

立法會
Legislative Council

**Note for the Bills Committee on
National Security (Legislative Provisions) Bill**

Background information on the Societies Ordinance

At the meeting of the Bills Committee on 23 July 2003, members requested us to supplement the background information on the Societies Ordinance (Cap. 151) in paragraph 4 of the Administration's paper on "Protecting National Security and Human Rights" (Paper No. 112).

2. According to paragraph 4 of Paper No. 112, when the Societies Ordinance was first enacted in 1949, it gave the Executive the power to refuse registration of any society on the grounds that the society was likely to be used for a purpose prejudicial to or incompatible with peace, welfare or good order in Hong Kong. Those grounds were amended in 1992 and 1997. The Governor in Council (now the Chief Executive in Council) also had a power to strike companies off the register of companies on similar grounds since 1959.

A. Enactment of the Societies Ordinance in 1949

3. According to the speech of the then Attorney General when he moved the First Reading of the Societies Bill 1949 :

- (a) The Societies Ordinance 1911 provided for the compulsory registration of all societies. The Societies Ordinance 1920 introduced alteration of the law, particularly in that registration of societies was no longer rendered compulsory. The Ordinance declared triad societies and societies having unlawful objects or purposes incompatible with peace and good order of Hong Kong to be unlawful. It also empowered the Governor in Council the absolute discretion to declare a society to be unlawful for reasons set out in the Ordinance. Notwithstanding that the Ordinance did not call for registration or other formal notification of the existence of a society, many societies in the years since 1920 have continued voluntarily to register with the Secretary for Chinese Affairs thereby notifying their existence.
- (b) In 1949, it was considered that the maintenance of law and order in

Hong Kong would be assisted by the existence of record of all societies in Hong Kong and a knowledge of their objects and by enhanced powers of control of societies. In those circumstances a principal object of the Bill was to require compulsory registration.

- (c) The Bill also empowered the Registrar of Societies to refuse registration of any local society which was affiliated or connected with any political organization established outside Hong Kong. Such prohibition would mark an innovation in Hong Kong wherein considerable latitude had long been afforded towards the existence and operation of societies of any kind. But a change of attitude, as regards societies, having outside political connection, was regarded as unavoidable in the best interests of Hong Kong while serious political unrest prevailed throughout the world.
- (d) The Attorney General had made clear the Administration's intention upon the Bill being enacted to appoint the Commissioner of Police and selected officers of his Department to be the Registrar and Assistant Registrars of Societies. A right of appeal was given to the Governor in Council against a decision of the Registrar. A duration clause in the Bill limited the operation of the Ordinance until 31 December 1950, but the Legislative Council may, from time to time, by resolution extend the term of operation.

B. Immediately prior to the Societies (Amendment) Ordinance 1992

4. The Societies Ordinance has since then been amended on various occasions. Immediately prior to the enactment of the Societies (Amendment) Ordinance 1992 (75 of 1992), every local society was required to make an application to the Registrar of Societies for registration or exemption from registration within 14 days after it was established or deemed to be established. The Societies Ordinance did not apply to the persons listed in the Schedule to the Ordinance.

5. The Registrar might refuse to register or exempt from registration a society on certain specified grounds, and might do so after consultation with the Chief Secretary if he was satisfied that (i) the society was a branch of or was affiliated to or was connected with any organization or group of a political nature established outside Hong Kong, or (ii) the society was likely to be used for any purpose prejudicial to or incompatible with peace, welfare or good order in Hong Kong. These two grounds were among other grounds on which the Registrar might cancel registration or exemption from registration of a society after consultation with the Chief Secretary.

6. The Governor in Council might, in his discretion, order that any exempted or registered society be dissolved where he was satisfied that any such

society was being used for purposes prejudicial to or incompatible with peace, welfare or good order in Hong Kong.

7. **Column 1 of the Annex A** sets out a summary of the provisions of the Societies Ordinance immediately before the enactment of the Societies (Amendment) Ordinance 1992 relating to the registration system, control of societies, cancellation of registration and exemption from registration, definition of unlawful societies, penalties for offences, powers of entry and search and the power to summon witnesses.

C. Societies (Amendment) Ordinance 1992 (75 of 1992)

8. Following the enactment of the Hong Kong Bill of Rights Ordinance (Cap. 383) in 1991, a number of Ordinances, including the Societies Ordinance, were reviewed.

9. The Societies (Amendment) Bill 1992 was introduced into the former Legislative Council on 20 May 1992. An ad hoc group was set up to study the Bill. According to the Explanatory Memorandum of the Bill, the Bill proposed to amend the Societies Ordinance so that it would be consistent with the Hong Kong Bill of Rights Ordinance.

10. The Bill sought to replace the registration system with a notification system. All societies and associations which were not otherwise approved or regulated were required to notify the Commissioner of Police of their establishment. Failure to notify would be an offence. Societies which did not comply with the notification requirement would not, however, be regarded as unlawful automatically.

11. The power to refuse to register a society on the ground that it was connected with an overseas political organization would be substituted by a provision whereby the Secretary for Security might prohibit the operation of a society if he reasonably believed that the operation or continued operation might be prejudicial to the security of Hong Kong, or to public safety or public order. The then Secretary for Security stated during the Second Reading of the Bill that this requirement was necessary to deal with criminal and other undesirable societies whose operations were prejudicial to the well-being of Hong Kong.

12. On resumption of the Second Reading debate on 15 July 1992, the then Secretary for Security explained that the expression "security of Hong Kong" could refer only to the survival or well-being of the territory as a whole and not simply to the well-being of sectional or lesser interests, or to the interests or well-being of the Government. The power to prohibit societies would be exercised only in situations where there were strong reasons for believing that the operation or continued

operation of a society would prejudice either the security of Hong Kong, in the restrictive sense to which he had referred, or would constitute a real and serious threat to public safety or public order in the territory, for example, because it promoted terrorism.

13. The Bill amended the definition of unlawful society thereby repealing the presumption deeming a local society not being a registered society or an exempted society to be an unlawful society after the expiration of 14 days from the date on which the society was established. In the new definition, societies that were prohibited by virtue of an order of the Secretary were distinguished from triad societies.

14. During the Committee Stage, amendments were made to :

- (a) extend the period for notification from 14 days to one month;
- (b) reduce the level of penalty for failure to comply with the notification requirement;
- (c) increase the penalties for triad society-related offences;
- (d) introduce an objective test to the powers of the Societies Officer to prohibit the operation of societies and to enter and search;
- (e) repeal the power to summon witnesses.

15. **Column 2 of the Annex A** sets out a summary of the relevant provisions of the Societies Ordinance as amended by the Societies (Amendment) Ordinance 1992.

D. Societies (Amendment) Ordinance 1997 (118 of 1997)

16. On 23 February 1997, the Standing Committee of the National People's Congress of the People's Republic of China resolved, under Article 160 of the Basic Law, that among other things, "major amendments" to the Societies Ordinance introduced in 1992 shall not be adopted as the laws of the HKSAR. The Standing Committee also resolved that the HKSAR should enact laws on its own to avoid any legal vacuum arising on 1 July 1997.

17. A consultation document "Civil Liberties and Social Order" was issued by the Chief Executive's Office on 9 April 1997 to seek public views on proposals to amend the Societies Ordinance. Following consultation, for which public submissions were received, the Societies (Amendment) Bill 1997 was introduced to the Provisional Legislative Council on 17 May 1997. A Brief dated 15 May 1997

was issued by the Chief Executive's Office and relevant extracts are at **Annex B**.

18. The Bill sought to reinstate the registration system for societies which had been repealed in 1992, and provided that a local society to which the Societies Ordinance applied was required to apply to the Societies Officer for registration or exemption from registration within one month of its establishment. The Societies Officer might, in consultation with the Secretary for Security, refuse to register or exempt from registration a society under the following circumstances :

- (a) if he reasonably believed that such refusal was necessary in the interests of national security or public safety, public order or the protection of the rights and freedoms of others; or
- (b) if the society was a political body and had a connection with a foreign political organization or a political organization of Taiwan.

19. The above two situations also applied when the Societies Officer made recommendations to the Secretary for Security on banning the operation or continued operation of a society. The Bill also provided for new definitions of the terms "connection", "foreign political organization", "political body", "political organization of Taiwan" and "national security", as well as specifications in respect of the interpretation of the expressions of "public safety", "public order (*ordre public*) and "the protection of rights and freedoms of others".

20. A Bills Committee was set up. A Response from the Chief Executive's Office to concerns raised by members of the Bills Committee (English version only) and a Report of the Bills Committee submitted to the House Committee on 7 June 1997 are respectively at **Annexes C and D**.

21. The Bill was passed by the Provisional LegCo on 14 June 1997 with minor technical amendments. The Bill was listed in Schedule 1 of the Hong Kong Reunification Ordinance (110 of 1997) as one of the bills passed by the Provisional LegCo before 1 July 1997 in anticipation of the reunification. By virtue of section 3 of that Ordinance, the Bill was confirmed and shall have full force and effect of law subject to the signing and promulgation thereof by the Chief Executive. It came into operation on 1 July 1997.

22. A summary of the relevant provisions of the Societies Ordinance as amended by the Societies (Amendment) Ordinance 1997 is in **Column 3 of Annex A**.

