

LEGISLATIVE COUNCIL BRIEF

National Security (Legislative Provisions) Bill

INTRODUCTION

At the meeting of the Executive Council on 11 February 2003, the Council ADVISED and the Chief Executive ORDERED that the National Security (Legislative Provisions) Bill, at Annex A, should be introduced into the Legislative Council in order to implement Article 23 of the Basic Law (Article 23).

JUSTIFICATIONS

2. Every nation has laws to protect its sovereignty, territorial integrity, unity and national security.

3. In line with the high degree of autonomy for the Hong Kong Special Administrative Region (HKSAR) as provided under Article 2 of the Basic Law, and the guarantee that the socialist system and policies shall not be practised in the HKSAR as set out in Article 5, national laws for the protection of essential interests of the state and national security have not been promulgated in Hong Kong.

4. The HKSAR is constitutionally obliged under Article 23 to “enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People’s Government, or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies.” The intent of Article 23 is to prohibit by law acts that would undermine the sovereignty, territorial integrity, unity and national security of our country.

5. The Government launched a large-scale public consultation exercise on 24 September 2002 on its proposals to implement Article 23. After taking into account the views expressed during the three-month consultation period, the Government has clarified a number of issues, and has undertaken to introduce a clear and precise Bill into the Legislative Council.

6. The Basic Law provides for the continuity of the common law system of the HKSAR, and it follows that the implementation of Article 23 should be effected

by building on existing legislation as far as possible. We have also taken into account the following guiding principles -

- (a) the need to meet fully the requirements of the Basic Law, including Article 23 which stipulates the acts to be prohibited; and other relevant provisions in Chapter III, in particular Article 27 which guarantees certain fundamental rights and freedoms of Hong Kong residents, and Article 39 which stipulates, *inter alia*, that the provisions of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), as applied to Hong Kong shall remain in force, and shall be implemented through the laws of the HKSAR;
- (b) the need to protect adequately the state's essential interests, namely sovereignty, territorial integrity, unity and national security;
- (c) the need to ensure that all offences encompassed by local legislation to implement Article 23 are as clearly and tightly defined as possible, so as to avoid uncertainty and the infringement of fundamental rights and freedoms guaranteed by the Basic Law; and
- (d) the proposed measures should be broadly acceptable to the majority of the community.

7. Some of the Article 23 offences are already dealt with under existing legislation. Parts I and II of the Crimes Ordinance (Cap. 200) deal with treason and sedition respectively. Where the protection of official information is concerned, the Official Secrets Ordinance (Cap. 521) deals with spying and unlawful disclosure of official information. The Societies Ordinance (Cap. 151) regulates, *inter alia*, the activities of local political organizations and ties with foreign political organizations. We will propose amendments to these Ordinances to meet our obligations to implement Article 23.

THE BILL

8. The main provisions are set out in the following paragraphs.

Amendments to the Crimes Ordinance

Clause 4

Treason

9. The existing treason and treasonable offences in the Crimes Ordinance will be repealed. Clause 4 adds a new section 2 which limits the treason offence to -

- (a) joining foreign armed forces at war with our country with the intent to overthrow or intimidate the Central People's Government, or to compel the Central People's Government to change its policies or measures;
- (b) instigating foreign armed forces to invade our country with force; or
- (c) assisting a public enemy at war with our country with an intent to prejudice the position of the country in the war.

A state of war is defined to mean only open armed conflict between armed forces or publicly declared war. The common law offences of misprision of treason and compounding treason will be abolished.

10. Moreover, the offence of treason will not apply to non-Chinese nationals, irrespective of whether the offence occurred in or outside of the HKSAR.

Subversion

11. The new section 2A provides that it is an offence of subversion to -

- (a) disestablish the basic system of the People's Republic of China as established by the Constitution;
- (b) overthrow the Central People's Government; or
- (c) intimidate the Central People's Government

by using force or serious criminal means that seriously endangers the stability of the People's Republic of China or by engaging in war.

Secession

12. The new section 2B provides that it is an offence of secession to withdraw any part of the People's Republic of China from its sovereignty by using force or serious criminal means that seriously endangers the territorial integrity of the People's Republic of China or by engaging in war.

Clause 6

Sedition

13. The existing sedition offence in the Crimes Ordinance will be repealed. Clause 6 adds a new section 9A which provides that it is an offence of sedition to incite others to commit the offence of treason, subversion or secession; or to incite others to engage in violent public disorder that would seriously endanger the stability of the People's Republic of China. The reformed offence of sedition is based on the well-established common law principle of incitement, and does not criminalize peaceful advocacy.

14. In response to concerns raised, the new section 9C provides that it is an offence of dealing with seditious publications only when the accused has an intention to incite others, by means of the publication, to commit the offence of treason, subversion or secession. The new section 9D retains the existing safeguards for advocacy under the Crimes Ordinance.

Clause 7

Enforcement powers, safeguards and trial by jury

15. Clause 7 adds a new section 18A which specifically provides that the interpretation, application and enforcement of the provisions on Article 23 offences under the Crimes Ordinance shall be consistent with the international human rights standards promulgated in Hong Kong by virtue of Article 39 of the Basic Law. Specific safeguards are also provided for in the Official Secrets Ordinance and the Societies Ordinance under clauses 9 and 14 of the Bill respectively.

16. The new section 18B provides for the exercise of emergency investigation powers by police officers at or above the rank of chief superintendent of police. The emergency powers can only be exercised if the police officer reasonably believes that the relevant offence has been or is being committed, and that unless immediate action is taken evidence of substantial value to the investigation of the offence would be lost, and that the investigation would be seriously prejudiced as a result. It also provides that the search and seizure of journalistic materials must under all circumstances be authorized by court warrants.

17. The new section 18D puts it beyond doubt that any person accused of treason, subversion, secession or sedition offences will be tried by jury.

Amendments to the Official Secrets Ordinance

Clause 10

18. Clause 10 adds a new section 16A to the Official Secrets Ordinance to protect information relating to affairs concerning the HKSAR for which the Central Authorities are responsible under the Basic Law. In addition, disclosure of such information will only be penalized when it endangers “national security”, which is defined as “the safeguarding of territorial integrity and the independence of the People’s Republic of China.”

Clause 11

19. Clause 11 amends section 18 of the Official Secrets Ordinance to provide that it is an offence to make a damaging disclosure of protected information which has been obtained through illegal access. “Illegal access” will be limited to mean only criminal acts of unauthorized access to computer by telecommunication, access to computer with criminal or dishonest intent, theft, robbery, burglary or

bribery.

Clause 12

Trial by jury for unlawful disclosure offences

20. Clause 12 adds a new section 24A to the Official Secrets Ordinance to provide that anyone accused of an offence of unlawful disclosure under the Ordinance could opt for a trial by jury.

Amendments to the Societies Ordinance

Clause 15

Proscription of organizations endangering national security

21. To thwart organization of activities that would genuinely endanger the state, clause 15 adds a new section 8A to the Societies Ordinance to empower the Secretary for Security to proscribe an organization that endangers national security. This power can only be exercised where it is necessary and proportionate under the standards of the ICCPR to do so in order to protect national security, *and* one of the following circumstances exists -

- (a) the objective, or one of the objectives, of the organization is to engage in acts of treason, secession, sedition, subversion, or spying;
- (b) the organization has committed or is attempting to commit acts of treason, secession, sedition, subversion, or spying; or
- (c) the organization is subordinate to a Mainland organization which has been prohibited in the Mainland by Central Authorities, by means of an open decree and in accordance with the national law on the ground of protecting the security of the People's Republic of China.

A local organization would be subordinate to a Mainland organization only if the former accepts substantial financial contributions from, is directed or controlled by, or has its policies determined by, a Mainland organization. The new section 8C provides that it will be an offence to support or organize activities for a proscribed organization.

22. The new section 8D provides that any person aggrieved by a decision of the Secretary for Security to proscribe an organization will be able to appeal to the Court of First Instance to set aside the proscription. The new section 8E provides that the Chief Justice may make rules governing the proceedings of such appeals.

Clause 16

23. Clause 16 and the Schedule provide for related and consequential amendments.

— 24. The existing provisions being amended are at Annex B.

LEGISLATIVE TIMETABLE

25. The legislative timetable will be -

Publication in the Gazette	14 February 2003
First Reading and commencement of Second Reading debate	26 February 2003
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

IMPLICATIONS OF THE PROPOSALS

26. The proposals are in conformity with the Basic Law, including the provisions concerning human rights. They implement Article 23. The proposals have no productivity, environmental or significant sustainability implications. They have no significant economic and financial and civil service implications.

PUBLIC CONSULTATION

27. On 24 September 2002, the Government issued a consultation document on the proposals to implement Article 23 of the Basic Law for public consultation. The consultation period ended on 24 December 2002. The public has responded enthusiastically to the consultation, as evidenced by the more than 100 000 submissions received.

28. During the consultation period, Security Bureau and Department of Justice officials attended over 250 meetings and seminars to consult the community. These included public hearings at the Legislative Council, forums and interviews by the media and seminars organized by chambers of commerce, professional bodies, academics, trade unions and other interested groups. Government officials also attended meetings of the Legislative Council Joint Panel and all 18 District Councils to explain the proposals.

PUBLICITY

29. A press conference will be held to introduce the Bill. A Legislative Council Brief and a press statement will be issued. A spokesman will be available to answer media and public enquiries.

30. In addition, a series of publicity programmes and campaigns have been scheduled to explain to the public that their concerns of Article 23 have been adequately addressed through clear and tight drafting of the Bill. Television and radio “Announcements of Public Interest” to promote positive messages about the need to protect national security and to dispel fears and misunderstandings on the proposals to implement Article 23 will be launched. We will continue to engage the Legislative Council and concerned parties and organizations to take the matter forward.

ENQUIRIES

31. For any enquiries on this brief, please contact Mr Johann Wong, Principal Assistant Secretary for Security, at telephone number 2810 2448.

Security Bureau
13 February 2003

NATIONAL SECURITY (LEGISLATIVE PROVISIONS) BILL

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A BILL

To

Amend the Crimes Ordinance, the Official Secrets Ordinance and the Societies Ordinance pursuant to the obligation imposed by Article 23 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and to provide for related, incidental and consequential amendments.

Enacted by the Legislative Council.

PART 1

PRELIMINARIES

1. Short title

This Ordinance may be cited as the National Security (Legislative Provisions) Ordinance.

2. Commencement

This Ordinance shall come into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette.

PART 2

AMENDMENTS TO THE CRIMES ORDINANCE

3. Part heading amended

The heading of Part I of the Crimes Ordinance (Cap. 200) is amended by adding “, SUBVERSION AND SECESSION” after “TREASON”.

4. Sections substituted

Section 2 is repealed and the following substituted—

“2. Treason

- (1) A Chinese national commits treason if he—
 - (a) with intent to—
 - (i) overthrow the Central People’s Government;
 - (ii) intimidate the Central People’s Government; or
 - (iii) compel the Central People’s Government to change its policies or measures,
 joins or is a part of foreign armed forces at war with the People’s Republic of China;
 - (b) instigates foreign armed forces to invade the People’s Republic of China with force; or
 - (c) assists any public enemy at war with the People’s Republic of China by doing any act with intent to prejudice the position of the People’s Republic of China in the war.
- (2) A Chinese national who commits treason is guilty of an offence and is liable on conviction on indictment to imprisonment for life.
- (3) Subsections (1) and (2) apply also to any Chinese national who is a Hong Kong permanent resident in relation to any act referred to in subsection (1) done by him outside Hong Kong.
- (4) For the purposes of this section—
 - (a) “foreign armed forces” means—
 - (i) armed forces of a foreign country;
 - (ii) armed forces which are under the direction or control of the government of a foreign country; or
 - (iii) armed forces which are not based in, and are not armed forces of, the People’s Republic of China;
 - (b) “public enemy at war with the People’s Republic of China” means—
 - (i) the government of a foreign country at war with the People’s Republic of China; or
 - (ii) foreign armed forces at war with the People’s Republic of China;
 - (c) a state of war exists when—
 - (i) open armed conflict between armed forces is occurring; or
 - (ii) war has been publicly declared,
 and “at war” is to be construed accordingly.
- (5) The common law offence of misprision of treason is abolished.
- (6) The common law offence of compounding treason is abolished.

2A. Subversion

- (1) A person commits subversion if he—
 - (a) disestablishes the basic system of the People's Republic of China as established by the Constitution of the People's Republic of China;
 - (b) overthrows the Central People's Government; or
 - (c) intimidates the Central People's Government,
 by using force or serious criminal means that seriously endangers the stability of the People's Republic of China or by engaging in war.
- (2) A person who commits subversion is guilty of an offence and is liable on conviction on indictment to imprisonment for life.
- (3) Subsections (1) and (2) apply also to any Hong Kong permanent resident in relation to any act referred to in subsection (1) done by him outside Hong Kong.
- (4) For the purposes of this section—
 - (a) the expression “engaging in war” is to be construed by reference to the meaning of the expression “at war” in section 2(4)(c);
 - (b) “serious criminal means” means any act which—
 - (i) endangers the life of a person other than the person who does the act;
 - (ii) causes serious injury to a person other than the person who does the act;
 - (iii) seriously endangers the health or safety of the public or a section of the public;
 - (iv) causes serious damage to property; or
 - (v) seriously interferes with or disrupts an electronic system or an essential service, facility or system (whether public or private),
 and—
 - (vi) is done in Hong Kong and is an offence under the law of Hong Kong; or
 - (vii) (A) is done in any place outside Hong Kong;
 - (B) is an offence under the law of that place; and
 - (C) would, if done in Hong Kong, be an offence under the law of Hong Kong.

2B. Secession

- (1) A person commits secession if he withdraws any part of the People's Republic of China from its sovereignty by—

- (a) using force or serious criminal means that seriously endangers the territorial integrity of the People's Republic of China; or
 - (b) engaging in war.
- (2) A person who commits secession is guilty of an offence and is liable on conviction on indictment to imprisonment for life.
- (3) Subsections (1) and (2) apply also to any Hong Kong permanent resident in relation to any act referred to in subsection (1) done by him outside Hong Kong.
- (4) For the purposes of this section—
- (a) the expression “engaging in war” is to be construed by reference to the meaning of the expression “at war” in section 2(4)(c);
 - (b) “serious criminal means” has the same meaning as in section 2A(4)(b).

2C. Sections 159A and 159G apply to conspiracy or attempt to do certain acts outside Hong Kong

(1) If a person agrees, in Hong Kong, with any other person (whether such other person is in Hong Kong or elsewhere) that a course of conduct shall be pursued which, if the agreement is carried out in accordance with their intentions, will necessarily amount to or involve the doing (by one or more of the parties to the agreement), outside Hong Kong, of any act which would, if done in Hong Kong, be an offence under section 2A (subversion) or 2B (secession)—

- (a) section 159A applies to the person in relation to the agreement as if the act was an offence within the meaning of that section; and
- (b) sections 159B to 159E have effect accordingly.

(2) If a person does, in Hong Kong, an act (“former”) that is more than merely preparatory to the doing, outside Hong Kong, of any act (“latter”) which would, if done in Hong Kong, be an offence under section 2A (subversion) or 2B (secession) and he does the former with intent to do the latter—

- (a) section 159G applies to the person in relation to the former as if the latter was an offence to which that section applies; and
- (b) sections 159H to 159K have effect accordingly.

**2D. Inciting treason, subversion or secession
is an offence only under section 9A**

Inciting others to commit an offence under section 2 (treason), 2A (subversion) or 2B (secession) is an offence only under section 9A (sedition).”.

5. Part heading amended

The heading of Part II is amended by repealing “AGAINST THE CROWN” and substituting “ENDANGERING SECURITY OF THE STATE”.

6. Sections added

The following are added—

“9A. Sedition

- (1) A person commits sedition if, subject to section 9D, he—
 - (a) incites others to commit an offence under section 2 (treason), 2A (subversion) or 2B (secession); or
 - (b) incites others to engage, in Hong Kong or elsewhere, in violent public disorder that would seriously endanger the stability of the People’s Republic of China.
- (2) A person who—
 - (a) commits sedition by doing an act referred to in subsection (1)(a) is guilty of an offence and is liable on conviction on indictment to imprisonment for life;
 - (b) commits sedition by doing an act referred to in subsection (1)(b) is guilty of an offence and is liable on conviction on indictment to a fine and to imprisonment for 7 years.

9B. Inciting sedition not an offence

Inciting others to commit an offence under section 9A (sedition) is not an offence.

9C. Handling seditious publication

(1) In this section, “seditious publication” means a publication that is likely to cause the commission of an offence under section 2 (treason), 2A (subversion) or 2B (secession).

- (2) Subject to section 9D, a person who—
- (a) publishes, sells, offers for sale, distributes or displays any seditious publication;
 - (b) prints or reproduces any seditious publication; or
 - (c) imports or exports any seditious publication,
- with intent to incite others, by means of the publication, to commit an offence under section 2 (treason), 2A (subversion) or 2B (secession) is guilty of an offence and is liable on conviction on indictment to a fine of \$500,000 and to imprisonment for 7 years.

9D. Certain acts are not incitement

- (1) For the purposes of section 9A, a person shall not, by reason only that he does a prescribed act, be regarded as inciting others to—
- (a) commit an offence under section 2 (treason), 2A (subversion) or 2B (secession); or
 - (b) engage in violent public disorder that would seriously endanger the stability of the People's Republic of China.
- (2) For the purposes of section 9C, a person shall not, by reason only that he does any act referred to in section 9C(2)(a), (b) or (c) with intent only to do a prescribed act, be regarded as doing the first-mentioned act with intent to incite others to commit an offence under section 2 (treason), 2A (subversion) or 2B (secession).
- (3) In this section, “prescribed act” means—
- (a) showing that the Central People's Government or the Government of the Hong Kong Special Administrative Region has been misled or mistaken in any of its measures;
 - (b) pointing out errors or defects—
 - (i) in the government or constitution of;
 - (ii) in the laws of; or
 - (iii) in the administration of justice in, the People's Republic of China or the Hong Kong Special Administrative Region with a view to the remedying of such errors or defects;
 - (c) persuading members of the public in the People's Republic of China or in the Hong Kong Special Administrative Region to attempt to procure, by lawful means, the alteration of any matter provided for in the law of the People's Republic of China or of the Hong Kong Special Administrative Region, as the case may be; or

- (d) pointing out any matter which is producing or has a tendency to produce feelings of ill-will or enmity between different classes of the population of the People's Republic of China or of the Hong Kong Special Administrative Region with a view to the removal of such matter.”.

7. Part IIA added

The following is added—

“PART IIA

ENFORCEMENT PROVISIONS CONCERNING CERTAIN OFFENCES UNDER PARTS I AND II

18A. Enforcement, etc. of Parts I and II and this Part to be consistent with Basic Law

The provisions of Parts I and II and this Part are to be interpreted, applied and enforced in a manner that is consistent with Article 39 of the Basic Law.

18B. Investigation power

(1) If a police officer of or above the rank of chief superintendent of police reasonably believes that—

- (a) an offence under section 2 (treason), 2A (subversion), 2B (secession), 9A (sedition) or 9C (handling seditious publication) has been committed or is being committed;
- (b) anything which is likely to be or likely to contain evidence of substantial value to the investigation of the offence is in any premises, place or conveyance; and
- (c) unless immediate action is taken, such evidence would be lost and the investigation of the offence would be seriously prejudiced as a result,

he may direct any police officer to exercise any power conferred by subsection (2) in relation to the premises, place or conveyance.

(2) A police officer acting under a direction given under subsection (1) in relation to any premises, place or conveyance—

- (a) may enter the premises or place and, if necessary, break open any door or window of the premises or place for that purpose;

- (b) may stop and board the conveyance;
 - (c) may search the premises, place or conveyance or any person found therein;
 - (d) may seize, detain or remove anything found in the premises, place or conveyance which appears to him to be or to contain evidence of an offence under section 2 (treason), 2A (subversion), 2B (secession), 9A (sedition) or 9C (handling seditious publication);
 - (e) may detain the conveyance for such time as may be necessary for his exercise of the power conferred by paragraph (c) or (d); and
 - (f) may remove by force any person or thing obstructing him in the exercise of any power conferred by this subsection.
- (3) If requested, a police officer shall produce his police warrant card for inspection before exercising any power conferred by subsection (2).
- (4) A person may be searched under subsection (2)(c) only by a police officer of the same sex.
- (5) For the avoidance of doubt, it is declared that section 83 of the Interpretation and General Clauses Ordinance (Cap. 1) and other provisions of Part XII of that Ordinance apply to subsection (2) and any power conferred by it.
- (6) For the purposes of this section—
- (a) “conveyance” means any vehicle, tramcar, train, vessel or aircraft;
 - (b) “premises” includes any structure.

18C. Consent of Secretary for Justice required

Prosecution for an offence under any provision of Part I or II shall not be instituted except by, or with the written consent of, the Secretary for Justice.

18D. Certain offences to be tried by jury

For the avoidance of doubt, an accused charged with an offence under section 2 (treason), 2A (subversion), 2B (secession) or 9A(2)(a) (sedition by inciting commission of treason, subversion or secession) shall stand trial before the Court of First Instance.

**18E. Election of trial by jury for offence
under section 9A(2)(b) or 9C**

(1) An accused who is to stand trial before a magistrate for an offence under section 9A(2)(b) (sedition by inciting violent public disorder) or 9C (handling seditious publication) may elect to stand trial before the Court of First Instance by notifying the magistrate before the hearing commences.

(2) Where—

- (a) an accused is charged before a magistrate with an offence under section 9A(2)(b) (sedition by inciting violent public disorder) or 9C (handling seditious publication); and
- (b) an application has been made under section 88 of the Magistrates Ordinance (Cap. 227) for an order transferring the case to the District Court,

the accused may elect to stand trial before the Court of First Instance by notifying the magistrate before the order is made.

(3) An accused who is to stand trial before the District Court for an offence under section 9A(2)(b) (sedition by inciting violent public disorder) or 9C (handling seditious publication) may elect to stand trial before the Court of First Instance by notifying the judge before the hearing commences.

(4) For the purposes of subsections (1) and (3), the hearing commences at the time when evidence is received or heard in consequence of the accused pleading not guilty to the charge or any of the charges.”.

PART 3

AMENDMENTS TO THE OFFICIAL SECRETS ORDINANCE

8. Interpretation

(1) Section 12(1) of the Official Secrets Ordinance (Cap. 521) is amended—

- (a) in the definition of “public servant”, by repealing paragraphs (a), (b) and (c) and substituting—

- “(a) any person who holds an office specified in column 2 of Schedule 1 to the Pension Benefits Ordinance (Established Offices) Order (Cap. 99 sub. leg.);
- (b) any person who holds an office of emolument under the Government of the Hong Kong Special Administrative Region, whether such office is permanent or temporary;”;

(b) by adding—

““national security” (國家安全) means the safeguarding of the territorial integrity and the independence of the People’s Republic of China;”.

(2) Section 12(2)(a) is amended by repealing “Crown in right of the Government of Hong Kong, of any of the services, forces or bodies mentioned in subsection (1)” and substituting “Government of the Hong Kong Special Administrative Region”.

9. Section added

The following is added—

“12A. Enforcement, etc. of Part III to be consistent with Basic Law

The provisions of this Part are to be interpreted, applied and enforced in a manner that is consistent with Article 39 of the Basic Law.”.

10. Section added

The following is added—

“16A. Information related to Hong Kong affairs within the responsibility of the Central Authorities

(1) A person who is or has been a public servant or government contractor commits an offence if he makes, without lawful authority, a damaging disclosure of any information, document or other article—

(a) that relates to any affairs concerning the Hong Kong Special Administrative Region which are, under the Basic Law, within the responsibility of the Central Authorities; and

(b) that is or has been in his possession by virtue of his position as a public servant or government contractor.

(2) For the purposes of subsection (1), a disclosure is damaging if—

(a) the disclosure endangers national security; or

(b) the information, document or article in question is of such a nature that its unauthorized disclosure would be likely to endanger national security.

(3) It is a defence for a person charged with an offence under this section to prove that, at the time of the alleged offence, he did not know and had no reasonable cause to believe that—

- (a) the information, document or article in question was such as is mentioned in subsection (1)(a); or
- (b) the disclosure would be damaging within the meaning of subsection (2).”.

11. Information resulting from unauthorized disclosures or illegal access or information entrusted in confidence

- (1) Section 18(2) is amended—
 - (a) in paragraph (b), by repealing “or” at the end;
 - (b) in paragraph (c), by repealing the full stop and substituting “; or”;
 - (c) by adding—
 - “(d) acquired by means of illegal access (whether by himself or another) to it,
 - and for the purposes of paragraphs (a) and (b), “public servant or government contractor” includes a person who was formerly a public servant or government contractor where the information, document or article came into his possession when he was such a public servant or government contractor.”.
- (2) Section 18 is amended by adding—
 - “(5A) For the purposes of subsection (2), a person has illegal access to information or a document or article if—
 - (a) the information, document or article, as the case may be, comes into or remains in his possession by virtue of an offence under—
 - (i) section 27A (unauthorized access to computer by telecommunications) of the Telecommunications Ordinance (Cap. 106);
 - (ii) section 161 (access to computer with criminal or dishonest intent) of the Crimes Ordinance (Cap. 200);
 - or
 - (iii) section 9 (theft), 10 (robbery) or 11 (burglary) of the Theft Ordinance (Cap. 210),
 committed by him in relation to the information, document or article, as the case may be; or
 - (b) the information, document or article, as the case may be, comes into or remains in his possession in exchange for an advantage the offer or acceptance of which is an offence under section 4 (bribery) of the Prevention of Bribery Ordinance (Cap. 201).”.

