

The Administration's response to the issues raised and information sought at the joint meeting of the Panel on Security and Panel on Administration of Justice and Legal Services on 15 February 2003

Introduction

This note sets out the Administration's response to a number of issues raised and information sought at the joint meeting of the Panel on Security and Panel on Administration of Justice and Legal Services on 15 February 2003 in relation to proscription of local organizations, as listed in Appendix I of the Background brief on the Bill prepared by the Legislative Council (LC Paper No. CB(2)1378/02-03(03)).

Response

- A1. To explain the basis for empowering the Secretary for Security to proscribe any local organization if she reasonably believes that the proscription is necessary in the interests of national security and is proportionate for such purposes, without a requirement for the organization to commit an offence.

Administration's response to A1

Due to the highly serious and reprehensible nature of organized crimes that endangers national security, specific and focused measures are necessary to deal with such activities. It is possible for activities that threaten national security without necessarily amounting to criminal offences, e.g. preparing people in terrorism. It is therefore necessary for the Secretary for Security to be given the power to proscribe an organization if he reasonably believes that this is necessary in the interests of national security, in accordance with the standards of international human rights covenants.

- A3. To explain the inadequacies of the existing provisions in the Societies Ordinance in terms of proscription of local organizations and why additional proscription power is needed.

Administration's response to A3

The Societies Ordinance in section 8(2) gives the Secretary for

Security the power to make an order prohibiting the operation or continued operation of a society or the branch of a society.

“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.”

2. Under section 8(1)(a), the Societies Officer may recommend to the Secretary for Security that an order be made if, *inter alia* –

“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;”

3. We consider that these existing powers are inadequate. First, the existing powers are not focused on any particular type of threat to national security. Unlike the existing provisions, the Bill clearly specifies the factual circumstances one of which must be satisfied before the measure of proscription could be considered applicable. Such circumstances are¹ -

- (a) the objective, or one of the objectives, of the organization is to engage in treason, subversion, secession or sedition or commit an offence of spying;
- (b) the organization has committed or is attempting to commit treason, subversion, secession or sedition or an offence of spying; or
- (c) the organization 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.

4. This provides a clearer stipulation regarding the pre-conditions under which an organization would be subjected to the proscription measures proposed. It should nevertheless be stressed that mere satisfaction of the pre-conditions above are not sufficient for a

¹ See section 8A(2) in clause 15 of the Bill.

proscription to be made. All proscription decisions must be made in accordance with the standards of international human rights covenants, and are subject to appeal to the Court of First Instance, in addition to judicial reviews.

5. Secondly, under the existing provisions the Secretary's power to prohibit can be applied to any "society or a branch"². The scope of application is restricted by section 2(2) –

"The provisions of this Ordinance shall not apply to any person listed in the Schedule."

6. The schedule lists 14 types of bodies which are excluded from the application of the ordinance (See Annex 1). There are certain exceptions to this rule by virtue of specific provision in the Societies Ordinance or in other enactments (e.g. section 2(2B) of the Societies Ordinance; section 360C(1)³ of the Companies Ordinance (Cap 32)). The effect is that the existing power to proscribe under the Societies Ordinance does not apply to certain types of society or organization.

7. We consider that organized activities that endangers national security, defined as "the safeguarding of the territorial integrity and the independence of the People's Republic of China", should be prohibited in accordance with international human rights standards, regardless of whether they are registrable under the Societies Ordinance. The Bill provides a clear stipulation in this regard.

A9. To explain whether the proposed provisions relating to proscription would be applicable to any body of persons falling within the definition of "society".

Administration's response to A9

Under the proposals in the Bill a new section 8A would be added giving the Secretary for Security power to proscribe by order a "local organization" if he reasonably believes that the proscription is necessary

² S.2(1) - "Branch", in relation to a society, includes any society which is in any way subordinate to any other society.