23. During examination of the Bill, the Bills Committee had asked for the issue of administrative guidelines to the Commissioner of Police after passage of the Bill on the application of "national security" consideration which must be consistent with what was necessary in a democratic society. At the meeting of the Provisional

LegCo Panel on Security on 25 July 1997, the Administration explained to members of the Panel that they did not propose to devise guidelines for the following reasons :

- (a) it was not practicable to devise a set of guidelines to cater for different circumstances as there were a large number of societies formed from time to time;
- (b) unlike the Public Order Ordinance which might involve front-line police officers making decision on the spot, the Commissioner of Police might, in accordance with the Societies (Amendment) Ordinance 1997, take time to consult the Secretary for Security before he refused to register a society if he reasonably believed that the refusal was necessary in the interests of, inter alia, national security.

They therefore recommended that the Commissioner should adopt a case by case approach in applying the "national security" consideration in the Societies Ordinance.

E. Consequential Amendments to the Companies Ordinance

24. Part XIII A of the Companies Ordinance (Cap. 32) deals with the prevention of evasion of the Societies Ordinance. Part XIII A was added to the Companies Ordinance in 1984 by the Companies (Amendment) Ordinance 1984 (6 of 1984), incorporating the whole of the Companies (Prevention of Evasion of the Societies Ordinance) Ordinance which was repealed at the same time.

25. Section 360C empowers the Governor in Council (now the Chief Executive in Council) to order the Registrar of Companies to strike a company off the register of companies. Immediately prior to the enactment of the Societies (Amendment) Ordinance 1992, the order could be made if the Governor in Council was satisfied that a company formed and registered under the Companies Ordinance would, if it were a society in respect of which the Societies Ordinance applied, be liable to have its registration under that Ordinance cancelled by the Registrar of Societies on any of the grounds specified in section 10 of the Societies Ordinance. Please refer to **Part C of Column 1 and Appendix of Annex A** for details.

26. Consequential amendments to section 360C were provided in the Societies (Amendment) Ordinances of 1992 and 1997. In 1992, the ground for making an order under section 360C was amended to the effect that if the Governor in Council was satisfied that a company formed and registered under the Companies Ordinance would, if it were a society in respect of which the Societies Ordinance applied, be liable to have its operation or continued operation prohibited by the Secretary for Security under section 8 of that Ordinance. Please refer to **Part B of Column 2 of Annex A** for details.

27. Since 1997, the Chief Executive in Council could make an order under section 360C if he was satisfied that a company formed and registered under the Companies Ordinance would, if it were a society in respect of which the Societies Ordinance 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. Please refer to **Parts B and C of Column 3 of Annex A** for details.

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Prepared by

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A summary of the relevant provisions of the Societies Ordinance (Cap. 151)

<p style="text-align: center;">Pre 17 July 1992 (Immediately Prior to the amendment by the Societies (Amendment) Ordinance 1992 (75 of 1992))</p>	<p style="text-align: center;">17 July 1992 to 30 June 1997 (As amended by the Societies (Amendment) Ordinance 1992 (75 of 1992))</p>	<p style="text-align: center;">Post 1 July 1997 (As amended by the Societies (Amendment) Ordinance 1997 (118 of 1997))</p>
<p>A. <i>Registration system (sections 5, 6 and 12)</i></p> <p>1. Every local society is required to make an application to the Registrar of Societies for registration or exemption from registration within 14 days after it is established.</p> <p>2. The Registrar may refuse to register or exempt from registration a society on certain specified grounds, and may refuse to do so after consultation with the Chief Secretary if he is satisfied that -</p> <p style="padding-left: 40px;">(a) the society is a branch of or is affiliated to or is connected with any organization or group of a political nature established outside Hong Kong; or</p> <p style="padding-left: 40px;">(b) the society is likely to be used for any purpose prejudicial to or</p>	<p>A. <i>Notification system (section 5)</i></p> <p>1. A local society is required to send to the Societies Officer a notification in writing within 1 month after it is established or deemed to be established or within 1 month after a branch is established.</p>	<p>A. <i>Registration system (sections 5, 5A, 5B and 5C)</i></p> <p>1. A local society is required to apply to the Societies Officer for registration or exemption from registration within 1 month of its establishment or deemed establishment or within 1 month after a branch is established.</p> <p>2. The Societies Officer may, after consultation with the Secretary for Security, refuse to register or exempt from registration a society or a branch :</p> <p style="padding-left: 40px;">(a) if he reasonably believes that such refusal is necessary in the interests of national security or public safety, public order or the protection of the rights and freedoms of others; or</p> <p style="padding-left: 40px;">(b) if the society is a political body and has a connection with a foreign</p>

<p align="center">Pre 17 July 1992 (Immediately Prior to the amendment by the Societies (Amendment) Ordinance 1992 (75 of 1992))</p>	<p align="center">17 July 1992 to 30 June 1997 (As amended by the Societies (Amendment) Ordinance 1992 (75 of 1992))</p>	<p align="center">Post 1 July 1997 (As amended by the Societies (Amendment) Ordinance 1997 (118 of 1997))</p>
<p>incompatible with peace, welfare or good order in Hong Kong.</p> <p>3. An appeal may be made to the Governor in Council within 30 days after the date when the decision was notified or published in the Gazette, whichever is later.</p>	<p>2. Where a local society fails to comply with section 5, every office-bearer or person claiming to be so shall be guilty of an offence and liable -</p> <p>(i) on first conviction to a fine of \$10,000;</p> <p>(ii) on a second or subsequent conviction, to a fine of \$20,000 and to imprisonment for 3 months, and an additional fine of \$300 for each day during which the offence continues,</p> <p>unless he establishes to the satisfaction to the</p>	<p>political organization or a political organization of Taiwan.</p> <p>3. An appeal may be made to the Chief Executive in Council within 30 days of the date when notice of the decision was given to the society.</p> <p>4. If a local society fails to comply with section 5, every office-bearer or person claiming to be so shall be guilty of an offence and liable -</p> <p>(i) on first conviction to a fine at level 3 (\$10,000);</p> <p>(ii) on a second or subsequent conviction, to a fine at level 4 (\$25,000) and to imprisonment for 3 months, and an additional fine of \$300 for each day during which the offence continues.</p> <p>It is a defence if he establishes to the</p>

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	<p>court that he has exercised due diligence to ensure compliance and that such failure has occurred for reasons beyond his control.</p>	<p>satisfaction to the court that he has exercised due diligence to ensure compliance and that such failure has occurred for reasons beyond his control.</p>
<p><i>B. <u>Control (sections 8, 9, 9A and 9B)</u></i></p> <ol style="list-style-type: none"> 1. No society shall be registered or exempted from registration if its constitution or rules do not contain to the satisfaction of the Registrar prescribed matters or such other matters as the Registrar may reasonably require. 2. No amendment shall be made to the constitution or rules of a registered society or an exempted society except in accordance with the prior approval in writing of the Registrar. 3. The Registrar has the power to serve notice on the society to desist from any activity which appears to him not to be in accordance with the objects of the society 	<p><i>B. <u>Control (sections 8 and 11)</u></i></p> <ol style="list-style-type: none"> 1. Where the Societies Officer reasonably believes that the operation or continued operation of a society may be prejudicial to the security of Hong Kong or to public safety or public order, the Societies Officer shall notify the Secretary for Security and may recommend the making of an order prohibiting the operation or continued operation of the society. 	<p><i>B. <u>Control (section 8)</u></i></p> <ol style="list-style-type: none"> 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 - <ul style="list-style-type: none"> (a) if he reasonably believes that the prohibition is necessary in the interests of national security or public safety, public order or the protection of the rights and freedoms of others; or (b) if the society or branch is a political body that has a connection with a foreign political organization or a political organization of Taiwan.

<p>Pre 17 July 1992 (Immediately Prior to the amendment by the Societies (Amendment) Ordinance 1992 (75 of 1992))</p>	<p>17 July 1992 to 30 June 1997 (As amended by the Societies (Amendment) Ordinance 1992 (75 of 1992))</p>	<p>Post 1 July 1997 (As amended by the Societies (Amendment) Ordinance 1997 (118 of 1997))</p>
<p>as set out in its constitution or rules.</p> <p>4. The Registrar shall enter in a register of registered societies or a list of exempted societies the particulars given in the application form.</p> <p>5. The Registrar may by notice in writing require the society to furnish him in writing such particulars relating to every place or premises kept or used by the society as a place of meeting or place of business. Similarly, he may require the society to keep a register of members and to retain on the register the name and</p>	<p>2. On the notification of the Societies Officer, the Secretary for Security may by order published in the Gazette prohibit the operation or continued operation of the society in Hong Kong.</p> <p>3. An appeal may be made to the Governor in Council against the making of the order within 30 days after the order takes effect.</p> <p>4. The Societies Officer shall keep a list of all societies which have notified him setting out the names and addresses of these societies.</p>	<p>2. On the recommendation of the Societies Officer, the Secretary for Security may by order published in the Gazette prohibit the operation or continued operation of the society or branch in Hong Kong.</p> <p>3. An appeal may be made to the Chief Executive in Council against the making of the order within 30 days after the order takes effect.</p> <p>4. The Societies Officer shall keep a list of all societies which have notified him setting out the names and addresses of these societies.</p>

