

**National Security (Legislative Provisions) Bill:
Organizations to which the proposed section 8A
of Societies Ordinance applies**

Introduction

This paper explains the necessity of the proposed section 8A(2)(c), in addition to section 8A(2)(a) and (b).

Need for the proposed section 8A(2)(c)

2. The proposed section 8A(2) provides that a local organization may be subject to the proscription mechanism only if it satisfies any of the following criteria -

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

3. It should also be noted that all proscription measures can only be lawfully taken in compliance with the criteria as set out in the proposed section 8A(1) and the proposed section 2A, i.e. in compliance with the standards of international human rights covenants entrenched by Article 39 of the Basic Law including the International Covenant on Civil and Political Rights.

4. An organization which poses threats to national security may not be attempting or aiming to commit the narrowly defined offences specified in the proposed section 8A(2)(a) or (b). The following illustrates some of the possibilities -

- (a) Offences besides the specified ones which threaten national security

Threats to national security are certainly not limited to the narrowly defined offences mentioned in section 8A(2)(a) and (b). For example, a local organization which is controlled by a prohibited organization in the Mainland may be involved in activities in preparation for terrorist attacks, or aimed at the purchase of chemical weapons for its parent organization. The commission of such activities may not constitute the specified offences under section 8A(2)(a) and (b). Nevertheless, it is certainly in the public interest to cease the continued operation of such organizations when this is a necessary and proportionate measure.

(b) Preparatory acts of the specified offences

The criteria in section 8A(2)(b) above requires (at least) an attempt to commit the specified offences. At common law and also under section 159G of the Crimes Ordinance (Cap. 200), this requires an act “more than merely preparatory” to the commission of the offences. Organizations involved in acts that fall short of such criteria, such as recruitment to form an army for a prohibited organization in the Mainland to commit secession by engaging in war, or raising funds for subverting the Central Peoples' Government by force, would not be covered by section 8A(2)(b). Furthermore, the aim of such an organization, even if it can be proven, may not satisfy all the essential elements of the criminal offences in section 8A(2)(a) (for example, the organization may not be aware of the entire plan of its parent organization). As with the case above, prohibition of the continued operation of such organizations would be in the public interest, so long as this complies with international human rights standards.

5. It should be emphasized that the proscription of a local organization would not directly result in criminal offences. It would only be an offence when one continues to be a member of, or provide support to, a local organization after it has been proscribed. Proscription, nevertheless, means that the operation of the organization has to stop.

Security Bureau
June 2003