(3) Section 18(6)(a) is amended by repealing “or international relations” and substituting “, international relations or affairs concerning the Hong Kong Special Administrative Region which are, under the Basic Law, within the responsibility of the Central Authorities”.

(4) Section 18(6) is amended by repealing “to 16” and substituting “to 16A”.

12. Section added

The following is added—

“24A. Election of trial by jury

(1) An accused who is to stand trial before a magistrate for an offence under section 13, 14, 15, 16, 16A, 17, 18, 19 or 20 may elect to stand trial before the Court of First Instance by notifying the magistrate before the hearing commences.

(2) Where—

(a) an accused is charged before a magistrate with an offence under section 13, 14, 15, 16, 16A, 17, 18, 19 or 20; and

(b) an application has been made under section 88 of the Magistrates Ordinance (Cap. 227) for an order transferring the case to the District Court,

the accused may elect to stand trial before the Court of First Instance by notifying the magistrate before the order is made.

(3) An accused who is to stand trial before the District Court for an offence under section 13, 14, 15, 16, 16A, 17, 18, 19 or 20 may elect to stand trial before the Court of First Instance by notifying the judge before the hearing commences.

(4) For the purposes of subsections (1) and (3), the hearing commences at the time when evidence is received or heard in consequence of the accused pleading not guilty to the charge or any of the charges.”.

PART 4

AMENDMENTS TO THE SOCIETIES ORDINANCE

13. Interpretation

(1) Section 2(1) of the Societies Ordinance (Cap. 151) is amended by adding—

“ “proscribed organization” (受取締組織) means an organization proscribed under section 8A;”.

(2) Section 2(2) is amended by adding “except in connection with the proscription of an organization under section 8A” before the full stop.

14. Section added

The following is added—

“2A. Enforcement, etc. to be consistent with Basic Law

The provisions of this Ordinance are to be interpreted, applied and enforced in a manner that is consistent with Article 39 of the Basic Law.”.

15. Sections added

The following are added—

“8A. Proscription of organizations endangering national security

(1) The Secretary for Security may by order proscribe any local organization to which this section applies if he reasonably believes that the proscription is necessary in the interests of national security and is proportionate for such purpose.

(2) This section applies to any local organization—

- (a) the objective, or one of the objectives, of which is to engage in treason, subversion, secession or sedition or commit an offence of spying;
- (b) which has committed or is attempting to commit treason, subversion, secession or sedition or an offence of spying; or
- (c) which is subordinate to a mainland organization the operation of which has been prohibited on the ground of 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) A certificate which—
- (a) is given by or on behalf of the Central People’s Government; and
 - (b) states that the operation of a mainland organization has been prohibited on the ground of 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,
- shall be conclusive evidence of the prohibition.
- (4) A document purporting to be a certificate referred to in subsection (3) shall—
- (a) be received in evidence in any legal proceedings without further proof; and
 - (b) unless the contrary is proved, be deemed to be such a certificate.
- (5) For the purposes of this section—
- (a) “treason” means an act that is an offence under section 2 of the Crimes Ordinance (Cap. 200);
 - (b) “subversion” means an act that is an offence under section 2A of the Crimes Ordinance (Cap. 200);
 - (c) “secession” means an act that is an offence under section 2B of the Crimes Ordinance (Cap. 200);
 - (d) “sedition” means an act that is an offence under section 9A of the Crimes Ordinance (Cap. 200);
 - (e) “offence of spying” means an offence under section 3 of the Official Secrets Ordinance (Cap. 521);
 - (f) “local organization” means—
 - (i) any society which is registered, registrable or exempted from registration under this Ordinance; or
 - (ii) any body of persons listed in the Schedule;
 - (g) “mainland organization” means any body of persons—
 - (i) organized and established; or
 - (ii) having its headquarters or principal place of business, in any part of the People’s Republic of China other than Taiwan, Hong Kong or Macau;
 - (h) a local organization (“the former”) is subordinate to a mainland organization (“the latter”) if—
 - (i) the former solicits or accepts for its operation substantial financial contributions, substantial financial sponsorship or substantial financial support of any kind or loans of a substantial amount, directly or indirectly, from the latter;

- (ii) the former is under the direction or control, directly or indirectly, of the latter; or
- (iii) the policies of the former or any of such policies are determined, directly or indirectly, by the latter.

8B. Procedural requirements for proscription

(1) Before proscribing an organization under section 8A, the Secretary for Security must afford the organization an opportunity—

- (a) to be heard; or
- (b) to make representations in writing,

as the organization thinks fit as to why it should not be proscribed.

(2) Subsection (1) does not apply where the Secretary for Security reasonably believes that affording the organization an opportunity to be heard or to make representations in writing would not be practicable in the circumstances of the case.

(3) As soon as practicable after making an order under section 8A(1), the Secretary for Security must—

- (a) serve a copy of the order on the organization;
- (b) (where the organization occupies or uses any building or premises) affix a copy of the order in a conspicuous manner—
 - (i) on any building or premises which appear to the Secretary for Security to be occupied or used as a place of meeting by the organization; and
 - (ii) at the nearest police station of the police district in which such building or premises are situated;
- (c) publish the order in the Gazette; and
- (d) publish the order in one English newspaper circulating daily in Hong Kong and two Chinese newspapers circulating daily in Hong Kong.

(4) An order made under section 8A(1)—

- (a) which is published under subsection (3)(c) and (d)—
 - (i) on the same day takes effect on that day;
 - (ii) on different days takes effect on the latest of such days;
- or
- (b) takes effect on such later date (if any) as may be specified in it,

notwithstanding that an appeal has been or may be made against the proscription under section 8D.

8C. Prohibition of participating in the activities of proscribed organization

- (1) Any person who—
 - (a) is or acts as an office-bearer or professes to be or claims to be an office-bearer of;
 - (b) manages or assists in the management of;
 - (c) is or acts as a member of;
 - (d) attends a meeting of; or
 - (e) pays money to or gives any other form of aid to,
 a proscribed organization is guilty of an offence and is liable on conviction to a fine at level 6 and to imprisonment for 3 years.
- (2) It is a defence for a person charged with an offence under subsection (1) if he proves that at the time of the alleged offence he did not know and had no reason to believe that the organization in question has been proscribed under section 8A.
- (3) Without prejudice to subsection (2), it is a defence for a person charged with an offence under subsection (1)—
 - (a) in relation to his being or acting as an office-bearer of a proscribed organization if he proves that he had taken all reasonable steps to cease to be such office-bearer;
 - (b) in relation to his being or acting as a member of a proscribed organization if he proves that he had taken all reasonable steps to cease to be such member.

8D. Appeal against proscription

- (1) Any office-bearer or member of an organization proscribed under section 8A who is aggrieved by the proscription may appeal to the Court of First Instance against the proscription within 30 days after the proscription takes effect.
- (2) Lodging an appeal under subsection (1) and doing any incidental act shall not be regarded for the purposes of section 8C as acting as an office-bearer or member.
- (3) On an appeal lodged under subsection (1) against a proscription, the Court of First Instance shall—
 - (a) if it is satisfied that—
 - (i) the Secretary for Security has not correctly applied the law in the proscription;
 - (ii) the evidence is insufficient to prove that the organization in question falls within section 8A(2)(a), (b) or (c); or

- (iii) the evidence is insufficient to justify a reasonable belief that the proscription—
 - (A) is necessary in the interests of national security; and
 - (B) is proportionate for such purpose, set aside the proscription; or
 - (b) if it is not so satisfied, dismiss the appeal.
- (4) A proscription set aside under subsection (3) shall be deemed to have never been made.
- (5) If in the course of any proceedings before the Court of First Instance the Court is satisfied, upon application by the Secretary for Justice, that the publication of any evidence to be given or any statement to be made in the course of the proceedings might prejudice national security, the Court may order that all or any portion of the public shall be excluded during any part of the hearing so as to avoid such publication.
- (6) In the hearing of an appeal, the Court of First Instance may admit such evidence as may be provided for in rules made under section 8E.

8E. Chief Justice may make rules for appeals

- (1) The Chief Justice may make rules to provide for—
 - (a) the lodgement, hearing and withdrawal of appeals under section 8D;
 - (b) costs in respect of such appeals;
 - (c) the practice and procedure concerning the hearing of such appeals;
 - (d) admissibility of evidence; and
 - (e) such other matters which are incidental to or arise out of the hearing of such appeals.
- (2) In making rules under this section, the Chief Justice shall have regard, in particular, to—
 - (a) the need to secure that proscriptions which are the subject of appeals are properly reviewed; and
 - (b) the need to secure that information is not disclosed to the detriment of national security.
- (3) Rules made under this section may make provision—
 - (a) enabling proceedings to take place without the appellant being given full particulars of the reasons for the proscription in question;
 - (b) enabling the Court of First Instance to hold proceedings in the absence of any person, including the appellant and any legal representative appointed by him; and

- (c) enabling the Court of First Instance to give the appellant a summary of any evidence taken in his absence.
- (4) Where rules made under this section enable the Court of First Instance to hold proceedings in the absence of the appellant and any legal representative appointed by him, the rules shall make provision for—
 - (a) a power to appoint a legal practitioner to act in the interests of the appellant; and
 - (b) the function and responsibility of such legal practitioner.”.

PART 5

OTHER AMENDMENTS

16. Related, incidental and consequential amendments

The enactments specified in the Schedule are amended as set out in the Schedule.

SCHEDULE

[s. 16]

RELATED, INCIDENTAL AND CONSEQUENTIAL AMENDMENTS

Interpretation and General Clauses Ordinance

1. Interpretation of words and expressions

Section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) is amended by adding—
 ““Central People’s Government” (中央人民政府) means the Central People’s Government of the People’s Republic of China;”.

Companies Ordinance

2. Section added

The Companies Ordinance (Cap. 32) is amended by adding after section 291A—

“291AAA. Registrar shall strike proscribed company off register

- (1) Where a company is proscribed under section 8A of the Societies Ordinance (Cap. 151), the Registrar shall—
 - (a) strike its name off the register; and
 - (b) publish a notice thereof in the Gazette,
 and upon the publication of the notice the company shall be dissolved.

(2) The Registrar may defer taking action under subsection (1) if he is satisfied that the right to take legal action against the proscription has not been exhausted.”.

Pensions Ordinance

3. Pension, gratuity or allowance may be cancelled, suspended or reduced on conviction, etc.

Section 15(1)(a)(iii) of the Pensions Ordinance (Cap. 89) is amended by repealing “treason under section 2” and substituting “an offence under section 2 (treason), 2A (subversion), 2B (secession) or 9A(2)(a) (sedition by inciting commission of treason, subversion or secession)”.

Post Office Ordinance

4. Prohibited articles

Section 32(1)(h) of the Post Office Ordinance (Cap. 98) is repealed.

Pension Benefits Ordinance

5. Pension benefits may be cancelled, suspended or reduced on conviction, etc.

Section 29(1)(c) of the Pension Benefits Ordinance (Cap. 99) is amended by repealing “treason under section 2” and substituting “an offence under section 2 (treason), 2A (subversion), 2B (secession) or 9A(2)(a) (sedition by inciting commission of treason, subversion or secession)”.

Societies Ordinance

6. Long title amended

The long title to the Societies Ordinance (Cap. 151) is amended by adding “, for the proscription of certain organizations” after “certain societies”.

7. Interpretation

Section 2(1) is amended in the definition of “office-bearer” by adding “and “office-bearer” of a local organization within the meaning of section 8A shall be construed in the same manner” after “ordinary member”.

8. Removing a society from the list

Section 14A is amended by adding—

“(4) Where a society or a branch becomes a proscribed organization, the Societies Officer shall, as soon as practicable after the proscription takes effect, remove the society or the branch from the list kept under section 11 but where subsequently, the proscription is set aside under section 8D(3), the Societies Officer shall as soon as practicable restore the society or the branch to the list.”.

9. Persons allowing unlawful society or proscribed organization on premises

Section 21(1) is amended by adding “or a proscribed organization” after “society” where it twice appears.

10. Penalty for inciting, etc. a person to become a member of an unlawful society or a proscribed organization

Section 22(1) is amended by adding “or a proscribed organization” after “society” where it twice appears.

11. Penalty for procuring subscription or aid for an unlawful society or a proscribed organization

Section 23(1) is amended by adding “or a proscribed organization” after “society”.

12. Schedule amended

The Schedule is amended—

- (a) by repealing “[s. 2]” and substituting “[ss. 2 & 8A(5)(f)]”;
- (b) in the heading, by adding “EXCEPT IN CONNECTION WITH PROSCRIPTION OF ORGANIZATION” after “NOT APPLY”.

Crimes Ordinance

13. Sections repealed

Sections 3, 4, 5, 9, 10, 11, 14, 15, 16 and 17 of the Crimes Ordinance (Cap. 200) are repealed.

14. Evidence

Section 12 is amended by repealing “10” and substituting “9A or 9C”.

15. Search warrant

Section 13 is amended by repealing “10” where it twice appears and substituting “9A or 9C”.

Criminal Procedure Ordinance

16. Rules and orders as to practice and procedure

Section 9(3) of the Criminal Procedure Ordinance (Cap. 221) is amended by repealing “or misprision of treason”.

17. An accused person may be refused bail in particular circumstances

Section 9G(10)(b) is amended by repealing “treason under section 2” and substituting “an offence under section 2, 2A, 2B or 9A(2)(a)”.

18. Service of documents in transferred proceedings

Section 10A is amended by adding—

“(7) This section applies in relation to proceedings conducted pursuant to section 13C(1) as if—

- (a) in subsection (1), everything before “, he shall” is substituted by—
 “(1) Where pursuant to section 13C(1) any proceedings stand transferred to the court for trial and where the Secretary for Justice has instituted proceedings pursuant to section 14(1)(a)”;
- (b) in subsection (2), “District Court judge” is substituted in both places where it appears by “magistrate”; and
- (c) in subsection (4), “in the District Court the District Judge” is substituted by “to the magistrate he”.

19. Section added

The following is added immediately before section 14—

“13C. Proceedings relating to section 18E of the Crimes Ordinance and section 24A of the Official Secrets Ordinance

(1) Where an accused elects under section 18E(1) or (2) of the Crimes Ordinance (Cap. 200) or section 24A(1) or (2) of the Official Secrets Ordinance (Cap. 521) to stand trial before the Court of First Instance—

- (a) the case shall proceed as if he is committed for trial under section 80C(4) of the Magistrates Ordinance (Cap. 227);
- (b) section 10 shall not apply to the case; and
- (c) the accused shall, if he is convicted of the offence, be sentenced by the trial judge, but the trial judge shall not impose a penalty heavier than the penalty that could have been imposed by a magistrate had the accused been convicted of the offence before the magistrate.

(2) Where an accused elects under section 18E(3) of the Crimes Ordinance (Cap. 200) or section 24A(3) of the Official Secrets Ordinance (Cap. 521) to stand trial before the Court of First Instance—

- (a) the case shall proceed as if an order has been made under section 77A(4) of the District Court Ordinance (Cap. 336) for the transfer of the proceedings to the Court of First Instance; and
- (b) the accused shall, if he is convicted of the offence, be sentenced by the trial judge, but the trial judge shall not impose a penalty heavier than the penalty that could have been imposed by a judge of the District Court had the accused been convicted of the offence before the District Court.”.

20. Trial of offences

- (1) Section 14A(1)(a) is repealed.
- (2) Section 14A(2)(a) is repealed.

21. Trial of offences

Section 51(2) is amended by repealing “treason” and substituting “an offence under section 2, 2A, 2B or 9A(2)(a) of the Crimes Ordinance (Cap. 200)”.

22. Transfer of proceedings

Section 65F is amended by adding—

“(4A) The judge shall refuse an application under subsection (1) to transfer proceedings for an offence under section 9A(2)(b) or 9C of the Crimes Ordinance (Cap. 200) or section 13, 14, 15, 16, 16A, 17, 18, 19 or 20 of the Official Secrets Ordinance (Cap. 521) if the accused objects to the transfer.”.

23. Penalties for concealing offences

Section 91(4) is amended by repealing “other than treason”.

24. Abolition of presumption of coercion of married woman by husband

Section 100 is amended by repealing “treason or murder” and substituting “murder or an offence under section 2, 2A, 2B or 9A(2)(a) of the Crimes Ordinance (Cap. 200)”.

Legal Aid in Criminal Cases Rules

25. Legal aid in capital cases

Rule 13(1) of the Legal Aid in Criminal Cases Rules (Cap. 221 sub. leg.) is amended by repealing “treason or piracy with violence” wherever it appears and substituting “piracy with violence or an offence under section 2 (treason), 2A (subversion), 2B (secession) or 9A(2)(a) (sedition by inciting commission of treason, subversion or secession) of the Crimes Ordinance (Cap. 200)”.

Magistrates Ordinance

26. Second Schedule amended

(1) Items 4 and 5 in Part I of the Second Schedule to the Magistrates Ordinance (Cap. 227) are repealed.

(2) Items 4 and 5 in Part III of the Second Schedule are repealed.

Education Ordinance

27. Grounds for cancellation of registration of manager

Section 31(1)(a) of the Education Ordinance (Cap. 279) is amended by repealing everything after “(Cap. 151),” and substituting—
“of—

(i) any society or a branch which has had—

(A) its registration or exemption from registration cancelled under section 5D of that Ordinance; or

- (B) its operation or continued operation prohibited by the Secretary for Security under section 8 of that Ordinance; or
- (ii) any organization which has been proscribed under section 8A of that Ordinance;”.

Pension Benefits (Judicial Officers) Ordinance

28. Pension benefits may be cancelled, suspended or reduced on conviction, etc.

Section 31(1)(c) of the Pension Benefits (Judicial Officers) Ordinance (Cap. 401) is amended by repealing “treason under section 2” and substituting “an offence under section 2 (treason), 2A (subversion), 2B (secession) or 9A(2)(a) (sedition by inciting commission of treason, subversion or secession)”.

Organized and Serious Crimes Ordinance

29. Authority for search

Section 5 of the Organized and Serious Crimes Ordinance (Cap. 455) is amended by adding—
“(9) Subsection (8) does not apply in relation to an organized crime or a specified offence which is an offence under—

- (a) section 8C (participating in the activities of proscribed organization) of the Societies Ordinance (Cap. 151);
- (b) section 2 (treason), 2A (subversion), 2B (secession), 9A (sedition) or 9C (handling seditious publication) of the Crimes Ordinance (Cap. 200); or
- (c) section 13, 14, 15, 16, 16A, 17, 18, 19 or 20 of the Official Secrets Ordinance (Cap. 521),

and accordingly entry, search and seizure under this section concerning such organized crime or specified offence are subject to section 83 of the Interpretation and General Clauses Ordinance (Cap. 1) and other provisions of Part XII of that Ordinance.”.

30. Offences relevant to definitions of “organized crime” and “specified offence”

(1) Schedule 1 is amended, in paragraph 9—

- (a) by adding—
“section 8C

participating in the activities of proscribed organization”

before—

“section 19

penalties on an office-bearer, etc. of an unlawful society”;

- (b) by adding “or proscribed organization” after “society” where it secondly and thirdly appears.

(2) Schedule 1 is amended, in paragraph 11, by adding—

“section 2	treason
section 2A	subversion
section 2B	secession
section 9A	sedition
section 9C	handling seditious publication
section 18	unlawful drilling”

before—

“section 24 threatening a person with intent”.

Post-Release Supervision of Prisoners Regulation

31. Specified offences

Schedule 1 to the Post-Release Supervision of Prisoners Regulation (Cap. 475 sub. leg.) is amended in item 3 by adding “or proscribed organization” after “society” where it appears opposite to “section 21(1), (2)”, “section 22(1), (2)” and “section 23(1), (2)”.

Official Secrets Ordinance

32. Interpretation

Section 12(1) of the Official Secrets Ordinance (Cap. 521) is amended in paragraph (b) of the definition of “international relations”, by repealing everything after “between the” and substituting “Hong Kong Special Administrative Region and any place outside the People’s Republic of China;”.

33. Information resulting from unauthorized disclosures or illegal access or information entrusted in confidence

- (1) Section 18(3) is amended by repealing “16” and substituting “16A”.
- (2) Section 18(4) is amended by repealing “or 16” and substituting “, 16 or 16A”.

34. Information entrusted in confidence to territories, States or international organizations

Section 20(4) is amended by repealing “or 16” and substituting “, 16 or 16A”.

Other Ordinances

35. References to treason to include subversion, etc.

The following provisions are amended by repealing “treason” wherever it appears and substituting “an offence under section 2 (treason), 2A (subversion), 2B (secession) or 9A(2)(a) (sedition by inciting commission of treason, subversion or secession) of the Crimes Ordinance (Cap. 200)” —

- (a) section 3(6)(m) of the Hong Kong Arts Development Council Ordinance (Cap. 472);
- (b) sections 39(1)(c) and 40(1)(b)(iii)(C) of the Legislative Council Ordinance (Cap. 542);
- (c) sections 14(1)(c), 19(1)(c), 21(1)(c) and 24(1)(c) of the District Councils Ordinance (Cap. 547); and
- (d) section 14(g) of the Chief Executive Election Ordinance (Cap. 569).

Explanatory Memorandum

The objective of this Bill is to make provisions for—

- (a) the offences of treason, subversion, secession and sedition;
- (b) the prohibition of unauthorized disclosure of certain official information; and
- (c) the proscription of certain organizations if national security so warrants,

pursuant to the obligation imposed by Article 23 of the Basic Law on the Hong Kong Special Administrative Region.

Amendments to the Crimes Ordinance (Cap. 200)

2. The provisions of Part I of the Ordinance are proposed to be repealed (clause 4 and paragraph 13 of the Schedule).

3. The new section 2 deals with treason. This offence can only be committed by Chinese nationals. A Chinese national who is a Hong Kong permanent resident is liable for treason committed outside Hong Kong. The common law offences of misprision of treason and compounding treason are proposed to be repealed.

4. The new sections 2A and 2B provide for the offences of subversion and secession respectively. These offences can be committed by a person of whatever nationality in Hong Kong. An act done outside Hong Kong falls within these sections if it is done by a Hong Kong permanent resident. The new section 2C prohibits conspiring or attempting, in Hong Kong, to do, outside Hong Kong, any act which if done in Hong Kong would constitute subversion or secession.

5. The new section 2D provides that inciting others to commit treason, subversion or secession is an offence only under the new section 9A. The common law offences will not apply.

6. Except for sections 6, 7, 8, 12, 13 and 18, the provisions of Part II of the Ordinance are proposed to be repealed (paragraph 13 of the Schedule).

7. The new section 9A provides for the offence of sedition. Two acts constitute sedition and they attract different penalties. Inciting others to commit treason, subversion or secession constitutes sedition. The new section 9B stipulates that inciting others to commit sedition is not an offence.

8. The new section 9C criminalizes certain acts relating to handling seditious publications.

9. The new section 9D effectively preserves the existing section 9(2) to exclude certain acts from the offences of sedition and handling seditious publications.
10. Clause 7 adds a new Part (Part IIA) to provide for matters relating to enforcement of the provisions of Parts I and II.
11. The existing section 13 provides for issue of search warrant by a magistrate. The new section 18B confers on the police a power to search without warrant. The power can only be exercised if, in the opinion of a police officer of or above the rank of Chief Superintendent of Police, crucial evidence would be lost unless immediate action is taken.
12. An accused charged with treason, subversion, secession and sedition by inciting others to commit those offences is to be tried by jury (the new section 18D). If an accused charged with sedition by inciting others to engage in violent public disorder or with handling seditious publications is to be tried in a magistracy or the District Court, he may elect trial by jury (the new section 18E) by having his case transferred to the Court of First Instance of the High Court. If convicted, an accused who elects trial by jury will not receive a penalty which is heavier than the penalty that can be imposed by a magistrate or a judge of the District Court (as may be appropriate).
13. The proposed repeal of the existing sections 4 and 11 removes the time limit before which prosecution for an offence under Part I or II of the Ordinance may be brought. However, such prosecution requires the consent of the Secretary for Justice (the new section 18C).

Amendments to the Official Secrets Ordinance (Cap. 521)

14. Clause 8 adds a definition of “national security” and modifies the definition of “public servant”.
15. The new section 16A (clause 10) prohibits public servants and government contractors (defined in the Ordinance) from making a damaging disclosure of any information that relates to any affairs concerning Hong Kong which are, under the Basic Law, within the responsibility of the Central Authorities. A disclosure is damaging if it endangers national security.
16. Clause 11 amends the existing section 18 to provide that a person who discloses protected information without lawful authority commits an offence if he knows or has reasonable cause to believe that it has come into his possession after it has been acquired by means of illegal access. Illegal access is defined to include only computer hacking, theft, robbery, burglary and bribery.

17. A person charged with certain offences relating to unauthorized disclosure may elect trial by jury. The arrangement is similar to those stipulated in the proposed new section 18E of the Crimes Ordinance (Cap. 200) and described in paragraph 12 of this Memorandum.

Amendments to the Societies Ordinance (Cap. 151)

18. Part 4 of the Bill contains amendments to the Ordinance to confer a power on the Secretary for Security to proscribe a local organization. The power is only exercisable when the Secretary reasonably believes in the circumstances prescribed in the new section 8A(1) that the proscription is necessary in the interests of national security (defined in section 2(4) of the Ordinance) and is proportionate for such purpose. One of the circumstances for proscription is that the local organization is subordinate to a mainland organization which has been lawfully proscribed by the Central Authorities on the ground of protection of the security of the People's Republic of China.