<p align="center">Pre 17 July 1992 (Immediately Prior to the amendment by the Societies (Amendment) Ordinance 1992 (75 of 1992))</p>	<p align="center">17 July 1992 to 30 June 1997 (As amended by the Societies (Amendment) Ordinance 1992 (75 of 1992))</p>	<p align="center">Post 1 July 1997 (As amended by the Societies (Amendment) Ordinance 1997 (118 of 1997))</p>
<p>other particulars of any member for three years after membership has expired.</p>		
<p><i>C. <u>Cancellation of registration and exemption from registration (sections 10, 12 and 30)</u></i></p> <p>1. Under section 10 (see Appendix), the Registrar may serve a notice requiring a society to show cause to his satisfaction why registration or exemption from registration of the society should not be cancelled by reason of any of the 15 grounds listed. If the society does not show cause within 14 days, the Registrar shall cancel the registration or exemption from registration, or may do so after consultation with the Chief Secretary, depending on the grounds on which the notice is served.</p>		<p><i>C. <u>Cancellation of registration and exemption from registration (sections 5D and 5E)</u></i></p> <p>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 -</p> <p>(a) if he reasonably believes that the prohibition is necessary in the interests of national security or public safety, public order or the protection of the rights and freedoms of others; or</p> <p>(b) if the society or branch is a political body that has a connection with a foreign political organization or a political organization of Taiwan.</p>

<p align="center">Pre 17 July 1992 (Immediately Prior to the amendment by the Societies (Amendment) Ordinance 1992 (75 of 1992))</p>	<p align="center">17 July 1992 to 30 June 1997 (As amended by the Societies (Amendment) Ordinance 1992 (75 of 1992))</p>	<p align="center">Post 1 July 1997 (As amended by the Societies (Amendment) Ordinance 1997 (118 of 1997))</p>
<p>2. An appeal may be made to the Governor in Council within 30 days after the date when the decision was notified or published in the Gazette, whichever is later.</p> <p>3. Section 30 provides that the Governor in Council may, in his discretion, order that any exempted or registered society be dissolved where he is satisfied that any such society was being used for purposes prejudicial to or incompatible with peace, welfare or good order in Hong Kong.</p>	<p align="center">Section 30 is repealed.</p>	<p>2. An appeal may be made to the Executive in Council within 30 days of the date when the notice of decision was given to the society.</p>
<p><i>D. <u>Definition of "unlawful society" (section 18)</u></i></p> <p>1. Every local society, not being a registered society or an exempted society, shall be deemed to be an unlawful society after the expiration of 14 days from the date on which it is established unless before the expiry of such period application has</p>	<p><i>D. <u>Definition of "unlawful society" (section 18)</u></i></p> <p>"Unlawful society" means -</p> <p>(a) a triad society, whether or not such society has notified the Societies Officer of its establishment and whether or not it is a local society; or</p>	<p><i>D. <u>Definition of "unlawful society" (section 18)</u></i></p> <p>"Unlawful society" means -</p> <p>(a) a triad society, whether or not such society is a registered society or an exempted society and whether or not it is a local society; or</p>

<p align="center">Pre 17 July 1992 (Immediately Prior to the amendment by the Societies (Amendment) Ordinance 1992 (75 of 1992))</p>	<p align="center">17 July 1992 to 30 June 1997 (As amended by the Societies (Amendment) Ordinance 1992 (75 of 1992))</p>	<p align="center">Post 1 July 1997 (As amended by the Societies (Amendment) Ordinance 1997 (118 of 1997))</p>
<p>been made to the Registrar for registration or exemption from registration.</p> <p>2. Every triad society, whether or not such society is a registered society or a exempted society and whether or not it is a local society, shall be deemed to be an unlawful society.</p>	<p>(b) a society in respect of which an order made under section 8 is in force.</p>	<p>(b) a society in respect of which, or in respect of whose branch, an order made under section 8 is in force.</p>
<p><i>E. Penalties (sections 19 to 26)</i></p> <p>1. Being an office-bearer or a person managing or assisting in the management of an unlawful society -</p> <p>\$100,000 and imprisonment for 5 years</p> <p>2(a) Being or acting as a member of an unlawful society, attending a meeting of an unlawful society, paying money or</p>	<p><i>E. Penalties (sections 19 to 25)</i></p> <p>1. Being an office-bearer or a person managing or assisting in the management of -</p> <p>(a) an unlawful society, \$100,000 and imprisonment for 3 years;</p> <p>(b) a triad society, \$1,000,000 and imprisonment for 15 years.</p> <p>2(a) Being or acting as a member of an unlawful society, attending a meeting of an unlawful society, paying money or</p>	<p><i>E. Penalties (sections 19 to 25)</i></p> <p>1. Sections 19 to 24 remain the same.</p>

<p align="center">Pre 17 July 1992 (Immediately Prior to the amendment by the Societies (Amendment) Ordinance 1992 (75 of 1992))</p>	<p align="center">17 July 1992 to 30 June 1997 (As amended by the Societies (Amendment) Ordinance 1992 (75 of 1992))</p>	<p align="center">Post 1 July 1997 (As amended by the Societies (Amendment) Ordinance 1997 (118 of 1997))</p>
<p>giving any aid to or for the purposes of an unlawful society -</p> <p>(i) on first conviction : \$10,000 and imprisonment for 12 months</p> <p>(ii) on a second or subsequent conviction : \$50,000 and imprisonment for 5 years</p> <p>(b) Being or acting as a member of a triad society, attending a meeting of a triad society, being found in possession certain articles of a triad society -</p> <p>(i) on first conviction : \$50,000 and imprisonment for 3 years</p> <p>(ii) on a second or subsequent conviction : \$100,000 and imprisonment for 7 years.</p> <p>3. Allowing an unlawful society on premises-</p> <p>(i) on first conviction : \$50,000 and</p>	<p>giving any aid to or for the purposes of an unlawful society -</p> <p>(i) on first conviction : \$20,000 and imprisonment for 2 years</p> <p>(ii) on a second or subsequent conviction : \$50,000 and imprisonment for 5 years</p> <p>(b) Being or acting as a member of a triad society, attending a meeting of a triad society, paying money or giving aid for the purposes of the triad society or being found in possession certain articles of a triad society -</p> <p>(i) on first conviction : \$100,000 and imprisonment for 3 years</p> <p>(ii) on a second or subsequent conviction : \$250,000 and imprisonment for 7 years.</p> <p>3(a) Allowing an unlawful society on premises -</p> <p>(i) on first conviction : \$50,000 and</p>	

<p align="center">Pre 17 July 1992 (Immediately Prior to the amendment by the Societies (Amendment) Ordinance 1992 (75 of 1992))</p>	<p align="center">17 July 1992 to 30 June 1997 (As amended by the Societies (Amendment) Ordinance 1992 (75 of 1992))</p>	<p align="center">Post 1 July 1997 (As amended by the Societies (Amendment) Ordinance 1997 (118 of 1997))</p>
<p>imprisonment for 3 years (ii) on a second or subsequent conviction : \$100,000 and imprisonment for 5 years</p> <p>4. Inciting a person to become a member of an unlawful society - \$50,000 and imprisonment for 3 years</p> <p>5. Procuring subscription or aid for an unlawful society - \$10,000 and imprisonment for 1 year</p>	<p>imprisonment for 12 months (ii) on a second or subsequent conviction : \$100,000 and imprisonment for 2 years</p> <p>(b) Allowing a triad society on premises - (i) on first conviction : \$100,000 and imprisonment for 3 years (ii) on a second or subsequent conviction : \$200,000 and imprisonment for 5 years</p> <p>4(a) Inciting a person to become a member of an unlawful society - \$50,000 and imprisonment for 2 years</p> <p>(b) Inciting a person to become a member of a triad society - \$250,000 and imprisonment for 5 years</p> <p>5(a) Procuring subscription or aid for an unlawful society - \$50,000 and imprisonment for 2 years</p> <p>(b) Procuring subscription or aid for a triad</p>	

<p align="center">Pre 17 July 1992 (Immediately Prior to the amendment by the Societies (Amendment) Ordinance 1992 (75 of 1992))</p>	<p align="center">17 July 1992 to 30 June 1997 (As amended by the Societies (Amendment) Ordinance 1992 (75 of 1992))</p>	<p align="center">Post 1 July 1997 (As amended by the Societies (Amendment) Ordinance 1997 (118 of 1997))</p>
<p>6. An office-bearer of a society whose registration or exemption from registration has been cancelled becomes an officer-bearer of another society without the written permission of the Registrar -</p> <p>\$15,000 and imprisonment for 3 years</p>	<p>society - \$250,000 and imprisonment for 5 years</p> <p>6. Where an order prohibiting the operation or continued operation of a society is effective, the Secretary may make an order that an officer-bearer of that society shall not become an office-bearer of another society without the written consent of the Societies Officer, and a person contravening the order -</p> <p>\$50,000 and imprisonment for 3 years</p>	<p>2. Where an order prohibiting the operation or continued operation of a society or branch is effective, the Secretary may make an order that an officer-bearer of that society or that branch shall not become an office-bearer of another society without the written consent of the Societies Officer, and a person contravening the order -</p> <p>\$50,000 and imprisonment for 3 years</p>
<p><i>F. Powers of entry and search (sections 31, 32 and 33)</i></p> <p>1. Sections 31 and 32 empower the Registrar or an assistant registrar to enter at any time into any place or premises which he has reason to believe is or are kept or used by any registered society or any of its members as a place of meeting</p>	<p><i>F. Powers of entry and search (sections 31, 32 and 33)</i></p> <p>1. Under section 31, the Societies Officer may, where he reasonably believes that it is necessary so to do in connection with the performance of his functions under the Ordinance, at all reasonable times enter into any place or premises which he</p>	<p><i>F. Powers of entry and search (sections 31, 32 and 33)</i></p> <p>1. Section 31 remains the same.</p>