³ S.360C(1) - If the Chief Executive in Council is satisfied that a company formed and registered under this Ordinance or any former Companies Ordinance would, if it were a society in respect of which the Societies Ordinance (Cap 151) applied, be liable to have 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, the Chief Executive in Council may order the Registrar of Companies to strike such company off the register of companies.

in the interests of national security and is proportionate for such purpose.

2. For the purposes of the new section 8A, the Bill defines “local organization” to mean “(i) any society which is registered, registrable or exempted from registration under th[e] Ordinance; or (ii) any body of persons listed in the Schedule”. Section 2(2) is modified accordingly. The proposed powers would therefore apply to any body of persons falling within the definition of “society”.

3. However, the new power is more focused than the existing power, as discussed above. Furthermore, any office-bearer or member of a proscribed organization would have the right to appeal to the Court of First Instance.

- A10. To review the definition of the term “society” in the Societies Ordinance, having regard to the Chinese and English versions.

Administration's response to A10

“Society” is defined in section 2 of the Societies Ordinance to mean “any club, company, partnership or association of persons, whatever the nature or objects, to which the provisions of th[e] Ordinance apply”.

2. The Chinese version of “society” is “社團”，“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”。

3. The Chinese and English definitions of the term are the same. The term covers legal forms of juridical persons as well as *de facto* associations of persons. The Chinese version of “一人以上的合夥或組織” refers to associations of more than one person, i.e. persons in the plural.

- A11. To explain the meaning of the term “substantial” in the new section 8A(5)(h)(i) of the Societies Ordinance.

Administration's response to A11

The Bill provides in the new section 8A(5)(h)(i) that a local organization is subordinate to a mainland organization 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.”

“Substantial” is used four times in sub-paragraph (i) to qualify financial contributions, financial sponsorship, financial support and the amount of loans.

2. Judicial authorities indicate that “substantial” is a relative term. It would have its normal dictionary meaning of “of real importance or value, of considerable amount” (opposite of nominal). The effect of the qualification would be to rule out from consideration nominal or minimal amounts or payments.

Security Bureau
March 2003

[/dosc/bl23/BComm-Paper3.doc]

Previous section of
enactment

Next section of enactment

Switch language

Back to the List of
Laws

Section of Enactment

▼
Chapter: 151 Title: SOCIETIES ORDINANCE Gazette Number: L.N. 90 of 2001
Schedule: Heading: SCHEDULE Version Date: 01/06/2001

[section 2]

PERSONS TO WHICH THE ORDINANCE DOES NOT APPLY

- (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). (Replaced L.N. 59 of 1964)
- (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). (Replaced 8 of 2001 s. 30)
- (5) Any company or association constituted pursuant to or under any Ordinance or other legislation applicable to Hong Kong. (Replaced 13 of 1999 s. 3)
- (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. (Added 13 of 1999 s. 3)
- (6) Any company, association or partnership formed for the sole purpose of carrying on any lawful business and registered under any other Ordinance. (Amended 71 of 1988 s. 2)
- (7) (Repealed 75 of 1992 s. 32)
- (8) Any Chinese temple registered under the Chinese Temples Ordinance (Cap 153).
- (9) Any credit union registered under the Credit Unions Ordinance (Cap 119). (Added L.N. 41 of 1970)
- (10) Any corporation registered under the Building Management Ordinance (Cap 344). (Added L.N. 107 of 1973. Amended 27 of 1993 s. 48)
- (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. (Added L.N. 107 of 1973. Amended L.N. 94 of 1974; L.N. 17 of 1982; L.N. 14 of 1983; L.N. 18 of 1983; L.N. 262 of 1989)
- (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. (Added L.N. 114 of 1974)
- (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. (Added L.N. 93 of 1975)

(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. (Added L.N. 225 of 1975)

(15) (Repealed 75 of 1992 s. 32)

(16) An unincorporated trust-

(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). (Added 75 of 1992 s. 32)

(Added 28 of 1961 s. 19)

**Previous section of
enactment**

Next section of enactment

Switch language

**Back to the List of
Laws**