19. The new section 8B stipulates procedural requirements for proscription. The new section 8C prohibits participation in the activities of a proscribed organization. The new section 8D provides for a right to appeal to the Court of First Instance against proscription. The new section 8E empowers the Chief Justice to make rules in relation to such appeals.

Other Amendments

20. Provisions are added to the Crimes Ordinance (Cap. 200) (new section 18A in clause 7), the Official Secrets Ordinance (Cap. 521) (new section 12A in clause 9) and the Societies Ordinance (Cap. 151) (new section 2A in clause 14) to prescribe unequivocally that the interpretation, application and enforcement of the relevant provisions are to be consistent with Article 39 of the Basic Law. The Article provides that two international human rights conventions as applied to Hong Kong shall be implemented.

21. The search powers of the police conferred by the new section 18B of the Crimes Ordinance (Cap. 200) (clause 7) and the existing section 5 of the Organized and Serious Crimes Ordinance (Cap. 455) are subject to Part XII of the Interpretation and General Clauses Ordinance (Cap. 1) (paragraph 29 of the Schedule). Accordingly, as regards journalistic materials (defined in section 82 of the Interpretation and General Clauses Ordinance (Cap. 1)), the search power cannot be exercised without a court warrant.

22. Under the existing law, if a person is charged or convicted of treason, he faces a number of consequences. The Bill proposes to amend various Ordinances so that a person charged with or convicted of subversion, secession and sedition faces the same consequences. The amendments are as follows.

- (a) A civil servant or a judicial officer may have his pension cancelled, suspended or reduced (paragraphs 3, 5 and 28 of the Schedule).
- (b) The convicted person will be disqualified from holding certain public offices (paragraph 35 of the Schedule).
- (c) The provision for the granting of legal aid to the accused applies (paragraph 25 of the Schedule).

23. Paragraph 2 of the Schedule provides that a company proscribed under the Societies Ordinance (Cap. 151) shall be struck off the register of companies.

24. Paragraph 4 of the Schedule abolishes an offence under the Post Office Ordinance (Cap. 98) concerning posting of seditious publications. The new section 9C of the Crimes Ordinance (Cap. 200) (clause 6) will cover this prohibited act.

25. Paragraphs 6 to 12 of the Schedule deal with incidental and consequential amendments to the Societies Ordinance (Cap. 151).

26. Paragraphs 16 to 24, 26, 29, 30 and 31 of the Schedule make consequential amendments to the Criminal Procedure Ordinance (Cap. 221), the Magistrates Ordinance (Cap. 227), the Organized and Serious Crimes Ordinance (Cap. 455) and the Post-Release Supervision of Prisoners Regulation (Cap. 475 sub. leg.). The amendments are necessitated by the addition of the new offences, the abolition of common law offences and the right to elect jury trial.

Relevant Statutory Provisions to be amended

Chapter:	200	Title:	CRIMES ORDINANCE	Gazette Number:
Section:	2	Heading:	Treason	Version Date: 30/06/1997

PART I

TREASON

- (1) A person commits treason if he-
- (a) kills, wounds or causes bodily harm to Her Majesty, or imprisons or restrains Her;
 - (b) forms an intention to do any such act as is mentioned in paragraph (a) and manifests such intention by an overt act;
 - (c) levies war against Her Majesty-
 - (i) with the intent to depose Her Majesty from the style, honour and royal name of the Crown of the United Kingdom or of any other of Her Majesty's dominions; or
 - (ii) in order by force or constraint to compel Her Majesty to change Her measures or counsels, or in order to put any force or constraint upon, or to intimidate or overawe, Parliament or the legislature of any British territory;
 - (d) instigates any foreigner with force to invade the United Kingdom or any British territory;
 - (e) assists by any means whatever any public enemy at war with Her Majesty; or
 - (f) conspires with any other person to do anything mentioned in paragraph (a) or (c).
- (2) Any person who commits treason shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for life. (Amended 24 of 1993 s. 2)
- [cf. 1351 c. 2 U.K.; 1795 c. 7 s. 1 U.K.; 1817 c. 6 s. 1 U.K.]

Chapter:	200	Title:	CRIMES ORDINANCE	Gazette Number:
Section:	6	Heading:	Incitement to mutiny	Version Date: 30/06/1997

PART II

OTHER OFFENCES AGAINST THE CROWN

- Any person who knowingly attempts-
- (a) to seduce any member of Her Majesty's forces from his duty and allegiance to Her Majesty; or (Amended 54 of 1992 s. 19; 20 of 1997 s. 25)
 - (b) to incite any such person-
 - (i) to commit an act of mutiny or any traitorous or mutinous act; or
 - (ii) to make or endeavour to make a mutinous assembly,
- shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for life.
- [cf. 1797 c. 70 s. 1 U.K.]

Chapter:	521	Title:	OFFICIAL SECRETS ORDINANCE	Gazette Number:	
Section:	12	Heading:	Interpretation	Version Date:	30/06/1997

PART III

UNLAWFUL DISCLOSURE

(1) In this Part-

"armed forces" (武裝部隊) means the armed forces of the Crown;

"British national" (英國國民) means a British citizen, a British Overseas citizen, a British Dependent Territories citizen, a British National (Overseas) or a British protected person;

"defence" (防務) means-

- (a) the size, shape, organization, logistics, order of battle, deployment, operations, state of readiness and training of the armed forces;
- (b) the weapons, stores or other equipment of the armed forces and the invention, development, production and operation of such equipment and research relating to it;
- (c) defence policy and strategy and military planning and intelligence;
- (d) plans and measures for the maintenance of essential supplies and services that are or would be needed in time of war;

"disclose" and "disclosure" (披露), in relation to a document or other article, include parting with possession of it;

"Hong Kong permanent resident" (香港永久性居民) has the meaning assigned to that term by section 2(1) of the Immigration Ordinance (Cap 115);

"international relations" (國際關係) means the relations between States, between international organizations or between one or more States and one or more such organizations and includes-

- (a) any matter relating to a State other than the United Kingdom or to an international organization that is capable of affecting the relations of the United Kingdom with another State or with an international organization; and
- (b) any matter relating to the relations between the United Kingdom and Hong Kong or the external relations of Hong Kong;

"prescribed" (訂明) means prescribed by an order made by the Governor;

"public servant" (公務人員) means-

- (a) any person who holds an office of emolument under the Crown in right of the Government of Hong Kong, whether such office is permanent or temporary;
- (b) any person employed in the civil service of the Crown in right of the United Kingdom, including Her Majesty's Diplomatic Service and Her Majesty's Overseas Civil Service;
- (c) any member of the armed forces;
- (d) any person who is a member or employee of a prescribed body or a body of a prescribed class and either is prescribed for the purposes of this paragraph or belongs to a prescribed class of members or employees of any such body;
- (e) any person who holds a prescribed office or who is an employee of such a person and either is prescribed for the purposes of this paragraph or belongs to a prescribed class of such employees;

"State" (國家) includes the government of a State and any organ of its government;

"territory" (地區) means any territory, not being a State, outside Hong Kong.

(2) In this Part, "government contractor" (政府承辦商) means, subject to subsection (3), any person who is not a public servant but who provides, or is employed in the provision of, goods or services-

- (a) for the purposes of the Crown in right of the Government of Hong Kong, of any of the services, forces or bodies mentioned in subsection (1) or of the holder of any office prescribed under subsection (1); or
- (b) under an agreement or arrangement certified by the Governor as being an agreement or arrangement to which the Government of a territory, the Government of a State, other than the United Kingdom, or an international organization is a party or which is subordinate to, or made for the purposes of implementing, any such agreement or arrangement.

(3) Where an employee or a class of employees of any body, or of any holder of an office, is prescribed by an order made for the purposes of subsection (1), the following persons shall be deemed not to be a government contractor for the purposes of this Part-

- (a) any employee of that body, or of the holder of that office, who is not prescribed or is not within the prescribed class of employees; and
- (b) any person who does not provide, or is not employed in the provision of, goods or services for the purposes of the performance of those functions of the body or the holder of the office in connection with which the employee or prescribed class of employees is engaged.

(4) In this Part, "international organization" (國際組織) means, subject to subsections (5) and (6), an organization of which only States or States and territories are members and includes a reference to any organ of such an organization.

(5) In subsection (4) the reference to an international organization includes a reference to any such organization whether or not one of which only States or States and territories are members and includes a commercial organization.

(6) In determining for the purposes of this section whether only States or States and territories are members of an organization, any member that is itself an organization of which only States are members, or that is an organ of such an organization, shall be treated as a State.

(7) In this Part, "security or intelligence" (保安或情報) means the work of, or in support of, the security or intelligence services or any part of them, and references to information relating to security or intelligence include references to information held or transmitted by those services or by persons in support of them, or any part of them.

[cf. 1989 c. 6 ss. 1(9), 2(4), 3(5), 12 & 13 U.K.]

Chapter:	521	Title:	OFFICIAL SECRETS ORDINANCE	Gazette Number:	
Section:	18	Heading:	Information resulting from unauthorized disclosures or information entrusted in confidence	Version Date:	30/06/1997

Expanded Cross Reference:
13, 14, 15, 16, 17

(1) A person who comes into possession of any information, document or other article in circumstances mentioned in subsection (2) commits an offence if he discloses it without lawful authority and knowing, or having reasonable cause to believe, that-

(a) it is protected against disclosure by any of sections 13 to 17; and <*Note-Exp. x-Ref: Sections 13, 14, 15, 16, 17*>

(b) it has come into his possession as mentioned in subsection (2).

(2) The circumstances referred to in subsection (1) are where any information, document or other article protected against disclosure by any of sections 13 to 17 has come into a person's possession as a result of it having been- <*Note-Exp. x-Ref:13, 14, 15, 16, 17*>

(a) disclosed (whether to him or another) by a public servant or government contractor without lawful authority;

(b) entrusted to him by a public servant or government contractor on terms requiring it to be held in confidence or in circumstances in which the public servant or government contractor could reasonably expect that it would be so held; or

(c) disclosed (whether to him or another) without lawful authority by a person to whom it was entrusted as mentioned in paragraph (b).

(3) In the case of information or a document or article protected against disclosure by sections 13 to 16, a person does not commit an offence under this section unless- <*Note-Exp. x-Ref:13, 14, 15, 16*>

(a) the disclosure by him is damaging; and

(b) he makes it knowing, or having reasonable cause to believe, that it would be damaging.

(4) The question whether a disclosure of information or of a document or other article is damaging shall be determined for the purposes of subsection (3) as it would be determined in relation to a disclosure of that information, document or article by a public servant in contravention of section 14, 15 or 16.

(5) A person does not commit an offence under this section in respect of information or a document or other article that has come into his possession as a result of it having been disclosed-

(a) as mentioned in subsection (2)(a) by a government contractor; or

(b) as mentioned in subsection (2)(c),

unless that disclosure was by a British national or Hong Kong permanent resident or took place in Hong Kong.

(6) For the purposes of this section, information or a document or article is protected against disclosure by any of sections 13 to 17 if- <*Note-Exp. x-Ref:13, 14, 15, 16, 17*>

(a) it relates to security or intelligence, defence or international relations or is such as is mentioned in section 16(1)(b); or

(b) it is information or a document or article to which section 17 applies,

and information or a document or article is protected against disclosure by sections 13 to 16 if it falls within paragraph (a). <*Note-Exp. x-Ref:13, 14, 15, 16*>

(7) No person shall be convicted for both an offence under this section and an offence under any of sections 13 to 17 in relation to the disclosure by him of any information or document or other article. <*Note-Exp. x-Ref:13, 14, 15, 16, 17*>

[cf. 1989 c. 6 s. 5 U.K.]

Chapter:	151	Title:	SOCIETIES ORDINANCE	Gazette Number:	L.N. 320 of 1999
Section:	2	Heading:	Interpretation	Version Date:	01/01/2000

(1) In this Ordinance, unless the context otherwise requires-
"branch" (分支機構), in relation to a society, includes any society which is in any way subordinate to any

other society; (Added 28 of 1961 s. 2. Amended 118 of 1997 s. 3)

"connection" (聯繫), in relation to a society or a branch, that is a political body, includes the following circumstances-

- (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 foreign political organization or a political organization of Taiwan;
- (b) if the society or the branch is affiliated directly or indirectly with a foreign political organization or a political organization of Taiwan;
- (c) if the society's or the branch's policies or any of them are determined directly or indirectly by a foreign political organization or a political organization of Taiwan; or
- (d) if a foreign political organization or a political organization of Taiwan directs, dictates, controls or participates, directly or indirectly, in the decision making process of the society or the branch; (Added 118 of 1997 s. 3)

"election" (選舉) means-

- (a) a general election or a by-election to elect members of the Legislative Council; or
- (b) an ordinary election or a by-election to elect members of a District Council; (Added 118 of 1997 s. 3. Amended 8 of 1999 s. 89; 48 of 1999 s. 48; 78 of 1999 s. 7)

"exempted society" (獲豁免社團) means a society exempted by the Societies Officer from registration under this Ordinance; (Added 118 of 1997 s. 3)

"foreign political organization" (外國政治性組織) includes-

- (a) a government of a foreign country or a political subdivision of a government of a foreign country;
- (b) an agent of a government of a foreign country or an agent of a political subdivision of the government of a foreign country; or
- (c) a political party in a foreign country or its agent; (Added 118 of 1997 s. 3. Amended 23 of 1998 s. 2)

"local society" (本地社團) means any society organized and established in Hong Kong or having its headquarters or chief place of business in Hong Kong, and includes any society deemed to be established in Hong Kong by virtue of section 2(2B) or 4; (Amended 36 of 1982 s. 2; 30 of 1988 s. 4; 75 of 1992 s. 3; 118 of 1997 s. 3)

"office-bearer" (幹事) of a society means any person who is the president, or vice-president, or secretary or treasurer of such society or any branch thereof, or who is a member of the committee or governing body of such society or any branch thereof, or who holds in such society or any branch thereof any office or position analogous to any of those mentioned above or in the case of a triad society, any person holding any rank or office in the triad society other than that of any ordinary member; (Amended 31 of 1957 s. 2; 28 of 1961 s. 2)

"performance of functions" (履行職能) includes the exercise of powers and the performance of duties; (Added 75 of 1992 s. 3)

"political body" (政治性團體) means-

- (a) a political party or an organization that purports to be a political party; or
- (b) an organization whose principal function or main object is to promote or prepare a candidate for an election; (Added 118 of 1997 s. 3)

"political organization of Taiwan" (台灣政治性組織) includes-

- (a) the administration of Taiwan or a political subdivision of the administration;
- (b) an agent of the administration of Taiwan or an agent of a political subdivision of the administration; or
- (c) a political party in Taiwan or its agent; (Added 118 of 1997 s. 3)

"Secretariat" (秘書處) means the Triad Renunciation Secretariat established by section 26BA; (Added 12 of 1991 s. 2)

"Societies Officer" (社團事務主任) means the Societies Officer and any Assistant Societies Officer

appointed in accordance with the provisions of section 3; (Added 75 of 1992 s. 3)

"society" (社團) means any club, company, partnership or association of persons, whatever the nature or objects, to which the provisions of this Ordinance apply; (Replaced 28 of 1961 s. 2)

"specified form" (指明的表格) means a form specified by the Societies Officer; (Added 118 of 1997 s. 3)

"triad ritual" (三合會儀式) means any ritual commonly used by triad societies, any ritual closely resembling any such ritual and any part of any such ritual; (Added 28 of 1961 s. 2)

"Tribunal" (審裁處) means the Triad Renunciation Tribunal established by section 26A. (Added 58 of 1988 s. 2)

(2) The provisions of this Ordinance shall not apply to any person listed in the Schedule. (Added 28 of 1961 s. 2. Amended 36 of 1982 s. 2; 75 of 1992 s. 3)

(2A) (Repealed 75 of 1992 s. 3)

(2B) This Ordinance applies to a society to which it otherwise would not apply under the Schedule by its being registered under the Business Registration Ordinance (Cap 310) if the Societies Officer gives written notice to the society that he is of the opinion that the society is not used solely for religious, charitable, social or recreational purposes. The society is taken to be established in Hong Kong on the date on which the notice is given. (Added 118 of 1997 s. 3)

(3) The Chief Executive in Council may by order amend the Schedule. (Added 28 of 1961 s. 2. Amended 13 of 1999 s. 3)

(4) In this Ordinance the expressions "public safety", "public order (ordre public)" and "the protection of rights and freedoms of others" are interpreted in the same way as under the International Covenant on Civil and Political Rights as applied to Hong Kong. "national security" (國家安全) means the safeguarding of the territorial integrity and the independence of the People's Republic of China. (Replaced 118 of 1997 s. 3)

(Amended 75 of 1992 s. 3)

Chapter:	1	Title:	INTERPRETATION AND GENERAL CLAUSES ORDINANCE	Gazette Number:	L.N. 106 of 2002
Section:	3	Heading:	Interpretation of words and expressions	Version Date:	01/07/2002

PART II

INTERPRETATION OF WORDS AND EXPRESSIONS

"act" (作為), when used with reference to an offence or civil wrong, includes a series of acts, an illegal omission and a series of illegal omissions;

"Administrative Appeals Board" (行政上訴委員會) means the Administrative Appeals Board established under the Administrative Appeals Board Ordinance (Cap 442); (Added 6 of 1994 s. 32)

"adult" (成人、成年人)* means a person who has attained the age of 18 years; (Amended 32 of 1990 s. 6)

"aircraft" (飛機、航空器) means any machine that can derive support in the atmosphere from the reactions of the air;

"alien" (外籍人士) means a person other than a Chinese citizen; (Added 26 of 1998 s. 4)

"amend" (修訂) includes repeal, add to or vary and the doing of all or any of such things simultaneously or by the same Ordinance or instrument; (Amended 89 of 1993 s. 3)

"arrestable offence" (可逮捕的罪行) means an offence for which the sentence is fixed by law or for which a person may under or by virtue of any law be sentenced to imprisonment for a term exceeding 12 months, and an attempt to commit any such offence; (Added 30 of 1971 s. 2)

"Basic Law" (《基本法》) means the Basic Law of the Hong Kong Special Administrative Region; (Added 26 of 1998 s. 4)

"Chief Executive" (行政長官) means-

(a) the Chief Executive of the Hong Kong Special Administrative Region;

(b) a person for the time being assuming the duties of the Chief Executive according to the provisions of Article 53 of the Basic Law; (Added 26 of 1998 s. 4)

"Chief Executive in Council" (行政長官會同行政會議) means the Chief Executive acting after consultation with the Executive Council; (Added 26 of 1998 s. 4)

"Chief Judge" (高等法院首席法官) means the Chief Judge of the High Court; (Added 26 of 1998 s. 4)

"Chief Justice" (終審法院首席法官) means the Chief Justice of the Court of Final Appeal; (Added 26 of 1998 s. 4)

"Chief Secretary for Administration" (政務司司長) means the Chief Secretary for Administration of the Hong Kong Special Administrative Region; (Added 26 of 1998 s. 4)

"China" (中國) means the People's Republic of China; (Added 26 of 1998 s. 4)

"Chinese citizen" and "Chinese national" (中國公民) mean a person who has Chinese nationality under the Nationality Law of the People's Republic of China in Schedule 4 to the Promulgation of National Laws 1997 (L.N. 379 of 1997); (Added 26 of 1998 s. 4)

"Clerk to the Executive Council" (行政會議秘書) includes any person appointed by the Chief Executive to be Deputy Clerk to the Executive Council; (Added 26 of 1998 s. 4)

"Clerk to the Legislative Council" (立法會秘書) means the Secretary General of the Legislative Council Secretariat appointed under section 15(1) of The Legislative Council Commission Ordinance (Cap 443) and includes the Deputy Secretary General and any Assistant Secretary General of the Legislative Council Secretariat; (Added 26 of 1998 s. 4)

"commencement" (生效日期), when used in relation to an Ordinance, or any part or provision thereof, means the date on which the Ordinance, part or provision came or comes into operation; (Replaced 39 of 1982 s. 2)

"committed for trial" (交付審判), when used in relation to a person, means-

- (a) committed to prison with a view to his being tried before the Court of First Instance; or
- (b) admitted to bail to appear and stand his trial before the Court of First Instance; (Added 26 of 1998 s. 4)

"common law" (普通法) means the common law in force in Hong Kong; (Added 26 of 1998 s. 4)

"consul" (領事) and "consular officer" (領事館官員) mean any person, including the head of a consular post, recognized by the competent authority of the receiving state as entrusted in that capacity with the exercise of consular functions;

"contravene" (違反) in relation to any requirement or condition prescribed in any Ordinance or in any grant, permit, licence, lease or authority granted under or by virtue of any Ordinance includes a failure to comply with that requirement or condition;

"counsel" (大律師) means a person admitted before the Court of First Instance to practise as counsel; (Added 26 of 1998 s. 4)

"court" (法院、法庭) means any court of the Hong Kong Special Administrative Region of competent jurisdiction; (Added 26 of 1998 s. 4)

"Court of Appeal" (上訴法庭) means the Court of Appeal of the High Court; (Added 26 of 1998 s. 4)

"Court of Final Appeal" (終審法院) means the Hong Kong Court of Final Appeal established by section 3 of the Hong Kong Court of Final Appeal Ordinance (Cap 484); (Added 79 of 1995 s. 50)

"Court of First Instance" (原訟法庭) means the Court of First Instance of the High Court; (Added 26 of 1998 s. 4)

"Crown lease" (官契) means any lease granted by the Crown before 1 July 1997, any instrument whereby the term of a Crown lease may have been extended or the provisions thereof varied and any agreement for a Crown lease; (Added 26 of 1998 s. 4)

"department" (部門), in relation to the Government, includes bureau; (Added 26 of 1998 s. 4)

"District Council" (區議會) has the meaning assigned to it by the District Councils Ordinance (Cap 547); (Replaced 8 of 1999 s. 89)

"District Court" (區域法院) means the District Court of the Hong Kong Special Administrative Region; (Added 26 of 1998 s. 4)

"District Judge" (區域法院法官) means a judge of the District Court; (Added 26 of 1998 s. 4)

"document" (文件) means any publication and any matter written, expressed or described upon any substance by means of letters, characters, figures or marks, or by more than one of these means;

"enactment" (成文法則) has the same meaning as Ordinance; (Added 26 of 1998 s. 4)

"Executive Council" (行政會議) means the Executive Council of the Hong Kong Special Administrative Region; (Added 26 of 1998 s. 4)

"export" (輸出、出口) means to take out or cause to be taken out of Hong Kong by air, land or water; (Added 26 of 1998 s. 4)

"Financial Secretary" (財政司司長) means the Financial Secretary of the Hong Kong Special Administrative Region and the Secretary for Financial Services and the Treasury; (Added 26 of 1998 s. 4. Amended L.N. 106 of 2002)

"financial year" (財政年度) means the period from 1 April in any year to 31 March in the immediately succeeding year, both days inclusive;

"foreign country" and "foreign state" (外國) mean a country or state other than the People's Republic of China; (Added 23 of 1998 s. 2)

"foreign currency" (外幣) means any currency other than Hong Kong currency; (Added 23 of 1998 s. 2)

"full age" (成年)* means the age of 18 years; (Added 32 of 1990 s. 6)

"Gazette" (憲報) means-

- (a) the Government of the Hong Kong Special Administrative Region Gazette and any supplement thereto;
- (b) the Gazette published by the Administration on or between 12 October 1945 and 1 May 1946;
- (c) the Government of the Hong Kong Special Administrative Region Gazette Extraordinary;
- (d) the Hong Kong Government Gazette and any supplement thereto published before 1 July 1997;
- (e) any Special Gazette or Gazette Extraordinary published before 1 July 1997; (Added 26 of 1998 s. 4)

"general holiday" and "public holiday" (公眾假期、公眾假日) mean any day which is a general holiday for the purposes of the General Holidays Ordinance (Cap 149); (Added 26 of 1998 s. 4. Amended 35 of 1998 s. 5)

"general revenue" (政府一般收入) means the general revenue of the Hong Kong Special Administrative Region; (Added 26 of 1998 s. 4)

"Government" (特區政府) means the Government of the Hong Kong Special Administrative Region; (Added 26 of 1998 s. 4)

"Government lease" (政府租契) means a lease of land granted by or on behalf of the Government, and includes-

- (a) an instrument whereby-
 - (i) the term of the lease has been extended; or
 - (ii) the provisions of the lease have been varied;
- (b) an agreement for such a lease; and
- (c) a Crown lease; (Added 26 of 1998 s. 4)

"Government Printer" (政府印務局) means-

- (a) the Government Printer of the Hong Kong Special Administrative Region and any other printer authorized by or on behalf of the Chief Executive to print any Ordinance or any other document of the Government;
- (b) in relation to any Ordinance or any other document printed before 1 July 1997, the Government Printer within the meaning of this section as in force immediately before that date; (Added 26 of 1998 s. 4)

"harbour" (海港) means the waters of Hong Kong within the boundaries specified in Schedule 3; (Added 26 of 1998 s. 4)

"health officer" (衛生主任) means-

- (a) the Director, Deputy Director and Assistant Director of Health;
- (b) any person appointed as a health officer by the Chief Executive; and
- (c) any person for the time being performing the duties of a health officer under any Ordinance; (Added 26 of 1998 s. 4)

"High Court" (高等法院) means the High Court of the Hong Kong Special Administrative Region established by section 3 of the High Court Ordinance (Cap 4); (Added 26 of 1998 s. 4)