<p align="center">Pre 17 July 1992 (Immediately Prior to the amendment by the Societies (Amendment) Ordinance 1992 (75 of 1992))</p>	<p align="center">17 July 1992 to 30 June 1997 (As amended by the Societies (Amendment) Ordinance 1992 (75 of 1992))</p>	<p align="center">Post 1 July 1997 (As amended by the Societies (Amendment) Ordinance 1997 (118 of 1997))</p>
<p>or place of business. If he has reason to believe that any registered society or exempted society is being used for purposes prejudicial to peace or welfare or to good order in Hong Kong, he may enter with or without assistance and using force for that purpose, if necessary, into any place or premises and may search such place or premises and any person found therein or escaping therefrom for evidence.</p> <p>2. Under section 33, any police officer of or above the rank of inspector may with or without assistance, using for if necessary, (a) enter into any dwelling-house or other building, or into any pace in which he has</p>	<p>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. No place or premises or any part thereof which is used for dwelling purposes shall be entered into except by a warrant issued by a magistrate.</p> <p>2. Under section 32, a magistrate may, if satisfied that there is reasonable ground for believing that a society is being used or operated for any purpose prejudicial to security of Hong Kong or to public safety or public order, issue a warrant to enter, search and seize.</p> <p>3. Section 33 is amended by -</p> <p>(a) repealing "if necessary" and substituting "if reasonably necessary";</p>	<p>2. Under section 32, a magistrate may, if satisfied that there is reasonable ground for believing that a society or a branch is being used or operated for any purpose that makes 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 to enter, search and seize.</p> <p>3. Section 33 remains the same.</p>

<p align="center">Pre 17 July 1992 (Immediately Prior to the amendment by the Societies (Amendment) Ordinance 1992 (75 of 1992))</p>	<p align="center">17 July 1992 to 30 June 1997 (As amended by the Societies (Amendment) Ordinance 1992 (75 of 1992))</p>	<p align="center">Post 1 July 1997 (As amended by the Societies (Amendment) Ordinance 1997 (118 of 1997))</p>
<p>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, lists of members or other articles belonging to any unlawful society are concealed, kept or deposited, (b) and to arrest all persons found in such house, building or place, (c) and to search such place and seize all such articles which he has reasonable cause to believe to belong to any unlawful society or to be in any way connected therewith.</p>	<p>(b) restricting the arrest of those persons found in the house, building or place whom the police officer has reasonable cause to believe are associated with the unlawful society.</p>	
<p><i>G. Power of Registrar to summon witnesses (section 34)</i></p> <p>The Registrar or an assistant registrar may summon any person whom he has reason to believe to be able to give any information as to the existence or operations of any unlawful society, or suspected unlawful society, or as to the operations of any registered society or exempted society.</p>	<p><i>G. Power of Registrar to summon witnesses</i></p> <p>Section 34 is repealed.</p>	

(2) A notice under this section shall specify the date on and after which the register of members is to be kept not being a date earlier than 1 month after the date of the notice.

(3) A register kept under this section shall be available for inspection on demand made at any reasonable time by the Registrar or an assistant registrar.
(Added, 36 of 1982, s. 5)

Cancellation of registration and exemption from registration

10. (1) The Registrar may serve on a society notice in such form as may be prescribed, requiring the society to show cause to his satisfaction, within 14 days of such service, why the registration or exemption from registration of the society should not be cancelled by reason of the fact that—

- (a) the society is a branch of, or is affiliated to or is connected with—
- (i) any society whose registration or exemption from registration has been cancelled under this section; or
- (ii) any society deemed to be an unlawful society under section 18; or (Replaced, 36 of 1982, s. 6)
- (b) the society is unlawful by virtue of any other enactment; or
- (c) any group of members of the society or any office-bearers of the society have in any way been connected with or participated in or instigated or supported the commission of an offence under this Ordinance, or any office-bearer of the society has been convicted of an offence under any other Ordinance which, in the opinion of the Registrar, renders him unfit to hold office in the society; or (Amended, 36 of 1982, s. 6)
- (d) the society has altered the constitution or rules thereof in contravention of the provisions of section 8(2); or
- (e) the society has failed to comply with a notice served on it in accordance with the provisions of section 8(2A) or (3); or (Amended, 36 of 1982, s. 6)
- (ea) in the case of a registered society, the society has contravened section 9A or 9B or has failed to comply with any requirement or direction thereunder; or (Added, 36 of 1982, s. 6)
- (eb) within the preceding 6 months, a meeting of the society or the office-bearers of the society has been held for any purpose which involved the commission of an offence under this Ordinance; or (Added, 36 of 1982, s. 6)
- (ec) on 2 or more occasions within the preceding 12 months 2 or more persons convicted of a criminal offence have—
- (i) been permitted to be present at any meeting of the society; or
- (ii) frequented any place or premises owned, occupied, used or controlled by the society, or of which the society is the lessee,
- otherwise than for any purpose relating to the probation, rehabilitation or moral improvement of such persons; or (Added, 36 of 1982, s. 6)

(ed) on 2 or more occasions within the preceding 12 months an offence under—

- (i) the Dangerous Drugs Ordinance (Cap. 134); or
- (ii) the Gambling Ordinance (Cap. 148); or
- (iii) Part XII of the Crimes Ordinance (Cap. 200),

has been committed in connection with or in respect of any place or premises owned, occupied, used or controlled by the society, or of which the society is the lessee; or (Added, 36 of 1982, s. 6)

(ee) within the preceding 12 months, members of the society numbering more than 10 per cent of the membership of the society, or more than 10 members thereof, whichever is the lesser, have been convicted of any criminal offence; or (Added, 36 of 1982, s. 6)

(ef) within the preceding 6 months, the society has on 2 or more occasions failed to conduct the activities of the society or meetings thereof in such manner as to prevent disturbance or disorder; or (Added, 36 of 1982, s. 6)

(eg) the society has on 2 or more occasions been in breach of its obligations under this Ordinance; or (Added, 36 of 1982, s. 6)

(f) the society is a branch of or is affiliated to or is connected with any organization or group of a political nature established outside Hong Kong; or (Amended, 30 of 1988, s. 4)

(g) the society has exercised or is exercising or intends to exercise or has attempted to exercise influence over the conduct or management of any school as defined by section 3 of the Education Ordinance (Cap. 279), or over any teacher or pupil in such school and that such influence is—

- (i) of a political nature; or
- (ii) prejudicial to the conduct or management of such school or to the welfare and good order of any such teacher or pupil; or

(h) in the case of a society which has been exempted from registration, the society, in the opinion of the Registrar, has ceased to be used solely for religious, charitable, social or recreational purposes or to be a rural committee or a federation or other association of rural committees.

(2) A copy of such notice shall be published in the *Gazette* within 7 days after the date of such service.

(3) If within such period of 14 days the society does not show cause to the Registrar why the registration or exemption from registration of the society should not be cancelled—

(a) if the notice was served on a ground set forth in subsection (1)(a), (b), (c), (d), (e), (ea), (eb), (ec), (ed), (ee), (ef) or (eg), the Registrar shall cancel the registration or exemption from registration of the society; and (Amended, 36 of 1982, s. 6)

(b) if the notice was served on a ground set forth in subsection (1)(f), (g) or (h), the Registrar, after consultation with the Chief Secretary, may cancel the registration or exemption from registration of the society.

(4) Notice of any such cancellation shall, as soon as is practicable thereafter, be—

- (a) served on the society;
- (b) affixed in a conspicuous manner on any building occupied by the society and at the nearest police station of the police district in which such building exists; and
- (c) published in the *Gazette*.

(5) Any cancellation in accordance with the provisions of this section shall take effect on the expiry of 14 days from the date when notice thereof was published in the *Gazette* or from the determination of any appeal against such cancellation in accordance with the provisions of this Ordinance whichever is the later.

(Added, 28 of 1961, s. 3)

Branch of a society

11. (1) No branch of a society shall be established without the prior approval of the Registrar.

(2) The Registrar may refuse his consent to the establishment of a branch of the society if—

- (a) the constitution or rules of the society do not provide for the establishment of a branch of the society; or
- (b) the constitution or rules of the branch of the society are such as to make the branch of the society an independent society not adequately under the control of the society.

(3) Every branch of the society established without the prior approval of the Registrar shall be deemed to be an unlawful society.

(Added, 28 of 1961, s. 3)

Appeals

12. (1) Any person aggrieved by a decision of the Registrar under this Ordinance or a decision of the Secretary for District Administration under section 7(2), may appeal to the Governor in Council and on any such appeal the Governor in Council may confirm, vary or reverse the decision of the Registrar or of the Secretary for District Administration, as the case may be. *(Amended, L.N. 14/83)*

(2) In the case of a decision in regard to a society, the society or any office-bearer or member thereof who is aggrieved by the decision may appeal under subsection (1).

