

**Comments on the Administration's Proposed Committee Stage Amendments to the National Security (Legislative Provisions) Bill**

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- 1 Subject to the comments below, I support the committee stage amendments proposed by the Administration on 3 June 2003.
- 2 *Removal of overlap between proscription mechanisms:* The existing section 8 of the Societies Ordinance empowers the Government to prohibit the operation of a society if this is considered necessary in the interests of national security. This overlaps with the “proscription” power introduced by the Bill, but the appeal mechanism (to the Chief Executive in Council rather than the court) is different. The committee stage amendment proposes to delete the reference to national security in section 8 so as to avoid the overlap. While I support the amendment, I believe that *a similar amendment should be considered with regard to section 5D of the Societies Ordinance*, which empowers the Government to cancel the registration of a society if this is considered necessary in the interests of national security. Like the power in section 8, section 5D also raises the problem of overlapping powers to control freedom of association on the ground of national security and conflicting mechanisms of appeal (in the case of section 5D, the appeal is to the Chief Executive in Council).
- 3 *Special procedures for appeals against proscription:* I support the proposal that the Chief Justice should not be the authority responsible for making the regulations on the special appeal procedures, as the courts may be called upon to determine the validity of the regulations in future. However, instead of vesting the power to make the regulations in the Security for Security, I believe that *it would be preferable to vest the power in the Chief Executive in Council*. The

regulations in this regard will be controversial and involve policy-making at the highest level. It is therefore appropriate that the Chief Executive in Council should be involved. It may be noted that before 1997, the Governor in Council was often charged with the responsibility for making major pieces of subordinate legislation (such as regulations). I would also propose that a provision be added to the proposed section 8E of the Societies Ordinance expressly providing that *the regulations made thereunder shall be subject to the affirmative resolution of the Legislative Council*. This would maximize the role of the Legislative Council in the making of the regulations (see section 35 of the Interpretation and General Clauses Ordinance, which refers to situations where it is expressly provided that subsidiary legislation shall be subject to the approval of the Legislative Council).

- 4 *Subversion*: I hope that the Administration and the Legislative Council will further consider *the deletion of the proposed section 2A(1)(c) of the Crimes Ordinance (regarding the third limb of the offence of subversion --- “intimidates the Central People’s Government”), or at least confine this limb on “intimidating the CPG” to “engaging in war”* (as in the existing section 2(1)(c) of the Crimes Ordinance on “intimidating Parliament” as an element of treason). This is because, as pointed out in my previous submission to the Legislative Council, the concept of “force or serious criminal means that seriously endangers the stability of the PRC” and “intimidates the CPG” is a vague and broad concept and can hardly satisfy the requirement of clarity and precision in the criminal law. It should be noted that although there is an offence of “criminal intimidation” in section 24 of the Crimes Ordinance, the word “intimidate” does not actually appear in the text of section 24.
- 5 *Official Secrets*: I hope that the Administration and the Legislative Council will further consider the introduction of a *defence (sometimes called a “public interest” defence) -- at least to a charge under section 18 of the Official Secrets Ordinance -- along the lines of section 30(3) of the existing Prevention of Bribery Ordinance*. Section 30(3) is not a broad public interest defence enabling the defendant to argue that disclosure of some official secrets is in the

public interest. Instead, it specifically limits the defence to disclosures revealing any “unlawful activity, abuse of power, serious neglect of duty or other serious misconduct” on the part of government officials, or “a serious threat to public order or to the security of Hong Kong or to the health or safety of the public” (the recent SARS crisis is a pertinent example here).

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