"HKSAR" (特區) means the Hong Kong Special Administrative Region of the People's Republic of China; (Added 26 of 1998 s. 4)

"Hong Kong" (香港) means the Hong Kong Special Administrative Region; (Added 26 of 1998 s. 4)

"Hong Kong permanent resident" and "permanent resident of the Hong Kong Special Administrative Region" (香港永久性居民、香港特別行政區永久性居民) mean a person who belongs to a class or description of persons specified in Schedule 1 to the Immigration Ordinance (Cap 115);

(Added 26 of 1998 s. 4)

"Hong Kong Special Administrative Region" (香港特別行政區) means the Hong Kong Special Administrative Region of the People's Republic of China, the geographical extent of which is the land and sea specified or referred to in Schedule 2; (Added 26 of 1998 s. 4)

"immovable property" (不動產) means-

- (a) land, whether covered by water or not;
- (b) any estate, right, interest or easement in or over any land; and
- (c) things attached to land or permanently fastened to anything attached to land;

"import" (輸入、進口) means to bring or cause to be brought into Hong Kong by air, land or water; (Added 26 of 1998 s. 4)

"infant" (幼年人) and "minor" (未成年人)* mean a person who has not attained the age of 18 years; (Amended 32 of 1990 s. 6)

"instrument" (文書) includes any publication in the Gazette having legal effect;

"Joint Declaration" (聯合聲明) means the Sino-British Joint Declaration on the Question of Hong Kong done at Beijing on 19 December 1984; (Added 26 of 1998 s. 4)

"judge" (法官) means the Chief Justice, a judge of the Court of Final Appeal, the Chief Judge, a Justice of Appeal, a judge of the Court of First Instance, a recorder of the Court of First Instance and a deputy judge of the Court of First Instance; (Added 26 of 1998 s. 4)

"judge of the Court of Final Appeal" (終審法院法官) means the Chief Justice, a permanent judge and a non-permanent judge of the Court of Final Appeal; (Added 79 of 1995 s. 50. Amended 26 of 1998 s. 37)

"justice" and "justice of the peace" (太平紳士) mean a person appointed to be a justice of the peace under the Justices of the Peace Ordinance (Cap 510); (Amended 47 of 1997 s. 10)

"Kowloon" (九龍) means the area specified in Schedule 4;

"Lands Tribunal" (土地審裁處) means the Lands Tribunal established under section 3 of the Lands Tribunal Ordinance (Cap 17); (Added 62 of 1974 s. 16)

"law" (法律、法例、法) means any law for the time being in force in, having legislative effect in, extending to, or applicable in, Hong Kong; (Added 26 of 1998 s. 4)

"Legislative Council" (立法會) means-

- (a) the Legislative Council of the Hong Kong Special Administrative Region;
- (b) the Provisional Legislative Council during its existence; (Added 26 of 1998 s. 4)

"magistrate" (裁判官) means any person appointed to be a permanent or special magistrate under the Magistrates Ordinance (Cap 227); (Replaced 47 of 1997 s. 10)

"master" (船長), when used with reference to a vessel, means the person (except a pilot) having for the time being command or charge of the vessel;

"medical practitioner" (醫生), "registered medical practitioner" (註冊醫生) and any words importing that a person is recognized by any Ordinance to be a medical practitioner in Hong Kong or a member of the medical profession in Hong Kong, mean a person duly registered as, or deemed to be registered as, a medical practitioner under the Medical Registration Ordinance (Cap 161);

"Ministry of Foreign Affairs" (外交部) means the Ministry of Foreign Affairs of the Central People's Government; (Added 26 of 1998 s. 4)

"month" (月) means calendar month;

"movable property" (動產) means property of every description except immovable property;

"national law applying in Hong Kong" (在香港實施的全國性法律) means a national law applied in Hong Kong pursuant to the provisions of Article 18 of the Basic Law; (Added 26 of 1998 s. 4)

"New Kowloon" (新九龍) means the area specified in Schedule 5;

"New Territories" (新界) means the area specified or referred to in Schedule 5A; (Added 26 of 1998 s. 4)

"oath" (誓言) and "affidavit" (誓章) include, in the case of persons allowed or required by law to affirm instead of swearing, affirmation; and "swear" (宣誓) in the like case includes affirm;

"occupy" (佔用) includes use, inhabit, be in possession of or enjoy the land or premises to which the word relates, otherwise than as a mere servant or for the mere purpose of the care, custody or charge thereof;

"offence" (罪、罪行、罪項、犯法行為) includes any crime and any contravention or other breach of, or failure to comply with, any provision of any law, for which a penalty is provided; (Added 26 of 1998 s. 4)

"official languages" (法定語文) means the English language and the Chinese language, and a reference to an "official language" shall be construed as a reference to the English language or the Chinese language as the case may be; (Added 18 of 1987 s. 2)

"order paper" (議事程序表), in relation to the Legislative Council, includes agenda; (Added 26 of 1998 s. 4)

"Ordinance" (條例) means-

- (a) any Ordinance enacted by the Legislative Council;
- (b) any Ordinance adopted by virtue of Article 160 of the Basic Law as a law of the Hong Kong Special Administrative Region;
- (c) any subsidiary legislation made under any such Ordinance except any such subsidiary legislation which has pursuant to Article 160 of the Basic Law been declared to be in contravention of the Basic Law; and
- (d) any provision or provisions of any such Ordinance or subsidiary legislation; (Added 26 of 1998 s. 4)

"People's Republic of China" (中華人民共和國) includes Taiwan, the Hong Kong Special Administrative Region and Macau; (Added 26 of 1998 s. 4)

"per cent" (釐、百分之), when used in relation to a rate of interest payable in any circumstances, means the rate of interest specified payable in respect of a year, unless it is expressly provided that it is payable in respect of any other period;

"person" (人、人士、個人、人物、人選) includes any public body and any body of persons, corporate or unincorporate, and this definition shall apply notwithstanding that the word "person" occurs in a provision creating or relating to an offence or for the recovery of any fine or compensation;

"pier" (碼頭) includes every quay, wharf or jetty of whatever description connected to and having direct access to the shore and used or intended to be used for the purposes of a pier, quay, wharf or jetty;

"police officer" (警務人員) and terms or expressions referring to ranks in the Hong Kong Police Force shall bear the meanings respectively assigned to them by the Police Force Ordinance (Cap 232); (Added 26 of 1998 s. 4)

"power" (權、權力) includes any privilege, authority and discretion;

"prescribed" (訂明) and "provided" (訂定), when used in or with reference to any Ordinance, mean prescribed or provided by that Ordinance or by subsidiary legislation made under that Ordinance;

"prison" (獄、監獄) means any place or building or portion of a building set apart for the purpose of a prison under any Ordinance relating to prisons;

"property" (財產) includes-

- (a) money, goods, choses in action and land; and
- (b) obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as defined in paragraph (a) of this definition;

"Provisional Legislative Council" (臨時立法會) means the Provisional Legislative Council of the Hong Kong Special Administrative Region; (Added 26 of 1998 s. 4)

"public" (公眾、公眾人士) includes any class of the public;

"publication" (刊物) means-

- (a) all written and printed matter;
- (b) any record, tape, wire, perforated roll, cinematograph film or other contrivance by means of which any words or ideas may be mechanically, electronically or electrically produced, reproduced, represented or conveyed;
- (c) anything whether of a similar nature to the foregoing or not, containing any visible representation, or by its form, shape, or in any manner, capable of producing, reproducing, representing or conveying words or ideas; and
- (d) every copy and reproduction of any publication as defined in paragraphs (a), (b) and (c) of this definition;

"public body" (公共機構) includes-

- (a) the Executive Council;
- (b) the Legislative Council;
- (c) (Repealed 78 of 1999 s. 7)
- (ca) any District Council; (Added 42 of 1981 s. 27. Amended 8 of 1999 s. 89)
- (cb) (Repealed 78 of 1999 s. 7)
- (d) any other urban, rural or municipal council;
- (e) any department of the Government; and
- (f) any undertaking by or of the Government;

"public office" (公職) means any office or employment the holding or discharging of which by a person would constitute that person a public officer;

"public officer" (公職人員) means any person holding an office of emolument under the Government, whether such office be permanent or temporary; (Added 26 of 1998 s. 4)

"public place" (公眾地方、公眾場所) means-

- (a) any public street or pier, or any public garden; and
- (b) any theatre, place of public entertainment of any kind, or other place of general resort, admission to which is obtained by payment or to which the public have or are permitted to have access;

"public seal" (公印) means the public seal of the Hong Kong Special Administrative Region; (Added 26 of 1998 s. 4)

"public servant" (公務員、公務人員) has the same meaning as public officer; (Added 26 of 1998 s. 4)

"registered" (登記、註冊), when used with reference to a document, means registered under the provisions of any law applicable to the registration of such a document;

"Registrar of the High Court" (高等法院司法常務官) means the Registrar of the High Court and any Deputy or Assistant Registrar of the High Court; (Added 26 of 1998 s. 4)

"regulations" (規例) has the same meaning as subsidiary legislation and subordinate legislation; (Added 26 of 1998 s. 4)

"repeal" (廢除) includes rescind, revoke, cancel or replace;

"road" (路、道路) has the same meaning as street; (Added 26 of 1998 s. 4)

"rules of court" (法院規則), when used in relation to any court, means rules made by the authority having for the time being power to make rules and orders regulating the practice and procedure of such court;

"Secretary for Justice" (律政司司長) means the Secretary for Justice of the Hong Kong Special Administrative Region; (Added 26 of 1998 s. 4)

"sell" (賣、售賣、出售) includes exchange and barter;

"ship" (船、船舶) includes every description of vessel used in navigation not exclusively propelled by oars;

"sign" (簽名、簽署) includes, in the case of a person unable to write, the affixing or making of a seal, mark, thumbprint or chop;

"sitting", in relation to the Legislative Council, includes meeting; (Added 26 of 1998 s. 4)

"solicitor" (律師) means a person admitted before the Court of First Instance to practise as a solicitor;
(Added 26 of 1998 s. 4)

"State" ("國家") includes only-

- (a) the President of the People's Republic of China;
- (b) the Central People's Government;
- (c) the Government of the Hong Kong Special Administrative Region;
- (d) the Central Authorities of the People's Republic of China that exercise functions for which the Central People's Government has responsibility under the Basic Law;
- (e) subordinate organs of the Central People's Government that-
 - (i) on its behalf, exercise executive functions of the Central People's Government or functions for which the Central People's Government has responsibility under the Basic Law; and
 - (ii) do not exercise commercial functions, when acting within the scope of the delegated authority and the delegated functions of the subordinate organ concerned; and
- (f) subordinate organs of the Central Authorities of the People's Republic of China referred to in paragraph (d), that-
 - (i) on behalf of those Central Authorities, exercise executive functions of the Central People's Government or functions for which the Central People's Government has responsibility under the Basic Law; and
 - (ii) do not exercise commercial functions, when acting within the scope of the delegated authority and the delegated functions of the subordinate organ concerned; (Added 26 of 1998 s. 4)

"statutory declaration" (法定聲明), if made-

- (a) in Hong Kong, means a declaration under the repealed Statutory Declarations Ordinance or the Oaths and Declarations Ordinance (Cap 11);
- (b) in any other common law jurisdiction, means a declaration made before a justice of the peace, notary public, or other person having authority therein under any legal provision for the time being in force in the jurisdiction to take or receive a declaration;
- (c) in the mainland of the People's Republic of China, means a declaration made before a notary pursuant to his notarial functions;
- (d) in any other place, means a declaration made before a consul of the People's Republic of China or a person having authority under a statute for the time being in force in the place to take or receive a declaration; (Added 26 of 1998 s. 4)

"street" (街、街道) means-

- (a) any highway, street, road, bridge, thorough-fare, parade, square, court, alley, lane, bridle-way, footway, passage or tunnel; and
- (b) any open place, whether or not situate on land the subject of a Government lease, used or frequented by the public or to which the public have or are permitted to have access; (Added 26 of 1998 s. 4)

"subsidiary legislation" and "subordinate legislation" (附屬法例、附屬法規、附屬立法) mean any proclamation, rule, regulation, order, resolution, notice, rule of court, bylaw or other instrument made under or by virtue of any Ordinance and having legislative effect; (Added 26 of 1998 s. 4)

"summary conviction" (簡易程序定罪) means a summary conviction by a magistrate in accordance with the provisions of the Magistrates Ordinance (Cap 227);

"surname" (姓、姓氏) includes a clan or family name;

"treaty" (條約) means a treaty, convention or agreement made between states, and any protocol or declaration attached thereto or independent thereof but referring thereto; (Added 26 of 1998 s. 4)

"triable summarily" (可循簡易程序審訊) means triable by a magistrate, in accordance with the provisions of the Magistrates Ordinance (Cap 227);

"vessel" (船隻) means any ship or boat and any description of vessel used in navigation;

"waters of Hong Kong" and "Hong Kong waters" (香港水域) mean all waters, whether navigable or not, included in the Hong Kong Special Administrative Region; (Added 26 of 1998 s. 4)

"weekday" and "week-day" (周日) mean any day other than a Sunday; (Added 68 of 1995 s. 15)

"words" (字、文字、語言文字) includes figures and symbols;

"writing" (書寫) and "printing" (印刷) include writing, printing, lithography, photography, typewriting and any other mode of representing words in a visible form;

"year" (年) means a year according to the Gregorian calendar;

"years of age" (歲、年歲、年齡) and words of like meaning, when used in reference to the age of any person, means years of age calculated from the date of birth. (Added 26 of 1998 s. 4)

(Amended 89 of 1993 s. 3; 26 of 1998 s. 4; 78 of 1999 s. 7)

* See also s. 6 of 32 of 1990.

Chapter:	89	Title:	PENSIONS ORDINANCE	Gazette Number:	63 of 1999
Section:	15	Heading:	Pension, gratuity or allowance may be cancelled, suspended or reduced on conviction, etc.	Version Date:	01/07/1997

Remarks:

Adaptation amendments retroactively made - see 63 of 1999 s. 3

(1) Where-

- (a) an officer to whom a pension or allowance has been granted- (Amended L.N. 63 of 1992)
 - (i) is convicted of any offence in connection with the public service under the Government, being an offence which is certified by the Chief Executive to have been gravely injurious to Hong Kong or to be liable to lead to serious loss of confidence in the public service; (Amended 63 of 1999 s. 3)
 - (ii) is convicted of any offence under Part II of the Prevention of Bribery Ordinance (Cap 201), being an offence related to the person's previous public service under the Government; or
 - (iii) is convicted of treason under section 2 of the Crimes Ordinance (Cap 200); or
 - (b) an officer is compulsorily retired in the exercise of disciplinary powers of punishment by the Government following a conviction of any offence referred to in paragraph (a), the pension or allowance which has been granted to him may be cancelled, suspended or reduced, or he may not be granted a pension, gratuity or allowance, as the case may be.
- (2) If after the retirement of an officer in circumstances in which he is eligible for a pension, gratuity or allowance but before the pension, gratuity or allowance is granted he is convicted and sentenced as specified in subsection (1)(a), any pension, gratuity or allowance eventually granted to him may be cancelled, suspended or reduced.
- (3) Subject to section 15A, the power under subsection (1) or (2) to cancel, suspend, reduce or refuse to grant a pension, allowance or gratuity shall be exercisable by a designated officer. (Replaced 86 of 1988 s. 7)

(4) Where, under this section, a designated officer refuses to grant a pension, allowance or gratuity to an officer or person, a pension, allowance or gratuity, as the case may be, shall accordingly not be granted to that officer or person. (Replaced 86 of 1988 s. 7)

(5)-(7) (Repealed 86 of 1988 s. 7)

(Replaced 36 of 1987 s. 36)

Chapter:	98	Title:	POST OFFICE ORDINANCE	Gazette Number:	23 of 1998 s. 2
Section:	32	Heading:	Prohibited articles	Version Date:	01/07/1997

Remarks:

Amendments retroactively made - see 23 of 1998 s. 2

- (1) No person shall post, tender for posting or send by post-
 - (a) any postal packet consisting of or containing anything which might expose postal officials to danger or which might soil or damage any other postal packet;
 - (b) any explosive, inflammable or dangerous substance;
 - (c) any animal or insect, live or dead, except as provided for in any regulations made under this Ordinance;
 - (d) (Repealed 34 of 1971 s. 3)
 - (e) any opium or any other drug to which the Dangerous Drugs Ordinance (Cap 134) applies; (Amended 33 of 1939; G.N. 840 of 1940 Supp. Schedule. See 2 of 1946 Schedule I Proc. No. 13)
 - (f) any obscene, immoral, indecent, offensive or libellous writing, picture or other thing;
 - (g) anything whatsoever of which the importation or circulation is forbidden in Hong Kong or in the country of destination (provided that such country is included in the Universal Postal Union); (Amended 1 of 1987 s. 8)
 - (h) any seditious publication within the meaning of any enactment relating to sedition; (Replaced 33 of 1939; G.N. 840 of 1940 Supp. Schedule)
 - (i) any postal packet which without lawful authority or excuse contains or bears any imitation or representation of any postage stamp; (Amended 23 of 1998 s. 2)
 - (j) any postal packet which purports to be prepaid with any postage stamp which in fact has been used or appears to have been used to prepay any other postal article;
 - (k) any imitation of any envelope, wrapper, card, form or document issued by any postal authority; (Amended 23 of 1998 s. 2)
 - (l) any postal packet bearing any imitation of any words, letters or other marks used by any postal authority; (Amended 23 of 1998 s. 2)
 - (m) any postal packet bearing without lawful authority any words, letters or other marks calculated to convey the impression that such postal packet has been sent on Her Majesty's service or on Government service; (Amended 80 of 1997 s. 39)
 - (n) any lottery ticket, document or other thing relating to an unlawful lottery, other than a lottery promoted, conducted or managed outside Hong Kong; or (Replaced 46 of 1992 s. 4. Amended 38 of 1994 s. 6)
 - (o) (Repealed 46 of 1992 s. 4)
 - (p) anything the sending of which by post is prohibited by any regulation made under this or any other Ordinance.

(2) No person shall post or tender for posting or send by post, in any particular kind of postal packet, anything if the sending of such thing by post in that kind of postal packet is prohibited by any regulation made under this Ordinance.

(3) The importation by post of anything which is prohibited to be sent by post is prohibited.

(4) (Repealed 1 of 1987 s. 5)

(5) If any postal packet received by the Post Office from outside Hong Kong for delivery in Hong Kong contains anything the sending of which by post is prohibited by or under this Ordinance, it shall be lawful for a magistrate, upon such notice to the addressee as he may think reasonable, to order that such thing be forfeited to the Crown, and anything so forfeited shall be dealt with in such way as the Governor may direct. (Amended 1 of 1987 s. 8)

(6) It shall be lawful for the Postmaster General to refuse to receive in the post or to refuse to forward anything which, by reason of its nature, contents or form or for any other reason, is not in accordance with any departmental rules made or adopted by him or any departmental practice followed in the Post Office.

[cf. 1908 c. 48 s. 63 U.K.]

Chapter:	99	Title:	PENSION BENEFITS ORDINANCE	Gazette Number:	63 of 1999
Section:	29	Heading:	Pension benefits may be cancelled, suspended or reduced on conviction, etc.	Version Date:	01/07/1997

Remarks:

Adaptation amendments retroactively made - see 63 of 1999 s. 3

(1) Where an officer to whom pension has been granted-

(a) is convicted of any offence in connection with the public service under the Government, being an offence which is certified by the Chief Executive to have been gravely injurious to Hong Kong or to be liable to lead to serious loss of confidence in the public service; (Amended 63 of 1999 s. 3)

(b) is convicted of any offence under Part II of the Prevention of Bribery Ordinance (Cap 201), being an offence related to the person's previous public service under the Government; or

(c) is convicted of treason under section 2 of the Crimes Ordinance (Cap 200),

the pension may be cancelled, suspended or reduced.

(2) If after the retirement of an officer in circumstances in which he is eligible for pension benefits but before the pension benefits are granted he is convicted and sentenced as specified in subsection (1), any pension benefits eventually granted to him may be cancelled, suspended or reduced.

(3) Where an officer is compulsorily retired in the exercise of disciplinary powers of punishment by the Government following a conviction of any offence referred to in subsection (1), the deferred pension which may be granted to him may be cancelled, suspended or reduced, or he may not be granted a deferred pension.

(4) Subject to section 29A, the power under subsection (1), (2) or (3) to cancel, suspend, reduce or refuse to grant pension benefits shall be exercisable by a designated officer. (Replaced 86 of 1988 s. 4)

(5) Where, under this section, a designated officer refuses to grant a deferred pension to a person, a deferred pension shall accordingly not be granted to that person. (Replaced 86 of 1988 s. 4)

(6)-(8) (Repealed 86 of 1988 s. 4)

(Enacted 1987)

Chapter: 151 Title: SOCIETIES ORDINANCE Gazette Number: 118 of 1997 s. 2

Heading: **Long title** Version Date: 01/07/1997

To provide for the registration of societies, for the prohibition of the operation of certain societies and for matters related thereto.

(Amended 75 of 1992 s. 2; 118 of 1997 s. 2)

[27 May 1949]

(Originally 28 of 1949 (Cap 151 1950))

Chapter: 151 Title: SOCIETIES ORDINANCE Gazette Number: L.N. 320 of 1999

Section: 2 Heading: **Interpretation** Version Date: 01/01/2000

(1) In this Ordinance, unless the context otherwise requires-
"branch" (分支機構), in relation to a society, includes any society which is in any way subordinate to any other society; (Added 28 of 1961 s. 2. Amended 118 of 1997 s. 3)

"connection" (聯繫), in relation to a society or a branch, that is a political body, includes the following circumstances-

- (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 foreign political organization or a political organization of Taiwan;
- (b) if the society or the branch is affiliated directly or indirectly with a foreign political organization or a political organization of Taiwan;
- (c) if the society's or the branch's policies or any of them are determined directly or indirectly by a foreign political organization or a political organization of Taiwan; or
- (d) if a foreign political organization or a political organization of Taiwan directs, dictates, controls or participates, directly or indirectly, in the decision making process of the society or the branch; (Added 118 of 1997 s. 3)

"election" (選舉) means-

- (a) a general election or a by-election to elect members of the Legislative Council; or
- (b) an ordinary election or a by-election to elect members of a District Council; (Added 118 of 1997 s. 3. Amended 8 of 1999 s. 89; 48 of 1999 s. 48; 78 of 1999 s. 7)

"exempted society" (獲豁免社團) means a society exempted by the Societies Officer from registration under this Ordinance; (Added 118 of 1997 s. 3)

"foreign political organization" (外國政治性組織) includes-

- (a) a government of a foreign country or a political subdivision of a government of a foreign country;

- (b) an agent of a government of a foreign country or an agent of a political subdivision of the government of a foreign country; or
 - (c) a political party in a foreign country or its agent; (Added 118 of 1997 s. 3. Amended 23 of 1998 s. 2)
- "local society" (本地社團) means any society organized and established in Hong Kong or having its headquarters or chief place of business in Hong Kong, and includes any society deemed to be established in Hong Kong by virtue of section 2(2B) or 4; (Amended 36 of 1982 s. 2; 30 of 1988 s. 4; 75 of 1992 s. 3; 118 of 1997 s. 3)
- "office-bearer" (幹事) of a society means any person who is the president, or vice-president, or secretary or treasurer of such society or any branch thereof, or who is a member of the committee or governing body of such society or any branch thereof, or who holds in such society or any branch thereof any office or position analogous to any of those mentioned above or in the case of a triad society, any person holding any rank or office in the triad society other than that of any ordinary member; (Amended 31 of 1957 s. 2; 28 of 1961 s. 2)
- "performance of functions" (履行職能) includes the exercise of powers and the performance of duties; (Added 75 of 1992 s. 3)
- "political body" (政治性團體) means-
- (a) a political party or an organization that purports to be a political party; or
 - (b) an organization whose principal function or main object is to promote or prepare a candidate for an election; (Added 118 of 1997 s. 3)
- "political organization of Taiwan" (台灣政治性組織) includes-
- (a) the administration of Taiwan or a political subdivision of the administration;
 - (b) an agent of the administration of Taiwan or an agent of a political subdivision of the administration; or
 - (c) a political party in Taiwan or its agent; (Added 118 of 1997 s. 3)
- "Secretariat" (秘書處) means the Triad Renunciation Secretariat established by section 26BA; (Added 12 of 1991 s. 2)
- "Societies Officer" (社團事務主任) means the Societies Officer and any Assistant Societies Officer appointed in accordance with the provisions of section 3; (Added 75 of 1992 s. 3)
- "society" (社團) means any club, company, partnership or association of persons, whatever the nature or objects, to which the provisions of this Ordinance apply; (Replaced 28 of 1961 s. 2)
- "specified form" (指明的表格) means a form specified by the Societies Officer; (Added 118 of 1997 s. 3)
- "triad ritual" (三合會儀式) means any ritual commonly used by triad societies, any ritual closely resembling any such ritual and any part of any such ritual; (Added 28 of 1961 s. 2)
- "Tribunal" (審裁處) means the Triad Renunciation Tribunal established by section 26A. (Added 58 of 1988 s. 2)
- (2) The provisions of this Ordinance shall not apply to any person listed in the Schedule. (Added 28 of 1961 s. 2. Amended 36 of 1982 s. 2; 75 of 1992 s. 3)
- (2A) (Repealed 75 of 1992 s. 3)
- (2B) This Ordinance applies to a society to which it otherwise would not apply under the Schedule by its being registered under the Business Registration Ordinance (Cap 310) if the Societies Officer gives written notice to the society that he is of the opinion that the society is not used solely for religious, charitable, social or recreational purposes. The society is taken to be established in Hong Kong on the date on which the notice is given. (Added 118 of 1997 s. 3)
- (3) The Chief Executive in Council may by order amend the Schedule. (Added 28 of 1961 s. 2. Amended 13 of 1999 s. 3)
- (4) In this Ordinance the expressions "public safety", "public order (ordre public)" and "the protection of rights and freedoms of others" are interpreted in the same way as under the International Covenant on Civil and Political Rights as applied to Hong Kong. "national security" (國家安全) means

the safeguarding of the territorial integrity and the independence of the People's Republic of China.
(Replaced 118 of 1997 s. 3)

(Amended 75 of 1992 s. 3)

Chapter:	151	Title:	SOCIETIES ORDINANCE	Gazette Number:	118 of 1997 s. 10
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Section:	14A	Heading:	Removing a society from the list	Version Date:	01/07/1997
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(1) (Repealed 118 of 1997 s. 10)

(2) Where a registered society or an exempted society has subsequently become a person listed in the Schedule, the Societies Officer may, upon application in writing by the society, remove the society from the list kept under section 11.