(3) An appeal under subsection (1) may be made within 30 days after the date when the decision was notified to the person or the society or the date of publication of the notice of the decision in the *Gazette*, whichever is the later.

(4) The operation of any decision appealed against under subsection (1) shall be suspended until the appeal has been heard and determined by the Governor in Council.

(Replaced, 36 of 1982, s. 7)

Cessation of existence of a society

13. (1) If the Registrar has reason to believe that any registered or exempted society has ceased to exist, he may publish in the *Gazette* a notification calling upon such society to furnish him with proof of its existence within 3 months from the date of such notification.

(2) If at the expiration of such 3 months the Registrar is satisfied that the society has ceased to exist, a notification to that effect shall be published in the *Gazette*, and the society shall be deemed to have ceased to exist from the date of such publication.

Dissolution of a society

14. (1) If a registered society or an exempted society decides to dissolve itself the society shall notify the Registrar of its decision by notification in writing signed by one or more of the principal office-bearers of the society.

(2) On receipt of any such notification the Registrar shall as soon as practicable thereafter, publish in the *Gazette* in English and in Chinese characters notice of such notification stating that if no objection is received by him within 14 days after the date of such publication, he will cancel the registration or exemption from registration of the society as the case may be.

(3) If no objection to such notice is received within such period, the Registrar shall cancel such registration or exemption as the case may be.

(4) If any objection to such notification is received by the Registrar he may, after such inquiry as he shall consider necessary, either cancel such registration or exemption or refuse to cancel such registration or exemption.

(5) Notice in such form as may be prescribed of any such cancellation or refusal shall be published and served in accordance with the provisions of section 10(4).

(Added, 28 of 1961, s. 4)

Information to be furnished by societies

15. (1) The Registrar may, at any time, by notice in writing served on any exempted society or registered society require any such society to furnish him in writing with—

- (a) a true and complete copy of the constitution or rules of any such society in force at the date of such notice;
- (b) a true and complete list of office-bearers and members of any such society residing in Hong Kong or present therein at the date of such notice;
- (ba) the address and other particulars specified in the notice of every place or premises owned, occupied, used or controlled by any such society, or of which any such society is the lessee, at such date as shall be specified in the notice; *(Added, 36 of 1982, s. 8)*
- (c) a true and complete return of the number of meetings held by any such society in Hong Kong within the period of 6 months immediately preceding such notice, stating the place or premises at which such meetings were held;

Brief for the Provisional Legislative Council

**SOCIETIES (AMENDMENT) BILL 1997
PUBLIC ORDER (AMENDMENT) BILL 1997**

INTRODUCTION

At its meeting on 13 May 1997, the Executive Council of the HKSAR advised and the Chief Executive of the HKSAR ordered that the Societies (Amendment) Bill 1997 at Annex A and the Public Order (Amendment) Bill 1997 at Annex B should be introduced into the Provisional Legislative Council.

BACKGROUND

2. On 23 February 1997, the Standing Committee of the National People's Congress (NPC) of the People's Republic of China (PRC) resolved, under Article 160 of the Basic Law, that among other things, major amendments to the Societies Ordinance (Cap 151) and the Public Order Ordinance (Cap 245) introduced in 1992 and 1995 respectively shall not be adopted as the laws of the Hong Kong Special Administrative Region (HKSAR). The NPC Standing Committee also resolved that the HKSAR should enact laws on its own to avoid any legal vacuum arising on 1 July 1997.

3. On 9 April 1997, the Chief Executive's Office published a consultation document "Civil Liberties and Social Order" to seek public views on proposals to amend the Societies Ordinance (SO) and the Public Order Ordinance (POO) to fill the legal vacuum resulting from the resolution of the NPC Standing Committee, in a way which must be in compliance with the provisions in the Basic Law and consistent with the International Covenant on Civil and Political Rights (ICCPR).

4. The proposals in the Consultation Document focus on the following areas -

- (a) Whether a registration system should be put in place for the

orderly management and operation of societies.

- (b) How a proper balance can be struck between the right to public processions and social order.
- (c) How interference by foreign political forces in local political activities can be prevented.

5. The consultation drew an enthusiastic response from the public, with over 5,000 submissions received by the Chief Executive's Office. The Chief Executive and senior officials of the Chief Executive's Office met over 70 organisations. The Provisional Legislative Council held a motion debate on the Consultation Document on 10 May 1997. In the light of public comments, the proposals in the Consultation Document have been amended and are now contained in the Societies (Amendment) Bill 1997 and the Public Order (Amendment) Bill 1997.

SOCIETIES (AMENDMENT) BILL 1997

6. **Clause 4** provides that a local society (or its branch) to which the Societies Ordinance applies must apply to the Societies Officer for registration or exemption from registration within 1 month of its establishment. The society may operate and continue to operate until the society is notified that the Societies Officer has refused its application.

7. **Clause 4** further provides that the Societies Officer may, after consultation with the Secretary for Security, refuse to register or exempt from registration a society in the following situations :-

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

8. **Clause 3** provides for the definitions of the following terms :-

- (a) "National security" means "the safeguarding of the territorial integrity and the independence of the People's Republic of China";
- (b) "political body" means -
 - (i) a political party or an organization that purports to be a political party; or
 - (ii) an organization whose principal function or main object is to promote or prepare a candidate for an election.
- (c) "connection"

includes the following circumstances :-

- (i) if the society or the branch solicits or accepts financial contributions, financial sponsorships or support of any kind or loans, directly or indirectly, from a foreign political organization or a political organization in Taiwan;
- (ii) if the society or its branch is affiliated directly or indirectly with a foreign political organization or a political organization in Taiwan;
- (iii) if the policies of the society or the branch are determined directly or indirectly by a foreign political organization or a political organization in Taiwan;
- (iv) if a foreign political organization or a political organization in Taiwan directs, dictates, controls or participates, directly or indirectly, in the management or the decision making process of the society or the branch.

(d) “foreign political organization”

is defined to include :-

- (i) a foreign government or a political sub-division of a foreign government;
- (ii) an agent of a foreign government or an agent of a political sub-division of the foreign government; or
- (iii) a political party in a foreign country or its agent.

(e) “a political organization of Taiwan”

is defined to include :-

- (i) the administration of Taiwan or a political sub-division of the administration;
- (ii) an agent of the administration of Taiwan or an agent of a political sub-division of the administration; or
- (iii) a political party in Taiwan or its agent.

9. Consequential amendments are provided for in **Clauses 18-21**. One consequential amendment is related to Part XIII A of the Companies Ordinance to prevent circumvention of the provisions in the Societies Ordinance. Briefly, the Chief Executive in Council will have powers to order the Registrar of Companies to refuse registration of a company or to order the company to be struck off if the company in question seeks to circumvent the provisions of the Societies Ordinance. Similar powers existed before the 1992 amendments to the Societies Ordinance.

10. **Clause 11** amends s. 15 (Information to be furnished by societies) of the Ordinance so that the information required to be furnished to the Societies Officer includes a society's income (and sources) and expenditure.

PUBLIC ORDER (AMENDMENT) BILL 1997

11. The Bill provides for various amendments to the provisions relating to public processions. Under **Clause 6**, a public procession may take place if :-

- (a) the Commissioner of Police is notified of the intention to hold the public procession;
- (b) the Commissioner of Police has notified the person who gave notice of the intended public procession that he has no objection to the procession or is taken to have issued a notice of no object; and
- (c) the conditions imposed are complied with.

12. No amendment will be made to the present requirement that the notice for a public procession must be given not later than 7 days (except a funeral procession which requires 24 hours' notice) but the Commissioner of Police may accept shorter notice than 7 days at his discretion. The minimum notice of 48 hours proposed in the Consultation Document has been removed.

13. **Clause 7** provides that the Commissioner of Police may object to a public procession being held if he reasonably considers that the objection is necessary in the interests of national security or public safety, public order, or the protection of the rights and freedoms of others. "National security" is defined in a similar way as in the case of the Societies (Amendment) Bill 1997.

14. If the Commissioner of Police objects to a public procession being held, he must, within the stipulated time, notify the organizer of his objections together with the reasons. The stipulated time is as follows :-

- (a) not later than 48 hours prior to the procession if a 7-day notice is given;
- (b) not later than 24 hours prior to the procession if shorter notice of not less than 3 days is given.

Should the Commissioner fail to do that within the stipulated time, it will be deemed that he has no objection to the procession.

15. The Commissioner must not exercise his right to object to a public procession being held if he considers the interests of national security or public safety, public order, or the protection of the rights and freedoms of others could be met by imposing conditions.

16. Transitional arrangements are provided in the Bill (Clause 16). Without prejudice to the power of the Commissioner of Police to accept shorter notice, notice of intention to hold a public procession must be given in writing to the Commissioner of Police on 24, 25 and 26 June 1997 respectively for a public procession to be held on 1, 2 and 3 July 1997 respectively and notice of intention must be given in writing to the Commissioner of Police for a public procession to be held on 4-9 July 1997. If the Commissioner of Police does not give notice to prohibit the public procession, this is taken to be a notice of no objection.

FINANCIAL AND STAFFING IMPLICATIONS

17. There would be additional costs arising from the requirement on the Police to issue "Notice of No Objection" and to enforce the prohibition of connection between local and foreign political organizations. However, it is difficult to quantify at this stage.

