and
- (b) may, if the person is also accused of any offence triable summarily only, make an order transferring the charge or complaint in respect of the summary offence to the District Court.

(2) An application under subsection (1) may be made either orally in open court or in writing.

(3) Subsection (1) shall not apply in relation to any proceedings transferred to be dealt with summarily by a magistrate pursuant to section 65F of the Criminal Procedure Ordinance (Cap. 221) or section 77A of the District Court Ordinance (Cap. 336) or transferred for a preliminary inquiry pursuant to section 77A of the District Court Ordinance (Cap. 336).

#### 14. Section 77A of the District Court Ordinance (Cap. 336) reads as follows—

##### 77A. Transfer of proceedings

(1) In any proceedings before the Court where a charge sheet has been delivered under section 75(3)(a) against an accused person, before an opening speech is made by or on behalf of the prosecution or, where no such speech is made, before the first witness is called to give evidence on behalf of the prosecution, the Secretary for Justice may apply to the Court for an order that the proceedings be transferred to the Court of First Instance or before a magistrate to be dealt with summarily.

(2) Any application under subsection (1) shall be made to a judge by way of motion, notice of which shall be supported by an affidavit showing the grounds on which the application is made.

(3) A copy of the notice of motion and the affidavit shall be served on the accused person not less than 21 days before the date named in the notice for hearing the motion, unless the judge gives leave to the contrary.

(4) 在接獲根據第(1)款提出的申請後，法官在符合第(5)款的情況下，及如其在顧及公正的原則而認為適合，可作出准許申請的命令(在本條及第77B條稱為“移交令”)或拒絕申請，而在准許或拒絕申請的情況下，均可就訟費方面作出其認為適宜的命令。

(5) 法官在作出移交令將法律程序移交原訟法庭後，須通知被控人他可選擇將該命令所關的控罪於裁判官席前作初級偵訊的聆訊，如他不作此選擇，控罪即不作偵訊而移交原訟法庭審訊；一經作如此通知後，須向被控人詢問他是否選擇將針對他的控罪作初級偵訊的聆訊，而他可作此選擇。

(6) 如被控人不選擇將控罪作初級偵訊的聆訊，則法律程序即移交原訟法庭審訊。

(7) 如被控人根據第(5)款選擇作初級偵訊，或如有將法律程序移交由裁判官循簡易程序處理的命令作出，則法官須指定被控人須到裁判官席前應訊的日期。

(8) 如有法律程序根據本條移交循簡易程序處理，則根據第(7)款指定的日期不得早於由移交令日期起計21天。

(9) 如有申請根據第(1)款提出，則在區域法院席前的整項法律程序須予擱置，直至申請已獲處置為止，但如法官就任何事宜另作命令，則屬例外。

(10) 在作出移交令時，法官可將被控人還押或准其保釋，視乎其認為適宜而定。

(11) 除非法官就任何事宜另作命令，否則移交令具有終止區域法院席前的法律程序的效力。

(12) 不得對移交令提出上訴。

(4) On an application being made under subsection (1), the judge may, subject to subsection (5), and if he considers it fit having regard to the interests of justice, make an order allowing the application (in this section and section 77B referred to as an “order of transfer”) or refuse the application and in either case may make such order as to costs as he considers appropriate.

(5) Upon making an order of transfer of proceedings to the Court of First Instance, the judge shall inform the accused person that he may elect to have the charge or charges to which the order relates heard at a preliminary inquiry before a magistrate and that if he does not so elect the proceedings shall be transferred for trial to the Court of First Instance without an inquiry; and the accused shall thereupon be asked whether or not he elects to have the charge or charges against him heard at a preliminary inquiry and he may make such an election.

(6) Where the accused does not elect to have the charge or charges heard at a preliminary inquiry the proceedings shall stand transferred to the Court of First Instance for trial.

(7) Where the accused person elects under subsection (5) to have a preliminary inquiry or where an order is made for transfer of proceedings to be dealt with summarily by a magistrate, the judge shall appoint a date on which the accused person shall appear before a magistrate.

(8) Where under this section proceedings stand transferred to be dealt with summarily, the date appointed under subsection (7) shall not be earlier than 21 days from the date of the order of transfer.

(9) Where an application is made under subsection (1), the entire proceedings before the Court shall be stayed until the application is disposed of unless the judge otherwise orders in respect of any matter.

(10) At the time of making an order of transfer, the judge may remand the accused person in custody or on bail as he may consider appropriate.

(11) Unless the judge otherwise orders in respect of any matter, an order of transfer shall operate to terminate the proceedings before the Court.

(12) An order of transfer shall not be subject to appeal.

