

**The Administration's Response to the Issues Raised by the
Legislative Council Assistant Legal Advisor in her letter of 27 March 2003
(Third Batch)**

Introduction

Further to our earlier response on 9 May and 5 June 2003, this note sets out the Administration's response to the remaining issues raised by the Legislative Council Assistant Legal Advisor in her letter of 27 March 2003. The questions are reproduced in italics and followed by our response.

**B. Amendments to the Crimes Ordinance (Cap. 200)
Clauses 3 to 7, paragraphs 13 to 15 of the Schedule**

New section 2A Subversion

B7. "Serious criminal means" is defined in the new section 2A(4)(b) to mean any act set out in (i) to (v) which, if done in Hong Kong, is an offence under the law of Hong Kong. Please provide a list of the relevant statutory provisions under which the acts are offences in Hong Kong.

Response

Under the proposed definition of "serious criminal means", an act which might lead to any of the consequences as listed in the new section 2A(4)(b)(i)-(v) must also constitute an offence under the laws of Hong Kong. For example, a person who unintentionally caused serious damage to property because of a traffic accident might not have committed any offence in Hong Kong, and as a result the serious damage to property caused by him would not have constituted a "serious criminal means" under the Bill.

A list of statutory provisions which criminalize acts that might amount to "serious criminal means" is provided in a separate paper entitled "Serious criminal means".

**D. Amendments to the Societies Ordinance (Cap. 151)
Clauses 13, 14 and 15, paragraphs 6 to 12 of the Schedule**

New section 8A Proscription of organizations

D6. Why is it necessary to use the words "an act that is" in the definitions of "treason", "subversion", "secession" and "sedition" in the new section 8A(5)?

Response

In the proposed section 8A(1), the Secretary for Security may by order proscribe any local organization to which that section applies if the conditions set out therein are complied with. In section 8A(2), the types of local organizations to which section 8A applies are listed out.

In section 8A(5), instead of referring to the offence of treason, subversion etc., each of such terms are being given a new definition and the words "an act that is" are used in the definitions of "treason", "subversion", "secession" and "sedition". If no such new definitions are given to the said terms, one might argue that the power of the Secretary for Security to proscribe an organization under section 8A(1) can only be exercised when there is prosecution for the relevant offence of treason, subversion etc.. The reference to "an act that is" helps to remove the doubt.

E. Consequential Amendments
Remaining paragraphs of the Schedule

Paragraph 2 of the Schedule
Section 291AAA of the Companies Ordinance (Cap. 32)

E1. Subject to your clarification whether a proscribed organization could at the same time be an unlawful society, please advise whether there is any overlap in the proposed section 291AAA and sections 360B, 360C and 360N.

E2. Please explain why the Registrar is obliged to take action as prescribed but may defer taking action if he is satisfied that the right to take legal action against proscription has not been exhausted. Would it be more appropriate if the Registrar takes action after the period for appeal has lapsed and no appeal has been lodged or after all legal action has been exhausted?

E3. Other than the Companies Ordinance, has the Administration considered making consequential amendments to the rest of the ordinances referred to in the Schedule to the Societies Ordinance?

Response to E1, E2 and E3

The issues raised in E1, E2 and E3 have to an extent been superseded by the government's proposed CSAs which apply the dissolution provisions in Sections 360D to 360M of the Companies Ordinance to companies which are proscribed.

The Registrar is given a discretion to delay taking action on the dissolution in order to allow time for any appeal against the proscription to take its course. As the dissolution procedure is not a court procedure, the discretion is necessary to allow for circumstances where the procedures should be commenced notwithstanding an on-going appeal against proscription (e.g. to protect the rights of creditors).

The proposed CSAs provide for the dissolution of unregistered companies and winding up of other types of organisation which have been proscribed.

Security Bureau
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