LEGISLATIVE TIMETABLE

18. The legislative timetable will be :-

Publication of the Bills	15 May 1997
First Reading and commencement of Second Reading debate	17 May 1997
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

PUBLICITY

19. A press conference will be held on 15 May 1997 when the Bills are published. A compendium of the submissions received, together with a summary of the public views on the Consultation Document, will be made available for public inspection.

Chief Executive's Office
15 May 1997

**Bills Committee on the
Public Order (Amendment) Bill 1997 and
Societies (Amendment) Bill 1997**

At the meeting of the Bills Committee on 24 May 1997, Members raised a number of issues on the above Bills. We would like to respond to some of them in the following paragraphs. Further comments from Members sent vide the letter from the Legal Adviser to the Bills Committee of 28 May are being considered.

PUBLIC ORDER (AMENDMENT) BILL 1997

National Security

2. The definition of "national security" now used in the Bill [and in the Societies (Amendment) Bill 1997] is drawn from the United Nations publication "Freedom of the Individual under Law" (published in 1990), the relevant text of which is reproduced below -

"National security means peace and stability in the community. The concept would seem to relate to measures enacted with a view to safeguarding territorial integrity and national independence from any external threat. It covers any activity prejudicial to the very existence of the State. Nevertheless, this requirement should not be used as a pretext for imposing arbitrary limitations or restrictions on the exercise of human rights and freedoms."

Members may wish to note that "national security" is also used in Articles 17 and 18 of the Hong Kong Bill of Rights Ordinance and in Clause 5 of the Outer Space Bill now before the Hong Kong Legislative Council. A similar term, "safety and interests of the United Kingdom" is used in the Official Secrets Bill which the Legislative Council is also considering.

Section 31 (Curfew Orders)

3. The Chairman of the Bills Committee asked if the provision in section 31 regarding members of Her Majesty's forces being on the list of persons not subject to or obliged to comply with a curfew order when on duty should be deleted, in view of Article 14 of the Basic Law which stipulates that the SARG shall be responsible for the maintenance of public order in the SAR is a matter for the SARG.

4. We have reflected on this point. Whether the list in section 31 should be kept in its present form is outside the scope of this amendment exercise. Changes to this list should be done in the context of the adaptation of law exercise or in an overall review of the Ordinance. We also note that Article 14 of the Basic Law provides that the Chief Executive may request the PLA garrison in the SAR in maintaining public order. In our view it will not be unreasonable to include a reference to the PLA garrison in section 31.

Clause 16 of the Bill (Transitional Arrangements)

5. In response to Members' concern we shall be moving a committee stage amendment to Clause 16 of the Bill make it clear that the amending ordinance will not take effect before 1 July.

SOCIETIES (AMENDMENT) BILL 1997

The "Foreign Political Organisations" and "Connections"

6. On drafting the definitions of "foreign political organisations" and "connections", we have made reference to the United States Federal Criminal Code. Section 2386 in Chapter 18 of the Code says:

"An organization is subject to foreign control if:

- (a) it solicits or accepts financial

contributions, loans, or support of any kind, directly or indirectly, from, or is affiliated directly or indirectly with, a foreign government or a political subdivision thereof, or an agent, agency, or instrumentality of a foreign government or political subdivision thereof, or a political party in a foreign country, or an international political organization; or

(b) its policies, or any of them, are determined by or at the suggestion of, or in collaboration with, a foreign government or political subdivision thereof, or an agent, agency, or instrumentality of a foreign government or a political subdivision thereof, or a political party in a foreign country, or an international political organization."

7. We have also made reference to Title 2 (Chapter 14) and Title 11 (Chapter 1) of the United States Federal Regulations, the texts of which are also reproduced below:

"Title 2, Chapter 14 - Federal Election Campaigns

Section 441e Contributions by foreign nationals

(a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with an election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

Title 11, Chapter 1 - Federal Election Commission

Section 110.4 Prohibited Contributions

(a)(2) No person shall solicit, accept, or receive a contribution as set out above from a foreign national.

(3) A foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation, labor organization, or political committee, with regard to such person's Federal or nonfederal election-related activities, such as decisions concerning the making of contributions or expenditures in connection with election for any local, State, or Federal office or decisions concerning the administration of a political committee."

8. We note Members' concern about the inclusion of the concept of participating in the management of a society in the definition of "connection". We agree that the application of the concept of participation should be confined to the decision making process of a society, not to its management. A committee stage amendment will be moved to reflect this.

Election

9. We have considered Members' suggestion that the election for the Chief Executive be included into the meaning of "election" under Clause 3 of the Bill. The meaning of "election" is essential in defining "local political bodies" which under this Bill refer to organisations whose principal function or main object is to promote or prepare a candidate for an election. Our intention is to cover elections to government institutions which are currently subject to electoral laws in Hong Kong. There is now no Hong Kong law governing the election of the Chief Executive. The next such election will not be held until five years later.

Sections 8 and 32

10. We note Members' suggestion that the proposed wording "...necessary in the interests of national security..." in section 8 and "... prejudicial to the national security..." in section 32 should be made consistent as far as possible, to avoid ambiguity in interpretation. We shall be moving a committee stage amendment to make the wording consistent.

11. We have taken on board the suggestions made by the Legal Adviser to the Bills Committee in her letters of 23 May on drafting aspects of the two Bills and shall be moving committee stage amendments to reflect them.

Chief Executive's Office
28 May 1997

Paper for House Committee Meeting on 7 June 1997

Report of the Bills Committee on Societies (Amendment) Bill 1997 and Public Order (Amendment) Bill 1997

Purpose

This paper reports on the deliberations of the Bills Committee on the Societies (Amendment) Bill 1997 and Public Order (Amendment) Bill 1997 and seeks the support of the House Committee on its recommendation that with the approval of the President, the Second Reading debate of the Bills should be resumed at the Council meeting to be held on 14 June 1997, subject to Committee Stage amendments (CSAs).

Background

The Bills

2. On 23 February 1997, the Standing Committee of the National People's Congress (NPC) of the People's Republic of China resolved, under Article 160 of the Basic Law, that among other things, major amendments to the Societies Ordinance (Cap 151) and the Public Order Ordinance (Cap 245) introduced in 1992 and 1995 respectively should not be adopted as laws of the Hong Kong Special Administrative Region (HKSAR). The NPC Standing Committee also resolved that HKSAR should enact laws on its own to avoid any resultant legal vacuum on 1 July 1997.

3. The Bills were introduced into the Council on 17 May 1997. The Societies (Amendment) Bill 1997 seeks to reinstate the registration system for societies which was repealed in 1992, and provides that a local society (or its branch) to which the Societies Ordinance applies must apply to the Societies Officer for registration or exemption from registration within one month of its establishment. In this regard, the Bill has made provisions for:

- a. application for registration or exemption from registration; appeal against refusal to register or to exempt; and offences in relation to registration;
- b. cancellation of registration or exemption from registration; appeal against such cancellation and offences of continued operation;
- c. prohibition of operation of societies; and
- d. other consequential and technical amendments.

The Bill also provides for new definitions of the terms of "connection", "election", "exempted society", "foreign political organization", "political body", "political organization of Taiwan", "specified form" and "national security", and specifications in respect of the interpretation of the expressions of "public safety", "public order (ordre public)" and "the protection of rights and freedoms of others".

4. The Public Order (Amendment) Bill 1997 seeks to modify the notification system introduced in 1995 for organizing public procession. It provides that a public procession may take place if the Commissioner of Police (CP) is notified of the intention to hold such public procession. CP may object to a public procession being held if he reasonably considers that the objection is necessary in the interests of national security or public safety, public order, or the protection of the rights and freedoms of others. If CP objects to a public procession being held, he must, within the stipulated time, notify the organizer of his objection together with reasons. Should CP fail to do that within the stipulated time, it will be deemed that he has no objection to the procession. CP must not exercise his right to object to a public procession being held if he considers the interests of national security or public safety, public order, or the protection of the rights and freedoms of others could be met by imposing conditions. Transitional arrangements are also provided for in the Bill.

The Bills Committee

5. At the House Committee meeting held on 17 May 1997, it was decided that a Bills Committee should be formed to study these two Bills. 15 members joined the Bills Committee, among whom Hon TAM Wai-chu, Maria, was elected Chairman and Hon WONG Ying-ho, Kennedy, Deputy Chairman. The membership list of the Bills Committee is at Appendix I. The Bills Committee has met three times, including two meetings with members of the Chief Office.

6. The Bills Committee issued press releases to the media of Hong Kong and placed notices on the internet to invite public views on the Bills, and received two submissions. The Bills Committee has taken note of the views expressed in these submissions.

Findings and Deliberations of the Bills Committee

7. The gist of findings and deliberations of the Bills Committee on the Bills is summarised in the following paragraphs.

The Societies (Amendment) Bill 1997

The registration system

8. The Bills Committee notes that the notification system, which replaced the registration system since 1992, is regarded by NPC as a major amendment to the Societies Ordinance. Therefore it shall not be adopted on and after 1 July 1997 and hence the Chief Executive is recommending the re-instatement of the registration system in this regard. The registration system as provided for in the Bill seeks to register all kinds of societies, with exemption for a society (or a branch) if the Societies Officer is satisfied that it is established solely for religious, charitable, social or recreational purposes or as a rural committee or a federation or other association of rural committees (New section 5A provided for under Clause 4 of the Societies (Amendment) Bill 1997 refers). The Bills Committee has ascertained from the Chief Executive's Office that the underlying principle as well as the actual provisions of the amending Bill in respect of the registration system are in compliance with the decision of the NPC, the provisions of the Basic Law and the International Covenant on Civil and Political Rights (ICCPR) as applied to Hong Kong, have sought to strike a right balance between civil liberties and social order, and will enable the authority to prevent the establishment of triad societies. It will also enable the public who wish to form a society to undergo an academic exercise with regard to the aims and objectives of such a society in the course of registration, and would cause little inconvenience to the public.

