

National Security (Legislative Provisions) Bill :
Proposed section 2C of Crimes Ordinance

This paper explains whether the proposed section 2C of the Crimes Ordinance is directed only at conspiracies or attempts in Hong Kong by those who are not Hong Kong permanent residents.

Effect of section 2C

2. The proposed section provides, in effect, that a person who, in Hong Kong conspires or attempts to commit acts outside Hong Kong which, if done in Hong Kong, would amount to subversion or secession, then that person can be convicted of conspiracy or attempting to commit subversion or secession.

3. In the absence of that provision, a person who engages in such conduct would not as a general rule be guilty of conspiracy or attempt, since the law of conspiracy and attempt applies only to conduct that is an offence triable in Hong Kong (sections 159A(3) and 159G(3) of the Crimes Ordinance). Subversive and secessionist conduct outside Hong Kong would not generally amount to an offence under Hong Kong law.

4. However, a Hong Kong permanent resident could be liable for subversion or secession committed outside Hong Kong (see proposed sections 2A(3) and 2B(3)). Therefore permanent residents who, in Hong Kong, conspire or attempt to commit subversion or secession outside Hong Kong would be liable even if section 2C were not enacted.

5. As drafted, section 2C is not limited to those who are not Hong Kong permanent residents and it is unnecessary to complicate the section in that way. Moreover, the exclusion of permanent residents might create the misleading impression that they could not be convicted of the conduct referred to in the section.

6. As a result, the section applies to all persons.

Department of Justice
May 2003