(3) Where an order prohibiting the operation or continued operation of a society or a branch has been published in the Gazette under section 8(2), the Societies Officer shall, as soon as practicable after the order comes into effect, remove the society or the branch from the list kept under section 11 but where subsequently, the order is revoked pursuant to an appeal under section 8(7), the Societies Officer shall as soon as practicable restore the society or the branch to the list.

(Added 75 of 1992 s. 7. Amended 118 of 1997 s. 10)

Chapter:	151	Title:	SOCIETIES ORDINANCE	Gazette Number:
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Section:	21	Heading:	Persons allowing unlawful society on premises	Version Date:	30/06/1997
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(1) Save as is proved in subsection (2), any person who knowingly allows a meeting of an unlawful society, or of members of an unlawful society, to be held in any house, building or place belonging to or occupied by him, or over which he has control, shall be guilty of an offence and shall be liable on conviction on indictment in the case of a first conviction for that offence, to a fine of \$50000 and to imprisonment for 12 months and in the case of a second or subsequent conviction for that offence, to a fine of \$100000 and to imprisonment for 2 years.

(2) Any person who knowingly allows a meeting of a triad society, or of members of a triad society, to be held in any house, building or place belonging to or occupied by him, or over which he has control, shall be guilty of an offence and shall be liable on conviction on indictment in the case of a first conviction for that offence, to a fine of \$100000 and to imprisonment for 3 years and in the case of a second or subsequent conviction for that offence, to a fine of \$200000 and to imprisonment for 5 years.

(Replaced 75 of 1992 s. 14)

Chapter:	151	Title:	SOCIETIES ORDINANCE	Gazette Number:	
Section:	22	Heading:	Penalty for inciting, etc., a person to become a member of an unlawful society	Version Date:	30/06/1997

(1) Save as is provided in subsection (2), any person who incites, induces or invites another person to become a member of or assist in the management of an unlawful society and any person who uses any violence, threat or intimidation towards any other person in order to induce him to become a member or to assist in the management of an unlawful society shall be guilty of an offence and shall be liable on conviction on indictment to a fine of \$50000 and to imprisonment for 2 years.

(2) Any person who incites, induces or invites another person to become a member of or assist in the management of a triad society and any person who uses any violence, threat or intimidation towards any other person in order to induce him to become a member or to assist in the management of a triad society shall be guilty of an offence and shall be liable on conviction on indictment to a fine of \$250000 and to imprisonment for 5 years.

(Replaced 75 of 1992 s. 15)

Chapter:	151	Title:	SOCIETIES ORDINANCE	Gazette Number:	
Section:	23	Heading:	Penalty for procuring subscription or aid for an unlawful society	Version Date:	30/06/1997

(1) Save as is provided in subsection (2), any person who procures or attempts to procure from any other person any subscription or aid for the purposes of an unlawful society shall be guilty of an offence and shall be liable on conviction on indictment to a fine of \$50000 and to imprisonment for 2 years.

(2) Any person who procures or attempts to procure from any other person any subscription or aid for the purposes of a triad society shall be guilty of an offence and shall be liable on conviction on indictment to a fine of \$250000 and to imprisonment for 5 years.

(Replaced 75 of 1992 s. 16)

Chapter:	151	Title:	SOCIETIES ORDINANCE	Gazette Number:	L.N. 90 of 2001
Schedule:		Heading:	SCHEDULE	Version Date:	01/06/2001

[section 2]

PERSONS TO WHICH THE ORDINANCE DOES NOT APPLY

- (1) Any company registered under the Companies Ordinance (Cap 32).
- (2) Any co-operative society registered under the Co-operative Societies Ordinance (Cap 33).
- (3) Any trade union or any trade union federation registered under the Trade Unions Ordinance (Cap 332). (Replaced L.N. 59 of 1964)
- (4) (a) An association the affairs of which are conducted wholly or partly in any school premises and which consists wholly or mainly of persons under the age of 21 years who are undergoing primary education or secondary education in any school.
(b) For the purposes of this item, "primary education" (小學教育), "school" (學校), "school premises" (校舍) and "secondary education" (中學教育) have the meanings assigned to them by section 3 of the Education Ordinance (Cap 279). (Replaced 8 of 2001 s. 30)
- (5) Any company or association constituted pursuant to or under any Ordinance or other legislation applicable to Hong Kong. (Replaced 13 of 1999 s. 3)
- (5A) Any company or association which was, immediately before the commencement of the Adaptation of Laws (No. 3) Ordinance 1999 (13 of 1999), a company or association constituted under Royal Charter, Royal Letters Patent or any Imperial Act and was, immediately before that commencement, a local society. (Added 13 of 1999 s. 3)
- (6) Any company, association or partnership formed for the sole purpose of carrying on any lawful business and registered under any other Ordinance. (Amended 71 of 1988 s. 2)
- (7) (Repealed 75 of 1992 s. 32)
- (8) Any Chinese temple registered under the Chinese Temples Ordinance (Cap 153).
- (9) Any credit union registered under the Credit Unions Ordinance (Cap 119). (Added L.N. 41 of 1970)
- (10) Any corporation registered under the Building Management Ordinance (Cap 344). (Added L.N. 107 of 1973. Amended 27 of 1993 s. 48)
- (11) Any association of owners or occupiers of premises which is approved for the purposes of this Ordinance by the Secretary for Home Affairs by notice in writing. (Added L.N. 107 of 1973. Amended L.N. 94 of 1974; L.N. 17 of 1982; L.N. 14 of 1983; L.N. 18 of 1983; L.N. 262 of 1989)
- (12) Any association or group of persons which-
(a) is formed for the sole purpose of recreation or training;
(b) conducts its activities wholly or largely in a Community or Youth Centre; and
(c) was formed with and continues to have the approval of the Director of Social Welfare. (Added L.N. 114 of 1974)
- (13) Any association of which-
(a) one or more of the directors, trustees or other office holders; or
(b) the committee or board or other body having the management of the association, is or are incorporated by any Ordinance. (Added L.N. 93 of 1975)
- (14) The operator of, and participants in, any chit fund, as defined in section 2 of the Chit-Fund Businesses (Prohibition) Ordinance (Cap 262), which complies with section 5(2) of that Ordinance. (Added L.N. 225 of 1975)
- (15) (Repealed 75 of 1992 s. 32)
- (16) An unincorporated trust-

- (a) of a public character established solely for charitable purposes; or
- (b) established solely for the purpose of engaging in a retirement scheme approved under section 87A of the Inland Revenue Ordinance (Cap 112). (Added 75 of 1992 s. 32)
(Added 28 of 1961 s. 19)

Chapter:	200	Title:	CRIMES ORDINANCE	Gazette Number:	
Section:	3	Heading:	Treasonable offences	Version Date:	30/06/1997

- (1) Any person who forms an intention to effect any of the following purposes, that is to say-
 - (a) to depose Her Majesty from the style, honour and royal name of the Crown of the United Kingdom or of any other of Her Majesty's dominions;
 - (b) to levy war against Her Majesty within the United Kingdom or any British territory in order by force or constraint to compel Her Majesty to change Her measures or counsels, or in order to put any force or constraint upon, or to intimidate or overawe, Parliament or the legislature of any British territory; or
 - (c) to instigate any foreigner with force to invade the United Kingdom or any British territory, and manifests such intention by an overt act or by publishing any printing or writing, shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for life. [cf. 1848 c. 12 s. 3 U.K.]
- (2) It shall be no defence to a charge under this section that any act proved against the person charged amounts to treason under section 2; but no person convicted or acquitted of an offence under this section shall afterwards be prosecuted for treason under section 2 upon the same facts. [cf. 1848 c. 12 s. 7 U.K.]

Chapter:	200	Title:	CRIMES ORDINANCE	Gazette Number:	
Section:	4	Heading:	Limitations as to trial for treason, etc.	Version Date:	30/06/1997

- (1) A person shall not be prosecuted for any offence under section 2 or 3 unless the prosecution is commenced within 3 years after the offence is committed. [cf. 1695 c. 3 s. 6 U.K.]
- (2) This section does not apply to cases in which the overt act alleged is the killing of Her Majesty, or a direct attempt to endanger the life of Her Majesty. [cf. 1800 c. 93 s. 1 U.K.]
- (3) The procedure on trials for treason or misprision of treason shall be the same as the procedure on trials for murder. [cf. 1967 c. 58 s. 12(6) U.K.]

Chapter:	200	Title:	CRIMES ORDINANCE	Gazette Number:	
Section:	5	Heading:	Assaults on the Queen	Version Date:	30/06/1997

Any person who wilfully-

- (a) produces or has near Her Majesty any arms or destructive or dangerous thing with intent to use the same to injure Her Majesty;
- (b) with intent to alarm or to injure Her Majesty, or to provoke a breach of the peace or whereby a breach of the peace is likely to be caused-
 - (i) discharges, or points, aims or presents any arms at or near Her Majesty;
 - (ii) causes any explosive substance to explode near Her Majesty;
 - (iii) assaults Her Majesty; or
 - (iv) throws anything at or upon Her Majesty,

shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 7 years.

[cf. 1842 c. 51 s. 2 U.K.]

Chapter:	200	Title:	CRIMES ORDINANCE	Gazette Number:	
Section:	9	Heading:	Seditious intention	Version Date:	30/06/1997

(1) A seditious intention is an intention-

- (a) to bring into hatred or contempt or to excite disaffection against the person of Her Majesty, or Her Heirs or Successors, or against the Government of Hong Kong, or the government of any other part of Her Majesty's dominions or of any territory under Her Majesty's protection as by law established; (Replaced 28 of 1938 s. 2)
- (b) to excite Her Majesty's subjects or inhabitants of Hong Kong to attempt to procure the alteration, otherwise than by lawful means, of any other matter in Hong Kong as by law established; or
- (c) to bring into hatred or contempt or to excite disaffection against the administration of justice in Hong Kong; or
- (d) to raise discontent or disaffection amongst Her Majesty's subjects or inhabitants of Hong Kong; or
- (e) to promote feelings of ill-will and enmity between different classes of the population of Hong Kong; or
- (f) to incite persons to violence; or (Added 30 of 1970 s. 2)
- (g) to counsel disobedience to law or to any lawful order. (Added 30 of 1970 s. 2)

(2) An act, speech or publication is not seditious by reason only that it intends- (Amended 28 of 1938 s. 2)

- (a) to show that Her Majesty has been misled or mistaken in any of Her measures; or
- (b) to point out errors or defects in the government or constitution of Hong Kong as by law established or in legislation or in the administration of justice with a view to the remedying of such errors or defects; or
- (c) to persuade Her Majesty's subjects or inhabitants of Hong Kong to attempt to procure by

- lawful means the alteration of any matter in Hong Kong as by law established; or
- (d) to point out, with a view to their removal, any matters which are producing or have a tendency to produce feelings of ill-will and enmity between different classes of the population of Hong Kong. (Amended 28 of 1938 s. 2)
- (3) (Repealed 74 of 1992 s. 2)

(13 of 1938 s. 3 incorporated)

Chapter:	200	Title:	CRIMES ORDINANCE	Gazette Number:	
Section:	10	Heading:	Offences	Version Date:	30/06/1997

- (1) Any person who-
- does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act with a seditious intention; or
 - utters any seditious words; or
 - prints, publishes, sells, offers for sale, distributes, displays or reproduces any seditious publication; or
 - imports any seditious publication, unless he has no reason to believe that it is seditious,
- shall be guilty of an offence and shall be liable for a first offence to a fine of \$5000 and to imprisonment for 2 years, and for a subsequent offence to imprisonment for 3 years; and any seditious publication shall be forfeited to the Crown. (13 of 1938 s. 4 incorporated. Amended 22 of 1950 Schedule; 30 of 1970 s. 3)
- (2) Any person who without lawful excuse has in his possession any seditious publication shall be guilty of an offence and shall be liable for a first offence to a fine of \$2000 and to imprisonment for 1 year, and for a subsequent offence to imprisonment for 2 years; and such publication shall be forfeited to the Crown. (13 of 1938 s. 4 incorporated. Amended 22 of 1950 Schedule)
- (3) Where any person has been convicted of an offence under subsection (1) or (2) in respect of any seditious publication, the court may order the seizure and forfeiture of any copies of the seditious publication in the possession of-
- the person convicted; or
 - any other person named in the order, if the court is satisfied by evidence on oath that the copies are in the possession of the other person for the use of the person convicted. (60 of 1971 s. 19 incorporated) [cf. 1819 c. 8 ss. 1 & 2 U.K.]
- (4) Any copies seized under subsection (3) shall be disposed of as the court may direct; but no copies shall be destroyed until the expiration of the period within which an appeal may be lodged or, if an appeal is lodged, until the appeal has been finally determined or abandoned. (60 of 1971 s. 19 incorporated)
- (5) In this section-
- "seditious publication" (煽動刊物) means a publication having a seditious intention;
- "seditious words" (煽動文字) means words having a seditious intention. (13 of 1938 s. 2 incorporated)

Chapter:	200	Title:	CRIMES ORDINANCE	Gazette Number:	
Section:	11	Heading:	Legal proceedings	Version Date:	30/06/1997

(1) No prosecution for an offence under section 10 shall be begun except within 6 months after the offence is committed.

(2) No prosecution for an offence under section 10 shall be instituted without the written consent of the Attorney General.

(13 of 1938 s. 5 incorporated)

Chapter:	200	Title:	CRIMES ORDINANCE	Gazette Number:	
Section:	14	Heading:	Power to remove seditious publications	Version Date:	30/06/1997

(1) Any police officer or public officer may-

- (a) enter any premises or place;
- (b) stop and board any vehicle, tramcar, train or vessel,

and remove therefrom or obliterate any seditious publication.

(2) Any police officer or public officer may-

- (a) break open any outer or inner door of any premises or place which he is empowered by this section to enter;
- (b) remove by force any person or thing obstructing any removal or obliteration which he is empowered by this section to make;
- (c) detain any vehicle, tramcar, train or vessel until any seditious publication has been removed or obliterated therefrom;
- (d) remove any person from any vehicle, tramcar, train or vessel while any seditious publication is removed or obliterated.

(3) Notwithstanding anything contained in subsection (1)(a), the powers conferred thereby shall, if the seditious publication is not visible from a public place, only be exercised-

- (a) with the prior permission of the occupier of the premises or place; or
- (b) under and in accordance with a warrant issued by a magistrate for such purpose.

(30 of 1970 s. 4 incorporated)

Chapter:	200	Title:	CRIMES ORDINANCE	Gazette Number:	
Section:	15	Heading:	Unlawful oaths to commit capital offences	Version Date:	30/06/1997

Any person who-

- (a) administers, or is present at and consents to the administering of, any oath or engagement in the nature of an oath, purporting to bind the person who takes it to commit an offence of murder, treason or piracy with violence; (Amended 24 of 1993 s. 3)
 - (b) takes any such oath or engagement, not being compelled to do so,
- shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for life.
[cf. 1812 c. 104 ss. 1 & 6 U.K.]

Chapter:	200	Title:	CRIMES ORDINANCE	Gazette Number:	
Section:	16	Heading:	Other unlawful oaths to commit offences	Version Date:	30/06/1997

Any person who-

- (a) administers, or is present at and consents to the administering of, any oath or engagement in the nature of an oath, purporting to bind the person who takes it to act in any of the following ways, that is to say-
 - (i) to engage in any mutinous or seditious enterprise;
 - (ii) to commit any offence not punishable with death;
 - (iii) to provoke a breach of the peace;
 - (iv) to be of any association or society, formed for the purpose of doing any act mentioned in subparagraph (i), (ii) or (iii);
 - (v) to obey the orders or commands of any committee or body of men not lawfully constituted, or of any leader or commander or other person not having authority by law for that purpose;
 - (vi) not to inform or give evidence against any associate or other person;
 - (vii) not to reveal or discover any unlawful association or society or any illegal act done or to be done, or any illegal oath or engagement that may have been administered or tendered to or taken by himself or any other person, or the import of any such oath or engagement; or
 - (b) takes any such oath or engagement, not being compelled to do so,
- shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 7 years.
[cf. 1797 c. 123 ss. 1 & 5 U.K.]

Chapter:	200	Title:	CRIMES ORDINANCE	Gazette Number:	
Section:	17	Heading:	Compulsion in taking unlawful oaths	Version Date:	30/06/1997

It shall be no defence to a charge under section 15 or 16 that the person charged was compelled to take any oath or engagement mentioned therein, unless-

- (a) within 14 days after taking it; or

(b) if prevented by actual force or sickness, within 14 days after the termination of such prevention,
the person charged declares-
(i) by information on oath before a magistrate; or
(ii) if he is on actual service in Her Majesty's forces, either by such information or by informing his commanding officer,
of all he knows concerning the matter, including any person by whom and in whose presence, and the place where, and the time when, the oath or engagement was administered or taken.
[cf. 1797 c. 123 s. 2 U.K.; 1812 c. 104 s. 2 U.K.]

Chapter:	200	Title:	CRIMES ORDINANCE	Gazette Number:
Section:	12	Heading:	Evidence	Version Date: 30/06/1997

No person shall be convicted for an offence under section 10 on the uncorroborated testimony of one witness.
(13 of 1938 s. 6 incorporated)

Chapter:	200	Title:	CRIMES ORDINANCE	Gazette Number:
Section:	13	Heading:	Search warrant	Version Date: 30/06/1997

If a magistrate is satisfied by information on oath that there is reasonable cause to believe that an offence under section 10 has been or is about to be committed he may grant a search warrant authorizing any police officer to enter any premises or place named in the warrant, with such assistance as may be necessary, and if necessary by force, and to search the premises or place and every person found therein, and to seize anything found on the premises or place which the officer has reasonable ground for suspecting to be evidence of an offence under section 10.
(13 of 1938 s. 7 incorporated)

Chapter:	221	Title:	CRIMINAL PROCEDURE ORDINANCE	Gazette Number:	L.N. 362 of 1997; 25 of 1998
Section:	9	Heading:	Rules and orders as to practice and procedure	Version Date:	01/07/1997

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

(1) Rules and orders regulating the practice and procedure under this Ordinance shall be made by the Criminal Procedure Rules Committee, which shall consist of-

- (a) the Chief Justice, who shall be chairman;
- (b) a Justice of Appeal appointed by the Chief Justice;
- (c) a judge of the Court of First Instance appointed by the Chief Justice; (Amended 25 of 1998 s. 2)
- (d) the Secretary for Justice or a legal officer nominated by him; (Amended L.N. 362 of 1997)
- (e) the Director of Legal Aid or a legal aid officer nominated by him;
- (f) a barrister nominated by the Hong Kong Bar Association;
- (g) a solicitor nominated by The Law Society of Hong Kong;
- (h) the Registrar, or a Deputy Registrar appointed by the Chief Justice, who shall be secretary. (Replaced 13 of 1995 s. 23)

(1A) Rules and orders made by the Rules Committee shall not have effect until approved by the Legislative Council and published in the Gazette. (Added 13 of 1995 s. 23)

(2) Such rules and orders may provide for the times for or within which documents must be filed or notices given, the duties of the various officers of the court, the manner in which cases and arguments are to be presented, and generally for the better carrying out of the provisions of this Ordinance. (Amended 24 of 1950 Schedule; 15 of 1969 s. 2; 13 of 1995 s. 23)

(3) Subject to the provisions of this Ordinance and to such rules and orders and any other enactment (including any enactment relating to juries) applicable thereto, the practice and procedure in all criminal causes and matters (including trials for treason or misprision of treason) shall be, as nearly as possible, the same as the practice and procedure from time to time and for the time being in force for similar cases in England.

(4) The Rules Committee may, by notice in the Gazette, specify forms for use under this Ordinance, and such forms shall be adhered to with such variations and additions as may be necessary. (Added 13 of 1995 s. 23)

(Replaced 5 of 1933 s. 2)

Chapter:	221	Title:	CRIMINAL PROCEDURE ORDINANCE	Gazette Number:	
Section:	9G	Heading:	An accused person may be refused bail in particular circumstances	Version Date:	30/06/1997

(1) The court need not admit an accused person to bail if it appears to the court that there are substantial grounds for believing, whether or not an admission were to be subject to conditions under section 9D(2), that the accused person would-

- (a) fail to surrender to custody as the court may appoint; or
 - (b) commit an offence while on bail; or
 - (c) interfere with a witness or pervert or obstruct the course of justice.
- (2) The court in forming an opinion under subsection (1) may have regard to-
- (a) the nature and seriousness of the alleged offence and, in the event of conviction, the manner in which the accused person is likely to be dealt with;
 - (b) the behaviour, demeanour and conduct of the accused person;
 - (c) the background, associations, employment, occupation, home environment, community ties and financial position of the accused person;
 - (d) the health, physical and mental condition and age of the accused person;
 - (e) the history of any previous admissions to bail of the accused person;
 - (f) the character, antecedents and previous convictions, if any, of the accused person;
 - (g) the nature and weight of the evidence of the commission of the alleged offence by the accused person;
 - (h) any other thing that appears to the court to be relevant.

(3) An accused person need not be admitted to bail if it appears to the court that he should be detained in custody for-

- (a) if he has attained the age of 18 years, his own protection; or
 - (b) if he has not attained the age of 18 years, his own protection, safety or welfare; or
 - (c) the purpose of further inquiry relating to the determining of the question of whether he should be admitted to bail.
- (4) An accused person need not be admitted to bail if-
- (a) he is detained in custody-
 - (i) under a sentence of any court; or
 - (ii) for or in connection with a charge of failing to surrender to custody under section 9L; or
 - (b) the court is satisfied that-
 - (i) he has previously failed to comply with any condition of bail imposed under section 9D; or
 - (ii) any other court dealing with him in the same proceedings is or has been so satisfied.

(5) An accused person need not be admitted to bail if he is the subject of a hospital order for the time being in force.

(6) An accused person need not be admitted to bail if he is the subject of an order made under section 109B (suspended sentence) for the time being in force and he is before the court under section 109D or 109E.

(7) An accused person need not be admitted to bail if he is the subject of a deportation order for the time being in force made under section 20 of the Immigration Ordinance (Cap 115).

(8) An accused person need not be admitted to bail if he is before the court under section 5 or 6 of the Probation of Offenders Ordinance (Cap 298) (breach of probation order; or commission of further offence).

(9) An accused person need not be admitted to bail if he is before the court under section 8 or 9 of

the Community Service Orders Ordinance (Cap 378) (breach of community service order; or commission of further offence).

(10) An accused person charged with-

(a) murder; or

(b) treason under section 2 of the Crimes Ordinance (Cap 200),

shall be admitted to bail only upon the order of a judge.

(11) If at any hearing the court refuses to admit an accused person to bail the court shall, at each subsequent hearing while the accused remains in custody, consider the question of whether or not he ought to be admitted to bail and-

(a) on the first occasion after that upon which the court first refused to so admit, the court shall hear any argument as to fact or law put to it in support of his admission to bail, whether or not it has previously heard that argument;

(b) on the second or any subsequent occasion after that upon which the court first refused to so admit, the court need not hear any argument as to fact or law put to it in support of his admission to bail, if it has previously heard that argument.

(Added 56 of 1994 s. 2)

Chapter:	221	Title:	CRIMINAL PROCEDURE ORDINANCE	Gazette Number:	L.N. 362 of 1997
Section:	10A	Heading:	Service of documents in transferred proceedings	Version Date:	01/07/1997

(1) Where pursuant to an order for transfer made under section 77A of the District Court Ordinance (Cap 336) (in this section referred to as an "order of transfer") any proceedings stand transferred to the court for trial under subsection (6) of that section and where the Secretary for Justice has instituted proceedings pursuant to section 14(1)(aa), he shall, not more than 21 days after an indictment is preferred against the accused person, but subject to subsection (2), deliver to the Registrar and, unless they have already been served, serve on the accused person- (Amended L.N. 362 of 1997)

- (a) a copy of the indictment;
- (b) copies of the statements of those witnesses whom the prosecution intends to call at the trial;
- (c) copies of all documentary exhibits; and
- (d) a list of the exhibits.

(2) Where the Secretary for Justice considers that it will not be practicable to comply with the requirements in subsection (1) within the period specified in that subsection, he may apply- (Amended L.N. 362 of 1997)

- (a) upon the making of the order of transfer, to the District Court judge who makes the order; or
 - (b) at least 21 days before the date fixed for trial, to a judge,
- for an extension of that period, and the District Court judge or the judge, as the case may be, may, if he is satisfied that the accused person is not prejudiced thereby, grant such extension as he considers reasonable.