9. Three members of the Bills Committee are not entirely in agreement with the design of the registration system as provided for in the Bill, although basically they are in support of the principle that the notification system introduced in 1992 should be repealed. Hon LIU Sing-lee, Bruce, regards that there should be a provision for automatic exemption of registration of a society (or its branch) if it is established for the purposes stated in new section 5A provided for under Clause 4 of the Bill and if its membership does not exceed a ceiling. Hon WONG Ying-ho, Kennedy, on the other hand, regards that the registration system could be replaced by a reporting for record system. Upon establishment, a society (or its branch) should supply the necessary information as stipulated in the Ordinance to the Societies Officer for record purpose. Only when the Societies Officer considers that such establishment is in contravention with the Basic Law or other relevant stipulations, he will return the report to the society (or its branch), with reasons, and the society (or its branch) is entitled to appeal. Hon CHAN Choi-hi is also in favour of a reporting system which would allow a society (or its branch) to report to the Societies Officer within two months of its establishment.

10. After considering the views of the two members and those of the Chief Executive's Office, as well as considering the relevant provisions in the Bill, the majority of members of the Bills Committee expresses agreement with and support to the registration system as provided for in the Bill, on the grounds that it would ensure social order, would minimise confusion, would be in accordance with the decision of NPC, and would not cause unnecessary inconvenience to the public.

The definition of "national security"

11. New section 2(4) provided for under Clause 3(4) of the Bill provides that "national security" means the safeguarding of the territorial integrity and the independence of the People's republic of China. The Bills Committee notes that the definition has not referred to the use or the threat of use of force. The Chief Executive's Office explains that so far no conclusion has been drawn in the international arena on the appropriateness of including such element in the definition. It also informs the Bills Committee that relevant administrative guidelines will be issued to the CP on the application of the "national security" consideration which must be consistent with what is necessary in a

democratic society after the enactment of the Bill.

12. Hon LIU Sing-lee, Bruce, points out that there must be certainty of law regarding the definition of “national security” and he is doubtful of the legislative effect of the administrative guidelines. He regards that the definition of “national security” must be confined to situations where the territorial integrity and political independence of the People’s Republic of China is not to be endangered. He will move CSA in this respect. Hon CHAN Choi-hi also points out that administrative guidelines are internal documents and their formulation is not subject to public scrutiny.

13. The majority of members of the Bills Committee, however, agrees that the concept of national security should be written in law. They also agree with the definition as provided for in the Bill. They regard that it is a matter of principle to ensure the integrity of the territory and independence of the government as a whole, without confinements.

The definition of “foreign political organization” and “political organization of Taiwan”

14. The Bills Committee has considered the concept of “foreign political organization” and “political organization outside Hong Kong” as suggested by some members. After consideration, the majority of members opts for the concept as provided for in the Bill which mainly deals with “foreign” and “Taiwan” as two entities separated from Hong Kong, and which does not distinguish PRC from HKSAR. They regard that it is a fact that HKSAR is part of PRC and their benefits are interlocked and interchangeable, especially under the concept of “one country, two systems”, and it will serve no purpose to distinguish PRC from Hong Kong. Hon LIU Sing-lee, Bruce, however regards that there should be a distinction. He will move CSA in this regard.

The definition of “connection”

15. At the suggestion of the Bills Committee, the Chief Executive’s Office agrees that the application of the concept of participating should be confined to the decision making process of a society, and should not applied to its management. Therefore, it will move CSA to amend the definition of “connection” to exclude such concept of participating in the management of a society.

The definition of “election”

16. The Chief Executive’s Office informs the Bills Committee that the intention of the term “election” is to cover elections to government institutions which are currently subject to electoral laws in Hong Kong. In order to be consistent with such intention, the Chief Executive’s office agrees to move CSA to exclude “the Provisional Legislative Council” from its definition.

The expressions of “public safety”, “public order (ordre public)” and “the protection of rights and freedoms of others”

17. The Bills Committee notes that Clause 3(4) of the Bill provides that the expressions of “public safety”, “public order (ordre public)” and “the protection of rights and freedoms of others” are to be interpreted in the same way as ICCPR and notes the explanations of the Chief Executive’s Office that the amendment will restrict the scope of interpretation of these expressions as such accordingly. Hon LIU Sing-lee, Bruce, will move CSA to subject the Ordinance not to be construed in such a way as to limit or restrict the rights and freedoms provided in ICCPR as applied to Hong Kong.

Confirmation of the Societies (Amendment) Ordinance 1992

18. In the light that the NPC has declared that major amendments to the Ordinance introduced in 1992 shall not be adopted as laws of the HKSAR, the Bills Committee regards that it is important to ensure that the Ordinance, as amended by the Bill, shall have continual legal effect on or after 1 July 1997. In response, the Chief Executive’s Office has agreed to amend Clause 17 of the Bill to read as follows:

“Subject to the amendments made in this Ordinance, the Societies (Amendment) Ordinance 1992 (No. 75 of 1992) and any amendments to the Societies Ordinance made since the Societies (Amendment) Ordinance 1992 are, to avoid doubt, adopted as laws of the Hong Kong Special Administrative Region and continue to have legal effect.”

The Bills Committee agrees with such an amendment.

Other technical amendments

19. There are some other technical amendments on the Bill which the Chief Executive's Office has agreed to move, by way of CSAs.

The Public Order (Amendment) Bill 1997 **The definition of "national security"**

20. The majority members of the Bills Committee agrees with the definition of "national security" in the Bill, which is also used in the Societies (Amendment) Bill 1997. Hon CHAN Choi-hi regards that the definition should be deleted and all references to the term made in the Bill should be deleted and substituted by "the territorial integrity and independence of the People's Republic of China, without the interference and threat of external force".

General powers of the Commissioner of Police

21. The Bills Committee considers amended section 6(2) provided for under Clause 3(2) of the Public Order (Amendment) Bill 1997 and suggests to the Chief Executive's Office that the phrase "to prevent an imminent threat to" should be restored, since it is not the intention of the Bill to lower the standard of triggering point at which CP could intervene during meetings, processions and gatherings. The Chief Executive's Office agrees with the suggestion and will move CSA to such effect.

Power of Commissioner of Police to prohibit notified public meeting

22. Amended section 9(4) provided for under Clause 4(2) of the Bill provides that CP shall not exercise the power to prohibit notified public meeting if he considers that the interests of national security or the interests of public safety, public order (ordre public) or the protection of the rights and freedoms of others could be met by the imposition of conditions. Since section 9(1) has a standard of "reasonableness", members suggest and the Chief Executive's Office agrees to move CSA to insert the same standard in amended section 9(4) as well. Similar amendment will also be made to new section 14(5) provided for under Clause 7.

Written Notice of No Objection to be issued by the Commissioner of Police

23. The Bills Committee notes that under new section 14(4) provided for under Clause 7, if CP does not object to a public procession being held, he shall notify the person who gave notice in writing of his having no objection as soon as practicable within the stipulated time. Should CP fail to do so, it will be deemed that he has issued such a notice. Hon CHAN Choi-hi does not regard such arrangement as necessary and will move CSA to delete the provision as well as all other relevant provisions.

Confirmation of Public Order (Amendment) Ordinance 1995 and Public Order (Amendment) Ordinance 1996

24. As it is essential to ensure that the Ordinance as amended by this Bill will have continual legal effect on or after 1 July 1997, and at the request of the Bills Committee, the Chief Executive's office has agreed to amend Clause 15 of the Bill to read as follows:

"Subject to the amendments made in this Ordinance, the Public Order (Amendment) Ordinance 1995, the Public Order (Amendment) Ordinance 1996 and any other amendments made to the Public Order Ordinance since the Public Order (Amendment) Ordinance 1995 are, to avoid doubt, adopted as laws of the Hong Kong Special Administrative Region and continue to have legal effect."

Transitional arrangements

25. At the suggestion of the Bills Committee, the Chief Executive's Office agrees that the transitional arrangements provided in Clause 16 of the Bill should be amended so that the existing procedures adopted by the Hong Kong Government will remain until before 1 July 1997.

Other technical amendments

26. There are some other technical amendments on the Bill which the Chief Executive's Office has agreed to move, by way of CSAs.

Committee Stage amendments

27. A set of draft Committee Stage amendments proposed by the Chief Executive's Office is at Appendix II, that proposed by Hon LIU Sing-lee, Bruce, is at Appendix III, and that proposed by Hon CHAN Choi-hi at Appendix IV.

Recommendation of the Bills Committee

28. The Bills Committee recommends that with the approval of the President, the Second Reading debate of these Bills be resumed at the Council meeting to be held on 14 June 1997, subject to CSAs to be moved by the Chief Executive's Office.