(13) 如區域法院除本款外對根據第(1)款提出的申請並無司法管轄權予以聆訊和裁定，則本款即賦予司法管轄權。

15. 《官方機密條例》(第 521 章) 第 3 條的內容如下——

### 3. 諜報活動

(1) 任何人如為有損聯合王國或香港的安全或利益的目的而作出以下作為，即屬犯罪——

- (a) 接近、察看、越過或進入禁地，或處身毗鄰禁地之處；
- (b) 製作旨在對、可能對或擬對敵人有直接或間接用處的圖片、圖則、模型或紀錄；或
- (c) 取得、收集、記錄或發表相當可能對、可能對或擬對敵人有直接或間接用處的任何機密的官方代碼或通行碼、任何圖片、圖則、模型或紀錄或其他文件或資料，或將之傳達予任何其他人。

(2) 在就本條所訂罪行而對某人提起的法律程序中，無須證明他犯有顯示有損聯合王國或香港的安全或利益的任何特定作為，而即使沒有證明他犯有該等作為，但如從案件的情況、他的行徑或經證明的他為人所知的品格看來，他的目的看似是有損聯合王國或香港的安全或利益的作為的目的，則他仍可被定罪。

(3) 在就本條所訂罪行而對某人提起的法律程序中，他曾經與或曾經企圖與在香港或其他地方的外國或台灣特工通訊此一事實，即為他曾為有損聯合王國或香港的安全或利益的目的而取得(或曾企圖為該目的而取得)旨在對、可能對或擬對敵人有直接或間接用處的資料的證據。

(13) Where apart from this subsection the Court does not have jurisdiction to hear and determine an application made under subsection (1), this subsection shall confer such jurisdiction.

15. Section 3 of the Official Secrets Ordinance (Cap. 521) reads as follows—

### 3. Spying

(1) A person commits an offence if he, for a purpose prejudicial to the safety or interests of the United Kingdom or Hong Kong—

- (a) approaches, inspects, passes over or is in the neighbourhood of, or enters, a prohibited place;
- (b) makes a sketch, plan, model or note that is calculated to be or might be or is intended to be directly or indirectly useful to an enemy; or
- (c) obtains, collects, records or publishes, or communicates to any other person, any secret official code word or password, or any sketch, plan, model or note, or other document or information, that is likely to be or might be or is intended to be directly or indirectly useful to an enemy.

(2) In any proceedings against a person for an offence under this section, it shall not be necessary to show that he was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the United Kingdom or Hong Kong and, notwithstanding that no such act is proved against him, he may be convicted if, from the circumstances of the case, or his conduct, or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the United Kingdom or Hong Kong.

(3) In any proceedings against a person for an offence under this section, the fact that he has been in communication with, or attempted to communicate with, a foreign or Taiwan agent in Hong Kong or elsewhere, shall be evidence that he has, for a purpose prejudicial to the safety or interests of the United Kingdom or Hong Kong, obtained or attempted to obtain information that is calculated to be or might be or is intended to be directly or indirectly useful to an enemy.

(4) 在不損害第(3)款的一般性的原則下，就該款而言——

(a) 任何人曾在香港或其他地方——

- (i) 造訪外國或台灣特工的地址或與外國或台灣特工交往或與外國或台灣特工有聯繫；
- (ii) 被發現管有外國或台灣特工的姓名或地址或關於外國或台灣特工的任何其他資料；或
- (iii) 將外國或台灣特工的姓名或地址或關於外國或台灣特工的任何其他資料給予任何其他人，或從任何其他人處取得該等姓名、地址或資料，

則在沒有相反證據的情況下，該人須當作曾與外國或台灣特工通訊；及

(b) 任何被合理地懷疑是用於接收擬給予外國或台灣特工的通訊的在香港或其他地方的地址，或外國或台灣特工所居住或經營任何業務的地址，或外國或台灣特工為發出或接收通訊而使用的地址，須當作為外國或台灣特工的地址，而致予該等地址的通訊則須當作為與外國或台灣特工的通訊。

(5) 在本條中，“外國或台灣特工”(foreign or Taiwan agent) 包括——

- (a) 受或曾經受或被合理地懷疑是受或曾經受外國或台灣直接或間接僱用，以在香港或其他地方作出有損聯合王國或香港的安全或利益的作為的人；或
- (b) 已經或已企圖或被合理地懷疑已經或已企圖在香港或其他地方為外國或台灣的利益作出該等作為的人。

(4) For the purpose of subsection (3) but without prejudice to the generality of that subsection—

(a) a person shall, in the absence of evidence to the contrary, be deemed to have been in communication with a foreign or Taiwan agent if he has, in Hong Kong or elsewhere—

- (i) visited the address of a foreign or Taiwan agent or consorted or associated with a foreign or Taiwan agent;
- (ii) been found in possession of the name or address of, or any other information regarding, a foreign or Taiwan agent; or
- (iii) supplied to any other person, or obtained from any other person, the name or address of, or any other information regarding, a foreign or Taiwan agent; and

(b) any address, in Hong Kong or elsewhere, reasonably suspected of being an address used for the receipt of communications intended for a foreign or Taiwan agent, or any address at which a foreign or Taiwan agent resides, or to which he resorts for the purpose of giving or receiving communications, or at which he carries on any business, shall be deemed to be the address of a foreign or Taiwan agent, and communications addressed to such an address to be communications with a foreign or Taiwan agent.

(5) In this section “foreign or Taiwan agent” (外國或台灣特工) includes a person who—

- (a) is or has been or is reasonably suspected of being or having been employed by a foreign state or Taiwan either directly or indirectly for the purpose of committing an act, in Hong Kong or elsewhere, prejudicial to the safety or interests of the United Kingdom or Hong Kong; or
- (b) has or is reasonably suspected of having, in Hong Kong or elsewhere, committed or attempted to commit such an act in the interests of a foreign state or Taiwan.