(3) A statement of a witness referred to in subsection (1)(b) shall-

- (a) be signed by the person making it;
- (b) contain a declaration by the witness to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that wilfully making a statement which he knows to be false or does not believe to be true may render him liable for a criminal prosecution;
- (c) if in a language other than English, be accompanied by an English translation and, if in a language other than Chinese, by a Chinese translation;
- (d) if made by a person under 21, give his age; and
- (e) purport to have been read over to the person who made the statement in the language used by that person in making the statement or to have been read by that person.

(4) A documentary exhibit referred to in subsection (1)(c) shall, if written in a language other than English, be accompanied by an English translation certified under section 27 of the Evidence Ordinance (Cap 8) and, if written in a language other than Chinese, be accompanied by a Chinese translation, unless on an application made in the District Court the District Judge or, on an application made in the court, the judge, directs otherwise on cause shown.

(5) An exhibit which is mentioned in a list of exhibits referred to in subsection (1)(d) shall be clearly identified in a statement of a witness referred to in subsection (1)(b) and the accused person or his counsel or solicitor shall be given reasonable opportunity to examine such exhibit.

(6) Failure to comply with any requirement in subsection (3), (4) or (5) shall not render the service of any documents under subsection (1) or (2) ineffective unless the judge is satisfied that the accused person is prejudiced by such failure.

(Added 59 of 1992 s. 3)

Chapter:	221	Title:	CRIMINAL PROCEDURE ORDINANCE	Gazette Number:	
Section:	14A	Heading:	*Trial of offences	Version Date:	30/06/1997

- (1) Where any provision in any Ordinance creates, or results in the creation of, an offence, the offence shall be triable summarily only, unless-
- (a) the offence is declared to be treason;
 - (b) the words "upon indictment" or "on indictment" appear; or (Amended L.N. 54 of 1989)
 - (c) (Repealed 50 of 1991 s. 4(1))
 - (d) the offence is transferred to the District Court in accordance with Part IV of the Magistrates Ordinance (Cap 227). (Added 16 of 1970 Schedule)
- (2) Where any provision in any Ordinance creates, or results in the creation of, an offence and-
- (a) the offence is declared to be treason; or
 - (b) subject to subsection (4), the words "upon indictment" or "on indictment" appear,
- the offence shall be triable only upon indictment.
- (3) (Repealed 50 of 1991 s. 4(1))
- (4) Where any provision in any Ordinance creates, or results in the creation of, an offence and the offence is declared to be triable either summarily or upon indictment or to be punishable on summary conviction or on indictment, the offence shall be triable either on indictment or summarily.
- (5) Nothing in this section shall affect-
- (a) the powers conferred upon a magistrate by the Magistrates Ordinance (Cap 227) or by any other law to try an indictable offence summarily; or
 - (b) the powers conferred upon the District Court by any law to try indictable offences.
- (Amended 50 of 1991 s. 4(1))

* This provision previously appeared in s. 89 of Cap 1. By virtue of 89 of 1993 s. 27, it was re-enacted as s. 14A of this Ordinance.

Chapter:	221	Title:	CRIMINAL PROCEDURE ORDINANCE	Gazette Number:	
Section:	51	Heading:	Trial of offences	Version Date:	30/06/1997

- (1) If a person is arraigned on an indictment-
- (a) he shall in all cases be entitled to make a plea of not guilty in addition to any special plea;
 - (b) he may plead not guilty to the offence specifically charged in the indictment but guilty to another offence of which he might be found guilty on that indictment;
 - (c) if he stands mute of malice, or will not answer directly to the indictment, the court may order a plea of not guilty to be entered on his behalf, and he shall then be treated as having pleaded not guilty. (Amended 24 of 1993 s. 8)
- (2) If on the trial of any information, charge or indictment for any offence other than treason it is proved that the accused is not guilty of that offence but the allegations in the information, charge or

indictment amount to or include, whether expressly or by implication, an allegation of another offence falling within the jurisdiction of the court of trial, he may be found guilty of that other offence or of an offence of which he could be found guilty on an information, charge or indictment specifically charging that other offence.

(3) For the purposes of subsection (2) any allegation of an offence shall be taken as including an allegation of attempting to commit that offence; and where a person is charged with attempting to commit an offence or with any assault or other act preliminary to an offence but not with the completed offence, then he may be convicted of the offence charged notwithstanding that he is shown to be guilty of the completed offence.

(4) Where a person arraigned on an indictment pleads not guilty of an offence charged in the indictment but guilty of some other offence of which he might be found guilty on that charge, and he is convicted on that plea of guilty without trial for the offence of which he has pleaded not guilty then, whether or not the 2 offences are separately charged in distinct counts, his conviction of the one offence shall be an acquittal of the other.

(5) Any power to bring proceedings for an offence by criminal information is abolished.

(6) Subsections (1) and (2) shall apply to an indictment containing more than one count as if each count were a separate indictment.

(7) In subsection (2), "court of trial" (主審法院) includes the District Court and a magistrate.
(Added 34 of 1972 s. 8)

(Replaced 5 of 1971 s. 5)
[cf. 1967 c. 58 s. 6 U.K.]

Chapter:	221	Title:	CRIMINAL PROCEDURE ORDINANCE	Gazette Number:	L.N. 362 of 1997
Section:	65F	Heading:	Transfer of proceedings	Version Date:	01/07/1997

Transfer of proceedings

(1) Where an indictment is preferred against an accused person and before he is arraigned, the Secretary for Justice may apply to the court for an order that the proceedings against the accused person be transferred before a magistrate to be dealt with summarily or to be transferred to the District Court. (Amended L.N. 440 of 1993; L.N. 362 of 1997)

(2) Any application under subsection (1) shall be made to a judge by way of motion, notice of which shall be supported by an affidavit showing the grounds on which the application is made.

(3) A copy of the notice of motion and the affidavit shall be served on the accused person not less than 21 days before the date named in the notice for hearing the motion, unless the judge otherwise directs.

(4) On an application being made under subsection (1), the judge may, if he considers it fit having regard to the interests of justice, make an order allowing the application (in this section and section 65G referred to as an "order of transfer"), or refuse the application and may in either case make such order as to costs as he considers appropriate.

(5) Where an order of transfer is made the judge shall appoint a date on which the accused person is required to appear or be brought before a magistrate or the District Court as may be applicable.

(6) The date appointed under subsection (5) shall not be earlier than 21 days from the date of the order of transfer.

(7) (a) Upon making an order of transfer to the District Court, the judge shall say to the accused person-

"I must warn you that at your trial you may not be permitted to give evidence of an alibi or call witnesses in support of an alibi unless you have earlier given particulars of the alibi and of the witnesses. You may give those particulars now to this court or to the prosecutor not less than 10 days prior to the commencement of your trial.",

or words to that effect and if it appears to the judge that the accused person may not understand the meaning of the word "alibi", he shall explain it to him. (Amended 13 of 1995 s. 49)

- (b) If the accused person is not present in court upon the making of an order to transfer to the District Court the clerk of the court shall forward to the accused person by registered post written notice, in the English and Chinese languages, of the warning required by paragraph (a). (Added 13 of 1995 s. 49)

(8) Where the judge has given the warning required by subsection (7)(a) or the clerk of the court has forwarded to the accused person written notice under subsection (7)(b), the clerk of the court shall give the accused person written notice of the provisions of section 75A of the District Court Ordinance (Cap 336). (Amended 13 of 1995 s. 49)

(8A) The written notices required by subsections (7) and (8) shall be sent to the accused person not less than 28 days before the date set for trial. (Added 13 of 1995 s. 49)

(9) Where an application is made under subsection (1), the entire proceedings before the court shall be stayed until the application is disposed of unless the judge otherwise orders in respect of any matter.

(10) At the time of making an order of transfer, the judge may remand the accused person in custody or on bail as he may consider appropriate.

(11) Unless the judge otherwise orders in respect of any matter, an order of transfer shall operate to terminate the proceedings before the court.

(12) An order of transfer shall not be subject to appeal.

(13) This section shall not apply in relation to any proceedings which stand transferred to the court pursuant to section 77A of the District Court Ordinance (Cap 336).

(14) Where apart from this subsection the court does not have jurisdiction to hear and determine an application made under subsection (1), this subsection shall confer such jurisdiction.

(Added 59 of 1992 s. 8)

Chapter:	221	Title:	CRIMINAL PROCEDURE ORDINANCE	Gazette Number:	L.N. 362 of 1997
Section:	91	Heading:	Penalties for concealing offences	Version Date:	01/07/1997

(1) If a person has committed an arrestable offence, any other person who, knowing or believing that the offence or some other arrestable offence has been committed, and that he has information which might be of material assistance in securing the prosecution or conviction of an offender for it, accepts or agrees to accept for not disclosing that information any consideration shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for 2 years.

(2) If a person causes any wasteful employment of the police by knowingly making to any person a false report tending to show that an offence has been committed, or to give rise to apprehension for the safety of any person or property, or tending to show that he has information material to any police inquiry he shall be guilty of an offence and shall be liable on conviction to a fine of \$2000 and to imprisonment for 6 months.

(3) No prosecution shall be instituted for an offence under subsection (1) except with the consent of the Secretary for Justice. (Amended L.N. 362 of 1997)

(4) The compounding of an offence other than treason shall not be an offence otherwise than under this section.

(5) (Repealed 50 of 1991 s. 4)

(Replaced 5 of 1971 s. 7)
[cf. 1967 c. 58 s. 5 U.K.]

Chapter:	221	Title:	CRIMINAL PROCEDURE ORDINANCE	Gazette Number:	
Section:	100	Heading:	Abolition of presumption of coercion of married woman by husband	Version Date:	30/06/1997

Coercion by husband

Any presumption of law that an offence committed by a wife in the presence of her husband is committed under the coercion of the husband is hereby abolished, but on a charge against a wife for any offence other than treason or murder it shall be a good defence to prove that the offence was committed in the presence of, and under the coercion of, the husband.

(Added 17 of 1930 s. 9)
[cf. 1925 c. 86 s. 47 U.K.]

Chapter:	221D	Title:	LEGAL AID IN CRIMINAL CASES RULES	Gazette Number:	79 of 1995 s. 50
Rule:	13	Heading:	Legal aid in capital cases	Version Date:	01/07/1997

- (1) Notwithstanding anything contained in this Part, where a person-
 - (a) is committed for trial upon a charge of murder, treason or piracy with violence;
 - (b) is convicted of a charge of murder, treason or piracy with violence and proposes to appeal therefrom; or
 - (c) wishes to oppose an appeal to, or an application for leave to appeal to, the Court of Final Appeal in proceedings involving a charge of murder, treason or piracy with violence, (L.N. 122 of 1982; 79 of 1995 s. 50)

the Director may, having considered the financial resources of the accused person or appellant, grant him a legal aid certificate or an appeal aid certificate, as the case may require, and shall do so if his financial resources do not exceed the relevant amounts specified in rule 4. (L.N. 199 of 1992; L.N. 182 of 1993)

- (2) The powers of the Director under sub-paragraphs (a) and (b) of paragraph (1) may be exercised by a judge or, in the case of an appeal to the Court of Appeal, by the court or a judge thereof, and the court or judge, if it or he thinks fit, may by order exempt the accused person or appellant from the requirements of Part III. (L.N. 122 of 1982)

(3) Upon granting a legal aid certificate or an appeal aid certificate under this rule, the Court of Appeal, the judge or the Director shall assign a solicitor and 1 or 2 counsel, one of whom may be leading counsel, as it or he may think fit, to represent the accused person or appellant.

Chapter:	227	Title:	MAGISTRATES ORDINANCE	Gazette Number:	25 of 1998 s. 2
Schedule:	2	Heading:		Version Date:	01/07/1997

Remarks:
Amendments retroactively made-see 25 of 1998 s. 2

[sections 91 & 92]
(Amended 30 of 1958 s. 12)

PART I

1. Any offence which is punishable with death.
2. Any offence (except an offence against section 10 or 12 of the Theft Ordinance (Cap 210), or an offence against Part VIII of the Crimes Ordinance (Cap 200)) which is punishable with imprisonment for life. (Amended 30 of 1958 Schedule; 58 of 1967 s. 4; 21 of 1970 s. 35; 91 of 1970 s. 6; 48 of 1972 s. 4)
3. Any offence against section 21 or 22 of the Crimes Ordinance (Cap 200).
4. Misprision of treason.
5. Any offence against Part I or Part II of the Crimes Ordinance (Cap 200). (Amended 25 of 1998 s. 2)
6. Blasphemy and offences against religion.
7. Composing, printing or publishing blasphemous, seditious or defamatory libels, except as provided by section 16 of the Defamation Ordinance (Cap 21).
8. Genocide and any conspiracy or incitement to commit genocide. (Added 52 of 1969 s. 4)
9. Torture. (Added 11 of 1993 s. 9)

PART II

1. Perjury and subornation of perjury.
2. Making or suborning any other person to make a false oath punishable as perjury. (Amended 50 of 1991 s. 4)
3. Any offence against the provisions of the laws relating to bankrupts.

4. Bigamy.
5. Bribery. (Replaced 24 of 1950 Schedule)
6. (Repealed 48 of 1972 s. 4)
7. An offence against section 22(1) of the Theft Ordinance (Cap 210). (Replaced 21 of 1970 s. 35)

PART III

[section 88]

1. Any offence which is punishable with death.
2. Any offence which is punishable with imprisonment for life except an offence against section 37C, 37D, 37O or 37P of the Immigration Ordinance (Cap 115), an offence against section 53 or 123 of the Crimes Ordinance (Cap 200), an offence against Part VIII of the Crimes Ordinance (Cap 200), an offence against section 4 or 6 of the Dangerous Drugs Ordinance (Cap 134), an offence against section 10 or 12 of the Theft Ordinance (Cap 210), section 17, 28 or 29 of the Offences against the Person Ordinance (Cap 212) or section 16, 17 or 18 of the Firearms and Ammunition Ordinance (Cap 238). (Replaced 49 of 1965 s. 21. Amended L.N. 165 of 1967; 41 of 1968 s. 59; 21 of 1970 s. 35; 48 of 1972 s. 4; 25 of 1978 s. 6; 59 of 1980 s. 2; 68 of 1981 s. 56; 59 of 1984 s. 7; 52 of 1992 s. 11)
3. Any offence against section 21 or 22 of the Crimes Ordinance (Cap 200).
4. Misprision of treason.
5. Any offence against Part I or Part II of the Crimes Ordinance (Cap 200). (Amended 25 of 1998 s. 2)
6. Blasphemy and offences against religion.
7. Composing, printing or publishing blasphemous, seditious or defamatory libels.
8. Genocide and any conspiracy or incitement to commit genocide. (Added 52 of 1969 s. 4)
(Part III added 2 of 1953 s. 4)
(Second Schedule replaced 24 of 1949 Schedule)

Chapter:	279	Title:	EDUCATION ORDINANCE	Gazette Number:	118 OF 1997 s. 21
Section:	31	Heading:	Grounds for cancellation of registration of manager	Version Date:	01/07/1997

- (1) The Director may cancel the registration of a manager of a school-
 - (a) if the person has been an office-bearer, as defined in section 2 of the Societies Ordinance (Cap 151), of any society or a branch which has had 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; (Amended 118 of 1997 s. 21)
 - (b) on any ground specified in section 30(1)(a) to (e) which applies to the manager, whether or not such ground existed at the time when he was registered as a manager of the school;
 - (c) if it appears to the Director that the person-
 - (i) has ceased to be a manager;
 - (ii) cannot perform satisfactorily or is not performing satisfactorily the duties of a manager;
 - (d) if the person has contravened any provision of this Ordinance;
 - (e) if it appears to the Director that-
 - (i) any school of which the person is registered as a manager is not being managed satisfactorily;
 - (ii) in any school of which the person is registered as a manager, the education of the pupils is not being promoted in a proper manner; or
 - (iii) any pupil of a school of which the person is registered as a manager is not under proper supervision or control while on the school premises; or
 - (f) if the manager was so registered by reason of a special interest in the school which has subsequently ceased. (Replaced 42 of 1993 s. 15)
- (2) The Director shall cancel the registration of a manager of a school-
 - (a) if it appears to him that the manager is no longer acceptable as a manager of the school to the majority of the management committee; or
 - (b) at the written request of the manager.
- (3) (Repealed 42 of 1993 s. 15)

Chapter:	401	Title:	PENSION BENEFITS (JUDICIAL OFFICERS) ORDINANCE	Gazette Number:	26 of 1999
Section:	31	Heading:	Pension benefits may be cancelled, suspended or reduced on conviction, etc.	Version Date:	01/07/1997

Remarks:

Adaptation amendments retroactively made - see 26 of 1999 s. 3

- (1) Where an officer to whom a pension has been granted-
 - (a) is convicted of an offence in connection with public service under the Government, and that offence is certified by the Chief Executive to have been gravely injurious to Hong Kong or to be liable to lead to serious loss of confidence in the public service; (Amended 26 of 1999 s. 3)
 - (b) is convicted of an offence under Part II of the Prevention of Bribery Ordinance (Cap 201), and that offence is related to the person's previous public service under the Government; or

(c) is convicted of treason under section 2 of the Crimes Ordinance (Cap 200), the pension may be cancelled, suspended or reduced.

(2) If after the retirement of an officer in circumstances in which he is eligible for pension benefits but before the pension benefits are granted he is convicted as specified in subsection (1), and sentenced, any pension benefits eventually granted to him may be cancelled, suspended or reduced.

(3) Where an officer is compulsorily retired in the exercise of disciplinary powers following a conviction of any offence referred to in subsection (1), the deferred pension which may be granted to him may be cancelled, suspended or reduced, or he may not be granted a deferred pension.

(4) For the purposes of subsections (1), (2) and (3), a designated officer may, subject to section 32, determine-

- (a) whether pension benefits shall be cancelled, suspended or reduced, or shall not be granted, as the case may be;
- (b) the date from which pension benefits shall be cancelled, suspended or reduced; and
- (c) in the case of a reduction in pension benefits, the amount of the reduction not exceeding 25% of the pension benefits.

(Enacted 1988)

Chapter:	455	Title:	ORGANIZED AND SERIOUS CRIMES ORDINANCE	Gazette Number:	25 of 1998 s. 2
Section:	5	Heading:	Authority for search	Version Date:	01/07/1997

Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

- (1) An authorized officer may, for the purpose of an investigation into-
 - (a) an organized crime;
 - (b) the proceeds of organized crime of any person who has committed or is suspected of having committed an organized crime;
 - (c) the proceeds of a specified offence of any person who has committed, or is suspected of having committed, that specified offence,apply to the Court of First Instance or the District Court for a warrant under this section in relation to specified premises. (Amended 25 of 1998 s. 2)
- (2) On such application the court may issue a warrant authorizing an authorized officer to enter and search the premises if it is satisfied-
 - (a) that a requirement imposed under section 3(6) in relation to material on the premises has not been complied with; or
 - (b) that an order made under section 4 in relation to material on the premises has not been complied with; or
 - (c) that the conditions in subsection (3)(a), (c) and (d) or subsection (3)(b), (c) and (d) are fulfilled; or
 - (d) that the conditions in subsection (4)(a), (c) and (d) or subsection (4)(b), (c) and (d) are fulfilled.
- (3) The conditions referred to in subsection (2)(c) are-
 - (a) where the investigation is into an organized crime, that there are reasonable grounds for suspecting that the organized crime has been committed;
 - (b) where the investigation is into the proceeds of organized crime or a specified offence of a person-

- (i) that the person has committed an organized crime or that specified offence, or that there are reasonable grounds for suspecting that he has committed an organized crime or that specified offence; and
 - (ii) that there are reasonable grounds for suspecting that the person has benefited from organized crime or that specified offence;
 - (c) that the conditions in section 4(4)(c) and (d) are fulfilled in relation to any material on the premises;
 - (d) that it would not be appropriate to make an order under that section in relation to the material because-
 - (i) it is not practicable to communicate with any person entitled to produce the material; or
 - (ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated; or
 - (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless an authorized officer could secure immediate access to the material.
 - (4) The conditions referred to in subsection (2)(d) are-
 - (a) where the investigation is into an organized crime, that there are reasonable grounds for suspecting that the organized crime has been committed;
 - (b) where the investigation is into the proceeds of organized crime or a specified offence of a person-
 - (i) that the person has committed an organized crime or that specified offence, or that there are reasonable grounds for suspecting that he has committed an organized crime or that specified offence; and
 - (ii) that there are reasonable grounds for suspecting that the person has benefited from organized crime or that specified offence;
 - (c) that there are reasonable grounds for suspecting that there is on the premises material which is likely to be relevant to the investigation for the purpose of which the application is made, but that the material cannot at the time of the application be particularized;
 - (d) that-
 - (i) it is not practicable to communicate with any person entitled to grant entry to the premises; or
 - (ii) entry to the premises will not be granted unless a warrant is produced; or
 - (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless an authorized officer arriving at the premises could secure immediate entry to them.
 - (5) Where an authorized officer has entered premises in the execution of a warrant issued under this section, he may seize and retain any material, other than items subject to legal privilege, which is likely to be relevant to the investigation for the purpose of which the warrant was issued.
 - (6) Any person who hinders or obstructs an authorized officer in the execution of a warrant issued under this section commits an offence and is liable-
 - (a) on conviction upon indictment to a fine of \$250000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.
 - (7) An authorized officer may photograph or make copies of any material seized under this section.
 - (8) Notwithstanding section 83 of the Interpretation and General Clauses Ordinance (Cap 1), but subject to this section, a warrant may be issued under this section authorizing entry to premises for the purpose of searching for or seizing material which is known or suspected to be journalistic material.
- (Added 88 of 1995 s. 6)

(Enacted 1994)
[cf. 1986 c. 32 s. 28 U.K.]

Chapter:	455	Title:	ORGANIZED AND SERIOUS CRIMES ORDINANCE	Gazette Number:	L.N. 145 of 2002
Schedule:	1	Heading:	OFFENCES RELEVANT TO DEFINITIONS OF "ORGANIZED CRIME" AND "SPECIFIED OFFENCE"	Version Date:	01/01/2003

[sections 2, 8 & 31]
(Amended 26 of 2002 s. 3)

Common law offences

1. murder
2. kidnapping
3. false imprisonment
4. conspiracy to pervert the course of justice

Statutory offences

	Offence	Description*
5.	Import and Export Ordinance (Cap 60) section 6A section 6C section 6D(1) and (2) section 6E section 18	import or export of strategic commodities import of certain prohibited articles export of certain prohibited articles carriage, etc. of prescribed articles in Hong Kong waters importing or exporting unmanifested cargo
6.	Immigration Ordinance (Cap 115) section 37D(1) section 38(4) section 42(1) and (2)	arranging passage to Hong Kong of unauthorized entrants carrying an illegal immigrant false statements, forgery of documents and use and possession of forged documents
7.	Dangerous Drugs Ordinance (Cap 134) section 4(1) section 4A(1) section 6(1)	trafficking in dangerous drugs trafficking in purported dangerous drugs manufacturing a dangerous drug
8.	Gambling Ordinance (Cap 148) section 5 section 7(1)	operating, managing or controlling gambling establishment bookmaking
9.	Societies Ordinance (Cap 151) section 19 section 21 section 22	penalties on an office-bearer, etc. of an unlawful society allowing a meeting of an unlawful society to be held on premises inciting etc., a person to become a member of an unlawful society
10.	Money Lenders Ordinance (Cap 163) section 24(1)	lending money at an excessive interest rate
11.	Crimes Ordinance (Cap 200) section 24 section 25 section 53 section 54 section 55 section 60 section 61 section 71 section 75(1) section 98(1) section 100(1) section 105	threatening a person with intent assaulting with intent to cause certain acts to be done or omitted causing explosion likely to endanger life or property attempt to cause explosion, or making or keeping explosive with intent to endanger life or property making or possession of explosive destroying or damaging property threats to destroy or damage property forgery possessing a false instrument with intent counterfeiting notes and coins with intent custody or control of counterfeit notes and coins with intent importation and exportation of counterfeit notes and coins

	section 118	rape
	section 119	procurement of person by threats
	section 120	procurement of person by false pretences
	section 129	trafficking to or from Hong Kong in persons
	section 130	control over person for purpose of unlawful sexual act or prostitution
	section 131	causing prostitution of person
	section 134	detention of person for unlawful sexual act or in vice establishment
	section 137	living on earnings of prostitution
	section 139	keeping a vice establishment
12.	Theft Ordinance (Cap 210)	
	section 9	theft
	section 10	robbery
	section 11(1)	burglary
	section 16A	fraud (Added 45 of 1999 s. 6)
	section 17	obtaining property by deception
	section 18	obtaining a pecuniary advantage by deception
	section 18D	procuring false entry in certain records
	section 19	false accounting
	section 23(1) and (4)	blackmail
	section 24(1)	handling stolen goods
13.	Offences against the Person Ordinance (Cap 212)	
	section 17	shooting or attempting to shoot, or wounding or striking with intent to do grievous bodily harm
14.	Firearms and Ammunition Ordinance (Cap 238)	
	section 13	possession of arms or ammunition without licence
	section 14	dealing in arms or ammunition without a licence
14A.	Trade Descriptions Ordinance (Cap 362)	
	section 9(1) and (2)	offences in respect of infringement of trade mark rights
	section 12 (provided that for the purpose of this Ordinance, an offence under section 12 of the Trade Descriptions Ordinance does not include an offence relating only to false trade description)	import or export of goods bearing forged trade mark
	section 22 (provided that for the purpose of this Ordinance, "offence under this Ordinance" referred to in section 22 of the Trade Descriptions Ordinance only means an offence under-	
	(a) section 9(1) or (2) of that Ordinance; or	being accessory to certain offences committed outside Hong Kong (Added L.N. 11 of 2000)

- (b) section 12 of that Ordinance, excluding any offence relating only to false trade description)
15. Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405) section 25(1) dealing with property known or believed to represent proceeds of drug trafficking (Replaced 26 of 2002 s. 3)
 16. Organized and Serious Crimes Ordinance (Cap 455) section 25(1) dealing with property known or believed to represent proceeds of indictable offence (Replaced 26 of 2002 s. 3)
 17. Weapons of Mass Destruction (Control of Provision of Services) Ordinance (Cap 526) section 4 providing services that assist the development, production, acquisition or stockpiling of weapons of mass destruction (Added 90 of 1997 s. 15)
 18. Copyright Ordinance (Cap 528) section 118(1), (4) and (8) (provided that for the purpose of this Ordinance, "infringing copy" referred to in section 118(1) and (4) of the Copyright Ordinance does not include a copy of a work which is an infringing copy by virtue only of section 35(3) of that Ordinance) offences relating to making or dealing with infringing copies
 section 120(1), (2), (3) and (4) (provided that for the purpose of this Ordinance, "infringing copy" referred to in section 120(1) and (3) of the Copyright Ordinance does not include a copy of a work which is an infringing copy by virtue only of section 35(3) of that Ordinance) offences relating to making infringing copies outside Hong Kong (Added L.N. 11 of 2000)

* Note: The short description of offences in this Schedule is for ease of reference only.