Advice sought

29. Members' advice is sought as to whether the Second Reading debate of the Bills be resumed at the Council meeting on 14 June 1997.

Provisional Legislative Council Secretariat
5 June 1997

1997 年社團（修訂）條例草案
及
1997 年公安（修訂）條例草案委員會

**Bills Committee on
Societies (Amendment) Bill 1997 and
Public Order (Amendment) Bill 1997**

委員名單
Membership List

譚惠珠議員（主席）	Hon TAM Wai-chu, Maria (Chairman)
黃英豪議員（副主席）	Hon WONG Ying-ho, Kennedy (Deputy Chairman)
朱幼麟議員	Hon CHU Yiu-lin, David
何鍾泰議員	Dr Hon HO Chung-tai
杜葉錫恩議員	Hon Mrs TU, Elsie
周梁淑怡議員	Hon Mrs CHOW LIANG Shuk-ye, Selina
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楊耀忠議員	Hon YEUNG Yiu-chung
葉國謙議員	Hon IP Kwok-him
廖成利議員	Hon LIU Sing-lee, Bruce
劉江華議員	Hon LAU Kong-wah
譚耀宗議員	Hon TAM Yiu-chung

（共 15 位委員）

（Total:15 members）

臨時立法會秘書處

1997 年 5 月 24 日

SOCIETIES (AMENDMENT) BILL 1997

COMMITTEE STAGE

Amendments to be moved by the Secretary for Policy Co-ordination

<i>Clause</i>	<i>Proposed amendment</i>
3(1)	<ul style="list-style-type: none"> (a) In paragraph (a) of the definition of "connection", by adding "financial" before "support". (b) In paragraph (d) of the definition of "connection", by deleting "the management or". (c) In the definition of "election", by deleting "the Provisional Legislative Council,". (d) In the definition of "foreign political organization", by deleting "or" at the end of paragraph (a).
3(4)	In proposed section 2(4) by deleting "freedoms and rights" and substituting "rights and freedoms".
4	<ul style="list-style-type: none"> (a) In proposed section 5A(3)- <ul style="list-style-type: none"> (i) by deleting “註冊” before “任何”, and by adding "註冊" before "或拒絕"; (ii) In paragraph (b), by adding "the" before "branch"; (iii) In paragraph (b), by deleting "and" and substituting "that". (b) In proposed section 5A(5) by adding "the" before "branch". (c) In proposed section 5D(1)(b)- <ul style="list-style-type: none"> (i) by adding "the" before "branch"; (ii) by deleting "and" and substituting "that". (d) In proposed section 5F(2)(a) by deleting "or branch". (e) In proposed section 5F(2)(b) by deleting "or branch".

- 5(1) (a) In proposed section 8(1)(b), by deleting "and" and substituting "that".
- (b) In proposed section 8(1), by deleting "向" and substituting "建議", and deleting "建議" after "局長".
- 5(6) (a) In paragraph (a), by deleting "a society" and substituting "A society".
- (b) In paragraph (b), by deleting "構”中" and substituting "構中".
- 8 In paragraph (a), by deleting "has" and substituting "have".
- 11 In proposed section 15(1A), by adding "入" before "來源", and by deleting "的詳細".
- 15 (a) By deleting paragraph (b) and substituting -
- "(b) by repealing" prejudicial to the security of Hong Kong" and substituting "that makes the prohibition of the operation or continued operation of the society or the branch necessary in the interests of national security".
- (b) In the Chinese text, paragraphs (d) and (e) are renumbered as paragraph (c) and (d).
- 16 In proposed section 43 by adding "(No. of 1997)" after "Ordinance 1997".
- 17 By deleting "confirmed" and substituting", to avoid doubt, adopted as laws of the Hong Kong Special Administrative Region and continue to have legal effect".
- 19 (a) by deleting "在”所適用的社團，”之後，加入", and substituting "刪去”保安司”而代以".
- (b) by adding "保安局局長" after "或是".

PUBLIC ORDER (AMENDMENT) BILL 1997

COMMITTEE STAGE

Amendments to be moved by the Secretary for Policy Co-ordination

<i>Clause</i>	<i>Proposed amendment</i>
2(2)	By deleting "freedoms and rights" and substituting "rights and freedoms".
3(1)	By deleting "in".
3(2)	By deleting "to prevent an imminent threat to" and "in".
4(1)	By deleting "in".
4(2)	(a) By adding "considers that the interests of" before "public safety or public order". (b) By adding "reasonably considers that the interests of" before "national".
5	By deleting "in".
7	(a) In proposed section 14(1), by deleting "則他在諮詢保安局局長後，". (b) In proposed section 14(2)- (i) in paragraph (a) by deleting "反對通知" and substituting "反對遊行通知"; (ii) in paragraph (b) by deleting "the objection" and substituting "objection"; (iii) in paragraph (c) by deleting "the objection" and substituting "objection". (c) In proposed section 14(3)- (i) by deleting ", other than held solely for a funeral as referred to in section 13A(1)(a)";

- (ii) in paragraph (a) by deleting "反對通知" and substituting "反對遊行通知";
 - (iii) in paragraph (b) by deleting "反對通知" and substituting "反對遊行通知";
 - (iv) in paragraph (c) by deleting "反對通知" and substituting "反對遊行通知";
 - (v) by adding "This subsection does not apply to a procession held solely for a funeral as referred to in section 13A(1)(a)." after paragraph (c).
- (d) In proposed section 14(4), by deleting "limited" and substituting "limit specified", and by adding "遊行" after "發布反對".
- (e) In proposed section 14(5), by adding "reasonably" before "considers".

8 By deleting "in".

9 In proposed section 16(1)(c), by deleting "反對通知" and substituting "反對遊行通知".

15 By deleting "confirmed" and substituting", to avoid doubt, adopted as laws of the Hong Kong Speical Administrative Region and continue to have legal effect".

16 Delete Clause 16 and substitute -

"16. Arrangements for public processions from 1 to 9 July 1997

(1) For a notice of intention to hold a public procession during the period from 1 July to 9 July 1997 (both days included) given in writing to the Commissioner of Police before 1 July 1997 in accordance with section 13A -

- (a) if the Commissioner of Police notifies a person of conditions imposed under section 15(2) before 1 July 1997, the Commissioner's notice is taken to be a notice of no objection subject to the conditions;
- (b) if the Commissioner of Police issues a notice of prohibition for the public procession under section 14 before 1 July 1997, the notice of prohibition is taken to be a notice of objection;

- (c) if the Commissioner of Police notifies the person giving notice of intention to hold a public procession before 1 July 1997 that the shorter notice is not accepted under section 13A, the Commissioner's notice of his decision is taken to be a notice of objection; and
- (d) if the Commissioner of Police does not give notice under paragraphs (a), (b) or (c) for a procession to be held between 1 July and 3 July (both days included), this is taken to be a notice of no objection.

(2) If a public procession takes place during the period from 1 July to 9 July 1997 (both days included) for which a person has not given notice to the Commissioner of Police or for which the Commissioner has not accepted shorter notice, the public procession is taken to be an unauthorized assembly for the purposes of the Public Order Ordinance (Cap. 245)."

Appendix III

SOCIETIES (AMENDMENT) BILL 1997

COMMITTEE STAGE

Amendment to be moved by Hon Bruce LIU Sing-lee

Clause	Amendment Proposed
3(1)	<p>(a) By deleting the definition of "connection" and substituting-</p> <p>“ “connection” (聯繫) in relation to a society or a branch, that is a political body, includes the following circumstances-</p> <p>(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 political organization outside Hong Kong; or</p> <p>(b) if the society or the branch is affiliated directly or indirectly with a political organization outside Hong Kong; or</p> <p>(c) if the society's or the branch's policies or any of them are determined directly or indirectly by a political organization outside Hong Kong; or</p> <p>(d) if a political organization outside Hong Kong directs, dictates, controls, or participates, directly or indirectly, in the decision making process of the society or the branch; ” .</p>

(b) By deleting the definition of "foreign political organization" and "political organization of Taiwan" and substituting -

" "political organization outside Hong Kong " (香港境外政治性組織) includes -

- (a) a government or a political subdivision of a government outside Hong Kong; or
- (b) an agent of a government or an agent of a political subdivision of a government outside Hong Kong; or
- (c) a political party or its branch in a country outside Hong Kong or its agent; "

3(3)

By adding -

" (2C) This Ordinance does not apply to any society formed solely for religious, charitable, social or recreational purposes and which consists of not more than 30 persons as its members including its office-bearers. "

3(4)

By deleting proposed section 2(4) and substituting-

" (4) Nothing in this Ordinance shall be construed in such a way as to limit or restrict the rights and freedoms provided in the International Covenant on Civil and Political Rights as applied to Hong Kong.

(5) In this Ordinance, the expressions “ public safety ”, “ public order (ordre public) ” and “ the protection of rights and freedoms of others ” have the same meanings as they have in the International Covenant on Civil and Political Rights as applied to Hong Kong.

(6) Without prejudice to subsection (4), “ national security ” in this Ordinance shall be confined to where the territorial integrity and political independence of the People’s Republic of China is not to be endangered. ” .

4

By adding -

“ 5 (3) The requirements under subsections (1) and (2) shall not apply to any society formed solely for religious, charitable, social or recreational purposes and which consists of not more than 30 persons as its members including its office-bearers. ” .