(Enacted 1994)

Chapter:	475A	Title:	POST-RELEASE SUPERVISION OF PRISONERS REGULATION	Gazette Number:	
Schedule:	1	Heading:	SPECIFIED OFFENCES	Version Date:	30/06/1997

[section 2]

Common law offences

1. murder
2. manslaughter

Statutory offences

	Offence	Description*
3.	Societies Ordinance (Cap 151)	
	section 19(1), (2)	being or claiming to be an office-bearer of an unlawful society
	section 20(2)	being or professing to be a member of triad society
	section 21(1), (2)	allowing unlawful society in building
	section 22(1), (2)	inciting, etc., a person to become a member of an unlawful society
	section 23(1), (2)	procuring a subscription or aid for an unlawful society
	section 24	contravention of an order made on a previous conviction under section 19 or 20 of the Societies Ordinance (Cap 151)
	section 25	contravention of a prohibition order under section 8 of the Societies Ordinance (Cap 151)
4.	Crimes Ordinance (Cap 200)	
	section 24	threatening injury etc. with intent
	section 25	assault with intent to cause certain acts to be done or omitted
	section 47, 48	incest
	section 53	causing an explosion likely to endanger life or property
	section 54	acting with intent to cause an explosion, or making or keeping explosive with intent to endanger life or property
	section 55	making or possession of explosive
	section 60	criminal damage and arson
	section 61	threats to destroy or damage property (L.N. 495 of 1996)
	section 62	possessing anything with intent to destroy or damage property (L.N. 495 of 1996)
	section 118	rape
	section 118A	non-consensual buggery
	section 118B	assault with intent to commit buggery
	section 118C	homosexual buggery with or by a man under 21
	section 118D	buggery with a girl under 21
	section 118E	buggery with a defective (L.N. 495 of 1996)
	section 118F	homosexual buggery committed otherwise than in private (L.N. 495 of 1996)
	section 118J	gross indecency by a man with another man
	section 118L	bestiality
	section 121	administering drugs to obtain or facilitate an unlawful sexual act
	section 122	indecent assault
	section 123	unlawful intercourse with a girl under 13
	section 124	unlawful intercourse with a girl under 16
	section 125	unlawful intercourse with a female defective
	section 135	causing or encouraging prostitution of, etc., a girl or boy under 16
	section 137	living on the earnings of prostitution

	section 146	indecent conduct towards a child under 16
	section 148	(Repealed L.N. 495 of 1996)
5.	Theft Ordinance (Cap 210)	
	section 10	robbery
	section 12	aggravated burglary
	section 23(1), (3)	blackmail
	section 23(4)	possession of blackmail letter or writing
6.	Offences against the Person Ordinance (Cap 212)	
	section 5	conspiring or soliciting, etc., to commit murder
	section 10	administering poison or wounding with intent to murder
	section 11	destroying or damaging a building with intent to murder
	section 13	attempting to administer poison, or shooting, or attempting to shoot or drown, etc., with intent to murder
	section 14	attempting to commit murder by means not otherwise specified
	section 15	sending a letter threatening to murder
	section 17	wounding, shooting, etc., with intent
	section 19	wounding or inflicting grievous bodily harm
	section 22	administering poison, etc., so as to endanger life or inflict grievous bodily harm endangered
	section 26	exposing a child whereby its life is endangered (L.N. 495 of 1996)
	section 27	ill-treatment or neglect of child or young person by those in charge
	section 28	causing bodily injury by gunpowder, etc.
	section 29	causing gunpowder to explode, etc., or throwing corrosive fluid, with intent to do grievous bodily harm
	section 30	placing gunpowder near building, etc., with intent to do bodily harm
	section 39	assault occasioning actual bodily harm
	section 42	forcible taking or detention of person, with intent to sell him or her
	section 43	stealing child under 14 years
	section 47B	child destruction
	section 47C	infanticide
7.	Public Order Ordinance (Cap 245)	
	section 17C	possession of offensive weapon at public meeting or procession
	section 28(1), (2)	causing a bomb hoax
	section 33	possession of offensive weapon in a public place

* Note: The short description of offences in this Schedule is for ease of reference only.

(Enacted 1996)

Chapter:	521	Title:	OFFICIAL SECRETS ORDINANCE	Gazette Number:	
Section:	12	Heading:	Interpretation	Version Date:	30/06/1997

PART III

UNLAWFUL DISCLOSURE

(1) In this Part-

"armed forces" (武裝部隊) means the armed forces of the Crown;

"British national" (英國國民) means a British citizen, a British Overseas citizen, a British Dependent Territories citizen, a British National (Overseas) or a British protected person;

"defence" (防務) means-

- (a) the size, shape, organization, logistics, order of battle, deployment, operations, state of readiness and training of the armed forces;
- (b) the weapons, stores or other equipment of the armed forces and the invention, development, production and operation of such equipment and research relating to it;
- (c) defence policy and strategy and military planning and intelligence;
- (d) plans and measures for the maintenance of essential supplies and services that are or would be needed in time of war;

"disclose" and "disclosure" (披露), in relation to a document or other article, include parting with possession of it;

"Hong Kong permanent resident" (香港永久性居民) has the meaning assigned to that term by section 2(1) of the Immigration Ordinance (Cap 115);

"international relations" (國際關係) means the relations between States, between international organizations or between one or more States and one or more such organizations and includes-

- (a) any matter relating to a State other than the United Kingdom or to an international organization that is capable of affecting the relations of the United Kingdom with another State or with an international organization; and
- (b) any matter relating to the relations between the United Kingdom and Hong Kong or the external relations of Hong Kong;

"prescribed" (訂明) means prescribed by an order made by the Governor;

"public servant" (公務人員) means-

- (a) any person who holds an office of emolument under the Crown in right of the Government of Hong Kong, whether such office is permanent or temporary;
- (b) any person employed in the civil service of the Crown in right of the United Kingdom, including Her Majesty's Diplomatic Service and Her Majesty's Overseas Civil Service;
- (c) any member of the armed forces;
- (d) any person who is a member or employee of a prescribed body or a body of a prescribed class and either is prescribed for the purposes of this paragraph or belongs to a prescribed class of members or employees of any such body;
- (e) any person who holds a prescribed office or who is an employee of such a person and

either is prescribed for the purposes of this paragraph or belongs to a prescribed class of such employees;

"State" (國家) includes the government of a State and any organ of its government;

"territory" (地區) means any territory, not being a State, outside Hong Kong.

(2) In this Part, "government contractor" (政府承辦商) means, subject to subsection (3), any person who is not a public servant but who provides, or is employed in the provision of, goods or services-

- (a) for the purposes of the Crown in right of the Government of Hong Kong, of any of the services, forces or bodies mentioned in subsection (1) or of the holder of any office prescribed under subsection (1); or
- (b) under an agreement or arrangement certified by the Governor as being an agreement or arrangement to which the Government of a territory, the Government of a State, other than the United Kingdom, or an international organization is a party or which is subordinate to, or made for the purposes of implementing, any such agreement or arrangement.

(3) Where an employee or a class of employees of any body, or of any holder of an office, is prescribed by an order made for the purposes of subsection (1), the following persons shall be deemed not to be a government contractor for the purposes of this Part-

- (a) any employee of that body, or of the holder of that office, who is not prescribed or is not within the prescribed class of employees; and
- (b) any person who does not provide, or is not employed in the provision of, goods or services for the purposes of the performance of those functions of the body or the holder of the office in connection with which the employee or prescribed class of employees is engaged.

(4) In this Part, "international organization" (國際組織) means, subject to subsections (5) and (6), an organization of which only States or States and territories are members and includes a reference to any organ of such an organization.

(5) In subsection (4) the reference to an international organization includes a reference to any such organization whether or not one of which only States or States and territories are members and includes a commercial organization.

(6) In determining for the purposes of this section whether only States or States and territories are members of an organization, any member that is itself an organization of which only States are members, or that is an organ of such an organization, shall be treated as a State.

(7) In this Part, "security or intelligence" (保安或情報) means the work of, or in support of, the security or intelligence services or any part of them, and references to information relating to security or intelligence include references to information held or transmitted by those services or by persons in support of them, or any part of them.

[cf. 1989 c. 6 ss. 1(9), 2(4), 3(5), 12 & 13 U.K.]

Chapter:	521	Title:	OFFICIAL SECRETS ORDINANCE	Gazette Number:	
Section:	18	Heading:	Information resulting from unauthorized disclosures or information entrusted in confidence	Version Date:	30/06/1997

Expanded Cross Reference:
13, 14, 15, 16, 17

(1) A person who comes into possession of any information, document or other article in circumstances mentioned in subsection (2) commits an offence if he discloses it without lawful authority and knowing, or having reasonable cause to believe, that-

- (a) it is protected against disclosure by any of sections 13 to 17; and <*Note-Exp. x-Ref: Sections 13, 14, 15, 16, 17*>
- (b) it has come into his possession as mentioned in subsection (2).

(2) The circumstances referred to in subsection (1) are where any information, document or other article protected against disclosure by any of sections 13 to 17 has come into a person's possession as a result of it having been- <*Note-Exp. x-Ref:13, 14, 15, 16, 17*>

- (a) disclosed (whether to him or another) by a public servant or government contractor without lawful authority;
- (b) entrusted to him by a public servant or government contractor on terms requiring it to be held in confidence or in circumstances in which the public servant or government contractor could reasonably expect that it would be so held; or
- (c) disclosed (whether to him or another) without lawful authority by a person to whom it was entrusted as mentioned in paragraph (b).

(3) In the case of information or a document or article protected against disclosure by sections 13 to 16, a person does not commit an offence under this section unless- <*Note-Exp. x-Ref:13, 14, 15, 16*>

- (a) the disclosure by him is damaging; and
- (b) he makes it knowing, or having reasonable cause to believe, that it would be damaging.

(4) The question whether a disclosure of information or of a document or other article is damaging shall be determined for the purposes of subsection (3) as it would be determined in relation to a disclosure of that information, document or article by a public servant in contravention of section 14, 15 or 16.

(5) A person does not commit an offence under this section in respect of information or a document or other article that has come into his possession as a result of it having been disclosed-

- (a) as mentioned in subsection (2)(a) by a government contractor; or
- (b) as mentioned in subsection (2)(c),

unless that disclosure was by a British national or Hong Kong permanent resident or took place in Hong Kong.

(6) For the purposes of this section, information or a document or article is protected against disclosure by any of sections 13 to 17 if- <*Note-Exp. x-Ref:13, 14, 15, 16, 17*>

- (a) it relates to security or intelligence, defence or international relations or is such as is mentioned in section 16(1)(b); or
- (b) it is information or a document or article to which section 17 applies,

and information or a document or article is protected against disclosure by sections 13 to 16 if it falls within paragraph (a). <*Note-Exp. x-Ref:13, 14, 15, 16*>

(7) No person shall be convicted for both an offence under this section and an offence under any of sections 13 to 17 in relation to the disclosure by him of any information or document or other article. <*Note-Exp. x-Ref:13, 14, 15, 16, 17*>

[cf. 1989 c. 6 s. 5 U.K.]

Chapter:	521	Title:	OFFICIAL SECRETS ORDINANCE	Gazette Number:	
Section:	20	Heading:	Information entrusted in confidence to territories, States or international organizations	Version Date:	30/06/1997

Expanded Cross Reference:
13,14,15,16,17,18

(1) A person who comes into possession of any information, document or other article in circumstances mentioned in subsection (2) commits an offence if he makes a damaging disclosure of it knowing, or having reasonable cause to believe, that-

- (a) it has been communicated in confidence as mentioned in subsection (2)(a);
- (b) it has come into his possession as mentioned in subsection (2)(b); and
- (c) its disclosure would be damaging.

(2) The circumstances referred to in subsection (1) are where any information, document or other article relating to security or intelligence, defence or international relations-

- (a) has been communicated in confidence by or on behalf of the Government of the United Kingdom or Hong Kong to a territory or State or an international organization; and
- (b) has come into a person's possession as a result of it having been disclosed (whether to him or another) without the authority of that territory, State or organization or, in the case of an organization, of a member of it.

(3) A person does not commit an offence under subsection (1) if the information, document or article-

- (a) is disclosed by him with lawful authority; or
- (b) has previously been made available to the public with the authority of the territory, State or organization concerned or, in the case of an organization, of a member of it.

(4) For the purposes of this section, the question whether a disclosure is damaging shall be determined as it would be determined in relation to a disclosure of the information, document or article in question by a public servant in contravention of section 14, 15 or 16.

(5) For the purposes of this section, information or a document or article is communicated in confidence if it is communicated-

- (a) on terms requiring it to be held in confidence; or
- (b) in circumstances in which the person communicating it could reasonably expect that it would be so held.

(6) No person shall be convicted for both an offence under this section and an offence under any of sections 13 to 18 in relation to the disclosure by him of any information or document or other article.

<*Note-Exp. x-Ref: Sections 13,14,15,16,17,18*>

[cf. 1989 c. 6 s. 6 U.K.]

Chapter:	472	Title:	HONG KONG ARTS DEVELOPMENT COUNCIL ORDINANCE	Gazette Number:	L.N. 82 of 2000
Section:	3	Heading:	Establishment of the Council	Version Date:	01/06/2000

Remarks:
Adaptation amendments retroactively made - see 59 of 2000 s. 3

PART II

ESTABLISHMENT OF THE HONG KONG ARTS DEVELOPMENT COUNCIL

- (1) There is established a body corporate called the Hong Kong Arts Development Council.
- (2) The Council may sue and be sued.
- (3) The Council shall consist of-
 - (a) a Chairman, a Vice-chairman and not more than 22 other members, each of whom shall be appointed by the Chief Executive for a term not exceeding 3 years; (Amended 9 of 2000 s. 2; 59 of 2000 s. 3)
 - (b)-(c) (Repealed 78 of 1999 s. 7)
 - (d) the Secretary for Home Affairs or his representative; (Amended L.N. 372 of 1996; L.N. 362 of 1997; L.N. 192 of 1998; L.N. 206 of 1998; 9 of 2000 s. 2)
 - (e) the Director of Education or his representative; and (Amended 9 of 2000 s. 2)
 - (f) the Director of Leisure and Cultural Services or his representative. (Added 9 of 2000 s. 2)
- (4) The other members referred to in subsection (3)(a) may include up to 10 persons nominated by organizations or groups of organizations specified under subsection (5), and each such organization or group of organizations may nominate for this purpose not more than 1 person for each of the interests represented by that organization or group of organizations, and each such person shall, in the opinion of the Chief Executive, be experienced in the interest for which he has been nominated. (Amended 9 of 2000 s. 2; 59 of 2000 s. 3)
- (5) The Chief Executive may by notice in the Gazette specify for the purposes of subsection (4) up to 10 organizations or groups of organizations each of which shall, in the opinion of the Chief Executive, be representative of one or more of the following interests- (Amended 9 of 2000 s. 2; 59 of 2000 s. 3)
 - (a) literary arts;
 - (b) music;
 - (c) dance;
 - (d) drama;
 - (e) visual arts;
 - (f) film arts;
 - (g) arts administration;
 - (h) arts education;
 - (i) arts criticism; (Amended 9 of 2000 s. 2)
 - (j) Chinese opera (Xiqu). (Added 9 of 2000 s. 2)
- (6) The following persons are not eligible for appointment by the Chief Executive under subsection (3)(a) or nomination under subsection (4)- (Amended 59 of 2000 s. 3)
 - (a) a person who holds an established or non-established office, as defined in section 2(1) of the Pension Benefits Ordinance (Cap 99);
 - (b) a person who holds a judicial office as defined in section 2 of the Public Service Commission Ordinance (Cap 93);
 - (c) the Chairman of the Public Service Commissioner;

- (d) the Commissioner, Deputy Commissioner and officers of the Independent Commission Against Corruption;
 - (e) the Commissioner for Administrative Complaints and his staff;
 - (f) a person who is employed by The Legislative Council Commission; (Amended 78 of 1999 s. 7)
 - (g) a person who is serving as an officer or member of any armed forces;
 - (h) a person who is a salaried functionary of a government, whether central or local, of any place outside Hong Kong;
 - (i) a person who is an undischarged bankrupt or, within the previous 5 years, has either obtained his discharge in bankruptcy or has entered into a composition with his creditors, in either case without paying his creditors in full;
 - (j) a person who is the subject of a decision under the Mental Health Ordinance (Cap 136) that he is of unsound mind and incapable of managing himself and his affairs and who has not subsequently under that Ordinance been found to have ceased to be of unsound mind;
 - (k) a person who has in Hong Kong or any other territory or country been sentenced to death or imprisonment (by whatever name called) for a term exceeding 3 months and has not either suffered the punishment to which he was sentenced or such other punishment as may by competent authority have been substituted or received a free pardon;
 - (l) without prejudice to paragraph (k), a person who has, where the appointment is to be made or is made within 10 years after the date of conviction, been convicted-
 - (i) of any offence in Hong Kong or in any other territory or country and sentenced to imprisonment, whether suspended or not, for a term exceeding 3 months without the option of a fine;
 - (ii) of having engaged in corrupt or illegal conduct in contravention of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554); or (Replaced 10 of 2000 s. 47)
 - (iii) of any offence under the Prevention of Bribery Ordinance (Cap 201); and
 - (m) a person who has been convicted of treason.
- (7) The members of the Council are the governing body of the Council and shall, in the name of the Council, manage the affairs of the Council and exercise the powers conferred on the Council under this Ordinance.
- (8) The Schedule applies with respect to the Council and its members and the Chief Executive may by order amend the Schedule. (Amended 59 of 2000 s. 3)
- (9) The Council is not a servant or agent of the Government and does not have the status, immunities or privileges of the Government.
- (10) Notice of appointments under subsection (3) and any order under subsection (8) shall be published in the Gazette.

(Enacted 1995)

Chapter:	542	Title:	LEGISLATIVE COUNCIL ORDINANCE	Gazette Number:	L.N. 55 of 2000
Section:	39	Heading:	When person is disqualified from being nominated as a candidate and from being elected as a Member	Version Date:	03/03/2000

(1) A person is disqualified from being nominated as a candidate at an election, and from being elected as a Member, if the person-

- (a) is-
 - (i) a judicial officer; or
 - (ii) a prescribed public officer; or
 - (iii) an officer of the Legislative Council or a member of staff of The Legislative Council Commission; or (Amended 48 of 1999 s. 24)
- (b) has, in Hong Kong or any other place, been sentenced to death or imprisonment (by whatever name called) and has not either-
 - (i) served the sentence or undergone such other punishment as a competent authority may have been substituted for the sentence; or
 - (ii) received a free pardon; or
- (c) has been convicted of treason; or
- (d) on the date of nomination, or of the election, is serving a sentence of imprisonment; or
- (e) without limiting paragraph (b), where the election is to be held or is held within 5 years after the date of the person's conviction, is or has been convicted-
 - (i) in Hong Kong or any other place, of an offence for which the person has been sentenced to imprisonment, whether suspended or not, for a term exceeding 3 months without the option of a fine; or
 - (ii) of having engaged in corrupt or illegal conduct in contravention of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554); or
 - (iii) of an offence against Part II of the Prevention of Bribery Ordinance (Cap 201); or
 - (iv) of any offence prescribed by regulations in force under the Electoral Affairs Commission Ordinance (Cap 541); or (Replaced 10 of 2000 s. 47)
- (f) is-
 - (i) ineligible to be a candidate, or to be elected as a Member, at the election; or
 - (ii) disqualified from being a candidate, or from being elected as a Member, at the election,
because of the operation of this or any other law; or
- (g) is a representative or salaried functionary of a government of a place outside Hong Kong; or
- (h) is a member of any national, regional or municipal legislature, assembly or council of any place outside Hong Kong, other than a people's congress or people's consultative body of the People's Republic of China, whether established at the national or local level; or
- (i) is an undischarged bankrupt or, within the previous 5 years, has either obtained a discharge in bankruptcy or has entered into a composition with the person's creditors or a voluntary arrangement, in either case without paying the creditors in full.

(2) A person is also disqualified from being nominated as a candidate at an election if, in accordance with the Mental Health Ordinance (Cap 136), the Court has found the person to be of unsound mind and incapable of managing himself or herself and his or her affairs, but a person disqualified under this subsection is eligible for nomination as a candidate if, under that Ordinance, it is subsequently found that the person's unsoundness of mind has ceased.

(3) A person is also disqualified from being elected as a Member if, in accordance with the Mental Health Ordinance (Cap 136), the Court has found the person to be of unsound mind and incapable of managing himself or herself and his or her affairs, but a person disqualified under this subsection ceases to be disqualified if, under that Ordinance, it is subsequently found that the person's unsoundness of mind has ceased.

(4) A person is also disqualified from being elected as a Member for a functional constituency if, since the close of nominations, the person has ceased to have a substantial connection with the constituency.

(5) In this section-

"judicial officer" (司法人員) means the holder of a judicial office, as defined in section 2 of the Public Service Commission Ordinance (Cap 93);

"prescribed public officer" (訂明的公職人員) means any of the following-

- (a) the Chairman of the Public Service Commission;
- (b) the Commissioner and Deputy Commissioner of the Independent Commission Against Corruption and the holder of any other office under the Independent Commission Against Corruption Ordinance (Cap 204);
- (c) The Ombudsman and the holder of any appointment under section 6 of The Ombudsman Ordinance (Cap 397);
- (d) a member of the Electoral Affairs Commission;
- (e) the chief executive of the Monetary Authority and any member of the senior management of that Authority, including divisional heads, executive directors, managers and counsel employed by that Authority;
- (ea) the Privacy Commissioner for Personal Data and any person employed or engaged by him or her under the Personal Data (Privacy) Ordinance (Cap 486); (Added 48 of 1999 s. 24)
- (eb) the Chairperson of the Equal Opportunities Commission and any person employed or whose services are engaged by the Commission under the Sex Discrimination Ordinance (Cap 480); (Added 48 of 1999 s. 24)
- (f) any person holding an office, whether permanent or temporary, in a Government department or bureau and employed in the department or bureau.

Chapter:	542	Title:	LEGISLATIVE COUNCIL ORDINANCE	Gazette Number:	L.N. 55 of 2000
Section:	40	Heading:	What requirements are to be complied with by persons nominated as candidates	Version Date:	03/03/2000

(1) A person is not validly nominated as a candidate for an election for a constituency, or by the Election Committee, unless-

- (a) a deposit has, in the manner prescribed by regulations in force under the Electoral Affairs Commission Ordinance (Cap 541), been lodged by or on behalf of the person with the Returning Officer concerned; and
- (b) the nomination form includes or is accompanied by-
 - (i) a declaration to the effect that the person will uphold the Basic Law and pledge allegiance to the Hong Kong Special Administrative Region; and
 - (ii) a declaration as to the person's nationality and as to whether or not the person has a right of abode in a country other than the People's Republic of China; and
 - (iii) a promissory oath given by the person to the effect that, if elected, he or she will not do anything during his or her term of office that results in his or her- (Amended 48 of 1999 s. 25)
 - (A) becoming-
 - (I) a prescribed public officer within the meaning of section 39(5); or
 - (II) an officer of the Legislative Council or a member of staff of The Legislative Council Commission; (Amended 48 of 1999 s. 25)
 - (B) being sentenced to death in Hong Kong or any other place;
 - (C) being convicted of treason;
 - (D) being convicted-

- (I) of having engaged in corrupt or illegal conduct in contravention of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554); or
 - (II) of an offence against Part II of the Prevention of Bribery Ordinance (Cap 201); or
 - (III) of any offence prescribed by regulations in force under the Electoral Affairs Commission Ordinance (Cap 541); (Replaced 10 of 2000 s. 47)
 - (E) being disqualified from being elected as a Member at an election because of the operation of this or any other law;
 - (F) becoming a representative or salaried functionary of a government of a place outside Hong Kong;
 - (G) becoming a member of any national, regional or municipal legislature, assembly or council of any place outside Hong Kong, other than a people's congress or people's consultative body of the People's Republic of China, whether established at the national or local level;
 - (H) becoming a member of the armed forces of the Central People's Government or any other country or territory; or
 - (I) in the case of a Member elected for a functional constituency, ceasing to have a substantial connection with the constituency.
- (2) The person must sign the declarations.
- (3) The deposit is to be of such an amount as is prescribed by the regulations for the purposes of this section.

Chapter:	547	Title:	DISTRICT COUNCILS ORDINANCE	Gazette Number:	33 of 2002
Section:	14	Heading:	Disqualification of appointed members	Version Date:	27/12/2002

- (1) A person is disqualified for appointment and from holding office as an appointed member, if the person-
- (a) is-
 - (i) a judicial officer; or
 - (ii) a prescribed public officer; or
 - (b) has, in Hong Kong, or any other place, been sentenced to death or imprisonment (by whatever name called) and has not either-
 - (i) served the sentence or undergone such other punishment as a competent authority may have substituted for the sentence; or
 - (ii) received a free pardon; or
 - (c) has been convicted of treason; or
 - (d) without limiting paragraph (b), where the term of office is to begin within 5 years after the date of the person's conviction, has been convicted, or is convicted after the beginning of the term of office-
 - (i) in Hong Kong or any other place, of an offence for which the person has been sentenced to imprisonment, whether suspended or not, for a term exceeding 3 months without the option of a fine; or
 - (ii) of having engaged in corrupt or illegal conduct in contravention of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554); or
 - (iii) of an offence against Part II of the Prevention of Bribery Ordinance (Cap 201); or
 - (iv) of any offence prescribed by regulations in force under the Electoral Affairs

Commission Ordinance (Cap 541); or (Replaced 10 of 2000 s. 47)

- (e) is a representative or a salaried functionary of the government of a place outside Hong Kong; or
- (f) is a member of any national, regional or municipal legislature, assembly or council of any place outside Hong Kong, other than a people's congress or people's consultative body of the People's Republic of China, whether established at the national level or local level; or
- (g) is an undischarged bankrupt or, within the previous 5 years, has either obtained a discharge in bankruptcy or has entered into a voluntary arrangement within the meaning of the Bankruptcy Ordinance (Cap 6) with the person's creditors, in either case without paying the creditors in full. (Amended 33 of 2002 s. 5)

(2) An appointed member is also disqualified from holding office if the person is found under the Mental Health Ordinance (Cap 136) to be incapable, by reason of mental incapacity, of managing and administering his or her property and affairs. (Amended 33 of 2002 s. 5)

(3) Subsection (2) does not prevent a person from being eligible for appointment as a member if subsequently it is found under the Mental Health Ordinance (Cap 136) that the person has become capable of managing and administering his or her property and affairs. (Amended 33 of 2002 s. 5)

(4) Subject to subsection (6), an appointed member is also disqualified from holding office for the remainder of that member's term of office if the member does not attend meetings of the District Council for 4 consecutive months ("disqualifying period") without obtaining the consent of the Council before the end of that period.

(5) The disqualifying period under subsection (4) begins on the day next following the date of the meeting of the Council at which the member is first absent without consent.

(6) If during the disqualifying period no meetings are held or only one meeting is held, that period is extended to end immediately after the 3rd consecutive meeting from which the member is absent.

(7) An appointed member is also disqualified from holding office if the person was not eligible for appointment as a member under section 12.

Chapter:	547	Title:	DISTRICT COUNCILS ORDINANCE	Gazette Number:	33 of 2002
Section:	19	Heading:	Disqualification of ex officio members	Version Date:	27/12/2002

(1) A person who is a Chairman of a Rural Committee is disqualified from holding office as an ex officio member, if the person-

- (a) is-
 - (i) a judicial officer; or
 - (ii) a prescribed public officer; or
- (b) has, in Hong Kong, or any other place, been sentenced to death or imprisonment (by whatever name called) and has not either-
 - (i) served the sentence or undergone such other punishment as a competent authority may have substituted for the sentence; or
 - (ii) received a free pardon; or
- (c) has been convicted of treason; or
- (d) without limiting paragraph (b), where the term of office is to begin within 5 years after the date of the person's conviction, has been convicted, or is convicted after the beginning of the term of office-
 - (i) in Hong Kong or any other place, of an offence for which the person has been

sentenced to imprisonment, whether suspended or not, for a term exceeding 3 months without the option of a fine; or

- (ii) of having engaged in corrupt or illegal conduct in contravention of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554); or
- (iii) of an offence against Part II of the Prevention of Bribery Ordinance (Cap 201); or
- (iv) of any offence prescribed by regulations in force under the Electoral Affairs Commission Ordinance (Cap 541); or (Replaced 10 of 2000 s. 47)
- (e) is a representative or a salaried functionary of the government of a place outside Hong Kong; or
- (f) is a member of any national, regional or municipal legislature, assembly or council of any place outside Hong Kong, other than a people's congress or people's consultative body of the People's Republic of China, whether established at the national level or local level; or
- (g) is an undischarged bankrupt or, within the previous 5 years, has either obtained a discharge in bankruptcy or has entered into a voluntary arrangement within the meaning of the Bankruptcy Ordinance (Cap 6) with the person's creditors, in either case without paying the creditors in full. (Amended 33 of 2002 s. 6)

(2) An ex officio member is also disqualified from holding office if the person is found under the Mental Health Ordinance (Cap 136) to be incapable, by reason of mental incapacity, of managing and administering his or her property and affairs. (Amended 33 of 2002 s. 6)

(3) Subsection (2) does not prevent a person from holding office as an ex officio member if subsequently it is found under the Mental Health Ordinance (Cap 136) that the person has become capable of managing and administering his or her property and affairs. (Amended 33 of 2002 s. 6)

(4) Subject to subsection (6), an ex officio member is also disqualified from holding office until the members elected at the next ordinary election commence their term of office if the member does not attend meetings of the District Council for 4 consecutive months ("disqualifying period") without obtaining the consent of the Council before the end of that period.

(5) The disqualifying period under subsection (4) begins on the day next following the date of the meeting of the Council at which the member is first absent without consent.

(6) If during the disqualifying period no meetings are held or only one meeting is held, that period is extended to end immediately after the 3rd consecutive meeting from which the member is absent.

Chapter:	547	Title:	DISTRICT COUNCILS ORDINANCE	Gazette Number:	33 of 2002
Section:	21	Heading:	When person is disqualified from being nominated as a candidate and from being elected as an elected member	Version Date:	27/12/2002

(1) A person is disqualified from being nominated as a candidate at an election, and from being elected as an elected member, if the person-

- (a) is-
 - (i) a judicial officer; or
 - (ii) a prescribed public officer; or
- (b) has, in Hong Kong, or any other place, been sentenced to death or imprisonment (by

whatever name called) and has not either-

- (i) served the sentence or undergone such other punishment as a competent authority may have substituted for the sentence; or
- (ii) received a free pardon; or
- (c) has been convicted of treason; or
- (d) on the date of nomination, or of the election, is serving a sentence of imprisonment; or
- (e) without limiting paragraph (b), where the election is to be held or is held within 5 years after the date of the person's conviction, is or has been convicted-
 - (i) in Hong Kong or any other place, of an offence for which the person has been sentenced to imprisonment, whether suspended or not, for a term exceeding 3 months without the option of a fine; or
 - (ii) of having engaged in corrupt or illegal conduct in contravention of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554); or
 - (iii) of an offence against Part II of the Prevention of Bribery Ordinance (Cap 201); or
 - (iv) of any offence prescribed by regulations in force under the Electoral Affairs Commission Ordinance (Cap 541); or (Replaced 10 of 2000 s. 47)
- (f) is ineligible to be a candidate or to be elected as an elected member because of the operation of this Ordinance or any other law; or
- (g) is a representative or a salaried functionary of the government of a place outside Hong Kong; or
- (h) is a member of any national, regional or municipal legislature, assembly or council of any place outside Hong Kong, other than a people's congress or people's consultative body of the People's Republic of China, whether established at the national level or local level; or
- (i) is an undischarged bankrupt or, within the previous 5 years, has either obtained a discharge in bankruptcy or has entered into a voluntary arrangement within the meaning of the Bankruptcy Ordinance (Cap 6) with the person's creditors, in either case without paying the creditors in full. (Amended 33 of 2002 s. 7)

(2) A person is also disqualified from being nominated as a candidate at an election if the person is found under the Mental Health Ordinance (Cap 136) to be incapable, by reason of mental incapacity, of managing and administering his or her property and affairs, but a person disqualified under this subsection is eligible for nomination as a candidate if, under that Ordinance, it is subsequently found that the person has become capable of managing and administering his or her property and affairs. (Amended 33 of 2002 s. 7)

(3) A person is also disqualified from being elected as an elected member if the person is found under the Mental Health Ordinance (Cap 136) to be incapable, by reason of mental incapacity, of managing and administering his or her property and affairs, but a person disqualified under this subsection ceases to be disqualified if, under that Ordinance, it is subsequently found that the person has become capable of managing and administering his or her property and affairs. (Amended 33 of 2002 s. 7)

Chapter:	547	Title:	DISTRICT COUNCILS ORDINANCE	Gazette Number:	33 of 2002
Section:	24	Heading:	Disqualification of elected members	Version Date:	27/12/2002

- (1) An elected member is disqualified from holding office if the member-
 - (a) becomes-
 - (i) a judicial officer; or

- (ii) a prescribed public officer; or
- (b) has, in Hong Kong, or any other place, been sentenced to death or imprisonment (by whatever name called) and has not either-
 - (i) served the sentence or undergone such other punishment as a competent authority may have substituted for the sentence; or
 - (ii) received a free pardon; or
- (c) has been convicted of treason; or
- (d) without limiting paragraph (b), after being elected, is convicted-
 - (i) in Hong Kong or any other place, of an offence for which the person has been sentenced to imprisonment, whether suspended or not, for a term exceeding 3 months without the option of a fine; or
 - (ii) of having engaged in corrupt or illegal conduct in contravention of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554); or
 - (iii) of an offence against Part II of the Prevention of Bribery Ordinance (Cap 201); or
 - (iv) of any offence prescribed by regulations in force under the Electoral Affairs Commission Ordinance (Cap 541); or (Replaced 10 of 2000 s. 47)
- (e) is a representative or a salaried functionary of the government of a place outside Hong Kong; or
- (f) is a member of any national, regional or municipal legislature, assembly or council of any place outside Hong Kong, other than a people's congress or people's consultative body of the People's Republic of China, whether established at the national level or local level; or
- (g) is an undischarged bankrupt or, within the previous 5 years, has either obtained a discharge in bankruptcy or has entered into a voluntary arrangement within the meaning of the Bankruptcy Ordinance (Cap 6) with the person's creditors, in either case without paying the creditors in full. (Amended 33 of 2002 s. 8)

(2) Subsection (1)(d) does not prevent a person from being eligible to be a candidate at an election to be held 5 years after the disqualification.

(3) An elected member is also disqualified from holding office if the person is found under the Mental Health Ordinance (Cap 136) to be incapable, by reason of mental incapacity, of managing and administering his or her property and affairs. (Amended 33 of 2002 s. 8)

(4) Subsection (3) does not prevent a person from being eligible to be a candidate at an election if subsequently it is found under the Mental Health Ordinance (Cap 136) that the person has become capable of managing and administering his or her property and affairs. (Amended 33 of 2002 s. 8)

(5) Subject to subsection (7), an elected member is also disqualified from holding office for the remainder of that member's term of office if the member does not attend meetings of the District Council for 4 consecutive months ("disqualifying period") without obtaining the consent of the Council before the end of that period.

(6) The disqualifying period under subsection (5) begins on the day next following the date of the meeting of the Council at which the member is first absent without consent.

(7) If during the disqualifying period no meetings are held or only one meeting is held, that period is extended to end immediately after the 3rd consecutive meeting from which the member is absent.

(8) An elected member is also disqualified from holding office if the person was not eligible to be nominated as a candidate under section 20.

Chapter:	569	Title:	CHIEF EXECUTIVE ELECTION ORDINANCE	Gazette Number:	L.N. 187 of 2001
Section:	14	Heading:	Disqualification from being nominated	Version Date:	21/09/2001

Without prejudice to section 13(1)(c) of the Electoral Affairs Commission Ordinance (Cap 541), a person is disqualified from being nominated as a candidate if-

- (a) he is the Chief Executive and holds the office of the Chief Executive for the second consecutive term;
- (b) he is a judicial officer as defined by section 2 of the Judicial Officers Recommendation Commission Ordinance (Cap 92);
- (c) he is a prescribed public officer;
- (d) he is adjudged bankrupt under the Bankruptcy Ordinance (Cap 6) and has not been discharged under section 30A or 30B of that Ordinance;
- (e) he holds a passport or similar travel document other than-
 - (i) a Hong Kong Special Administrative Region Passport issued under the Hong Kong Special Administrative Region Passports Ordinance (Cap 539);
 - (ii) a certificate of identity within the meaning of the Immigration Ordinance (Cap 115); or
 - (iii) any entry permit issued by an authority in any part of the People's Republic of China which authorizes its holder to enter any part of the People's Republic of China;
- (f) he has, in Hong Kong or any other place, been sentenced to death and has not either-
 - (i) served the sentence or undergone such other punishment as a competent authority may have substituted for the sentence; or
 - (ii) received a free pardon;
- (g) he has been convicted of treason;
- (h) he has been convicted-
 - (i) in Hong Kong or any other place, of an offence for which the person has been sentenced to imprisonment, whether suspended or not, for a term exceeding 3 months without the option of a fine;
 - (ii) of having engaged in corrupt conduct or illegal conduct in contravention of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554);
 - (iii) of an offence against Part II of the Prevention of Bribery Ordinance (Cap 201); or
 - (iv) of any offence prescribed by the EAC Regulations made for the purposes of this paragraph, within the 5 years before the date of nomination; or
- (i) he is found for the time being under the Mental Health Ordinance (Cap 136) to be incapable, by reason of mental incapacity, of managing and administering his property and affairs.



Implementation of
Article 23 of the Basic Law

National Security (Legislative Provisions) Bill

Overview



After extensive consultation, the Hong Kong Special Administrative Region (HKSAR) Government has drafted the National Security (Legislative Provisions) Bill to implement Article 23 of the Basic Law.

The Bill has been drafted in accordance with the principle that the HKSAR shall enact legislation on its own. In no way have Mainland legal concepts been extended to the HKSAR, nor is there any intention to create a new ordinance. Three existing ordinances will be amended to clearly specify those acts endangering national security as required to be prohibited by the Basic Law.

The Bill fully complies with the International Covenant on Civil and Political Rights. Existing freedoms and rights enjoyed by HKSAR residents as guaranteed by the Basic Law will continue to be protected.

In line with usual practice, the HKSAR Government will submit the Bill to the Legislative Council after publishing it in the gazette. Further views from residents and organisations are welcome.



1

Proposed prohibition of acts endangering national security

Treason

Treason refers to the instigation of foreign invasion, assisting a public enemy at war with the People's Republic of China (PRC), or joining foreign armed forces at war with the PRC.

The definition of 'war' in the treason offence limited to actual war or armed conflicts, and not ordinary demonstrations or riots. The freedom of speech, of the press, of procession, of demonstration and of assembly are fully preserved.

The offence of misprision of treason under common law will be abolished to allay public concerns on criminalising the failure to report the crime and the scenario that relatives and friends will be keeping each other under surveillance. Treason will apply only to Chinese nationals, whether within or outside the HKSAR.



2

Secession

Secession refers to the use of war, force or serious criminal means to split the country.



Subversion

Subversion refers to the use of war, force or serious criminal means to overthrow or intimidate the Central People's Government, or to disestablish the basic system of the state.

Only the actual use of force or serious criminal means akin to terrorist activities will result in a breach of the secession or subversion offences. The exercise of free speech will not be criminalised.



Sedition

Sedition refers to inciting others to commit treason, subversion or secession, or inciting others to engage in violent public disorder that would seriously endanger the stability of the PRC.

The offence of possessing seditious publications in the existing ordinance will be abolished. The freedom of speech, of publication and of academic research are fully protected.



Theft of state secrets

Slight amendments are proposed to the existing Official Secrets Ordinance. Information relating to the relations between the Central Authorities and the HKSAR will be clearly defined as information concerning the HKSAR for which the Central Authorities are responsible under the Basic Law. The free flow of financial information will not be impeded.

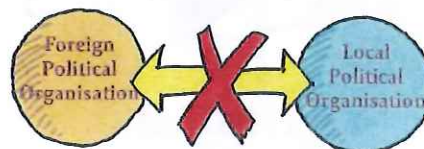


'Illegal access' to information is strictly limited to obtaining information through the five specified criminal means of hacking, theft, robbery, burglary, or bribery. The freedom of the press and the free flow of information are fully protected.



Foreign political organisations

Existing Societies Ordinance provisions will be used to prohibit foreign political organisations or bodies from conducting political activities in the HKSAR, and to prohibit political organisations or bodies of the HKSAR from establishing ties with foreign political organisations or bodies.



Organisations endangering national security

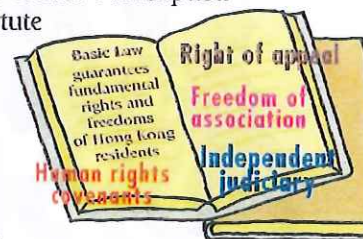
The power to proscribe organisations endangering national security will be strictly regulated. The Secretary for Security can exercise the power only if:

- the decision to proscribe a local organisation complies with international human rights standards, as applied under Article 39 of the Basic Law;
- it is made to safeguard national security; and
- it is necessary and proportionate.

A local organisation will not automatically be proscribed even if it is subordinate to a Mainland organisation proscribed by the Central Authorities by open decree.

A local organisation that is proscribed will have the right of appeal to the courts. Proscription itself does not constitute an offence.

An offence will only be committed if the proscription is disregarded and the organisation continues to operate.



Emergency investigation powers

The Bill clearly specifies that only under exigent situations can a police officer at the rank of Chief Superintendent or above authorise the exercise of emergency investigation powers. Search or seizure of journalistic materials may be carried out only if the officers have obtained a judicial warrant in advance. The freedom of the press will not be affected.



Trial by jury

People charged with treason, secession or subversion must be tried by jury. Those charged with sedition or unlawful disclosure may opt for trial by jury if they so wish.



Protection of human rights

The Bill explicitly stipulates that the interpretation, application and enforcement of all provisions must comply with Article 39 of the Basic Law, which mandates compliance with the standards of international human rights covenants.

To find out more about the Bill to implement Article 23 of the Basic Law, please obtain the text of the Bill and relevant information on or after February 14, 2003 at the Public Enquiry Service Centres of District Offices or visit the website: www.basiclaw23.gov.hk



Implementation of Article 23 of the Basic Law

National Security (Legislative Provisions) Bill

Explanatory Notes

Implementation of
Article 23 of the Basic Law

National Security
(Legislative Provisions) Bill

Explanatory Notes

Security Bureau
February 2003

An Overview

After extensive consultation, the Hong Kong Special Administrative Region (HKSAR) Government has drafted the National Security (Legislative Provisions) Bill to implement Article 23 of the Basic Law.

The Bill has been drafted in accordance with the principle that the HKSAR shall enact legislation on its own. In no way have Mainland legal concepts been extended to the HKSAR, nor is there any intention to create a new ordinance. Three existing ordinances will be amended to clearly specify those acts endangering national security as required to be prohibited by the Basic Law.

The Bill fully complies with the International Covenant on Civil and Political Rights (ICCPR). Existing freedoms and rights enjoyed by HKSAR residents as guaranteed by the Basic Law will continue to be protected.

In line with usual practice, the HKSAR Government will submit the Bill to the Legislative Council after publishing it in the gazette. Further views from residents and organizations are welcome.

Proposed prohibition of acts endangering national security

Treason

Treason refers to the instigation of foreign invasion, assisting a public enemy at war with the People's Republic of China (PRC), or joining foreign armed forces at war with the PRC.

Secession

Secession refers to the use of war, force or serious criminal means to split the country.

Subversion

Subversion refers to the use of war, force or serious criminal means to overthrow or intimidate the Central People's Government (CPG), or to disestablish the basic system of the state by such means.

Sedition

Sedition refers to inciting others to commit treason, subversion or secession, or inciting others to engage in violent public disorder that would seriously endanger the stability of the PRC.

Theft of state secrets

Slight amendments are proposed to the existing Official Secrets Ordinance to protect information related to national security. In particular, definitions of information on the relations between the Central Authorities and the HKSAR, and information acquired by 'illegal access', are clearly set out in the Bill.

Foreign political organizations

Existing Societies Ordinance definitions will be used to prohibit foreign political organizations or bodies from conducting political activities in the HKSAR, and to prohibit political organizations or bodies of the HKSAR from establishing ties with foreign political organizations or bodies.

Organizations endangering national security

The power to proscribe organizations endangering national security will be strictly regulated. The Secretary for Security can exercise the power only under stipulated conditions. A local organization will not automatically be proscribed even if it is subordinate to a Mainland organization prohibited by the Central Authorities by open decree.

Emergency investigation powers

The Bill clearly specifies that only under exigent situations can a police officer at the rank of Chief Superintendent or above authorize the exercise of emergency investigation powers.

Trial by jury

People charged with treason, secession or subversion must be tried by jury. Those charged with sedition or unlawful disclosure may opt for trial by jury if they so wish.

Protection of human rights

The Bill explicitly stipulates that the interpretation, application and enforcement of all provisions must comply with Article 39 of the Basic Law, which mandates compliance with the standards of international human rights covenants.

Main provisions of the Bill

Treason, subversion and secession

The provisions	
Treason	<p>A Chinese national commits treason if he —</p> <p>(a) with intent to —</p> <p>(i) overthrow the CPG;</p> <p>(ii) intimidate the CPG; or</p> <p>(iii) compel the CPG to change its policies or measures, joins or is a part of foreign armed forces at war with the PRC;</p> <p>(b) instigates foreign armed forces to invade the PRC with force; or</p> <p>(c) assists any public enemy at war with the PRC by doing any act with intent to prejudice the position of the PRC in the war.</p>
Misprision of Treason	The common law offence of misprision of treason is abolished.
Subversion	<p>A person commits subversion if he —</p> <p>(a) disestablishes the basic system of the PRC as established by the Constitution of the PRC;</p> <p>(b) overthrows the CPG; or</p> <p>(c) intimidates the CPG,</p> <p>by using force or serious criminal means that seriously endangers the stability of the PRC or by engaging in war.</p>
Secession	<p>A person commits secession if he withdraws any part of the PRC from its sovereignty by —</p> <p>(a) using force or serious criminal means that seriously endangers the territorial integrity of the PRC; or</p> <p>(b) engaging in war.</p>

Synopsis
<ul style="list-style-type: none"> • The existing 'treason' offence is substantially narrowed, such as abolishing the equation of assaulting the sovereign with treason. The scope of the offence will be clearly defined. • 'War' is narrowed to declared war or open armed conflicts. General demonstrations or riots will be excluded. • 'Assisting public enemy' refers to assisting a foreign government or foreign armed forces that are at war with China, and with an intent to prejudice the position of China in the war. Humanitarian aid to ordinary people will not constitute 'assisting public enemy'. • The terms 'instigate' and 'intimidate' etc. originate from existing legislation, and are similar to those of other common law jurisdictions. They will be interpreted in accordance with common law precedents and principles. • 'Misprision of treason' is an existing common law offence, which refers to a person who, knowing that another person has committed treason, fails to report the offence to the proper authorities within a reasonable time. The Bill abolishes this offence to ease public concerns. • 'Serious criminal means' originates from the definition of 'terrorist acts' in the United Nations (Anti-Terrorism Measures) Ordinance, and must be a criminal act itself to constitute an offence. • The relevant offences are committed only when the 'force' or 'serious criminal means' used is so serious that it would seriously endanger the stability or territorial integrity of the State. The scope of the offence is narrowly defined and will not affect human rights and freedoms.

Sedition and seditious publication

The provisions		Synopsis
Sedition	<p>A person commits sedition if he —</p> <p>(a) incites others to commit an offence of treason, subversion or secession; or</p> <p>(b) incites others to engage in violent public disorder that would seriously endanger the stability of the PRC.</p>	<ul style="list-style-type: none"> • The offence is committed only if one incites others to seriously endanger the security or stability of the State by means of war, the use of force, or serious criminal means akin to terrorist acts. • The offence of 'sedition' adopts the existing common law concept of 'incitement'. The scope of criminal law is not expanded. • Regarding seditious publication, the Bill not only abolishes the existing offence of 'possession of seditious publication', but also substantially narrows the existing scope of 'seditious publication' by repealing definitions that are too broad and by including the intention to commit a crime as a necessary element. Human rights are fully protected. • The amendments in the Bill are more protective of the freedom of speech, of the press, of publication, of academic research, literary and artistic creation, etc. compared with existing legislation.
Possession of seditious publication	<p>The existing offence of possession of seditious publication is abolished.</p>	
Handling seditious publication	<p>A person commits an offence if he —</p> <p>(a) publishes, sells, offers for sale, distributes or displays any seditious publication;</p> <p>(b) prints or reproduces any seditious publication; or</p> <p>(c) imports or exports any seditious publication, with intent to incite others, by means of the publication, to commit an offence of treason, subversion or secession.</p> <p>'Seditious publication' means a publication that is likely to cause the commission of an offence of treason, subversion or secession.</p>	

The offence of unlawful disclosure

The provisions	Synopsis
<p>Information related to Hong Kong affairs within the responsibility of the Central Authorities</p>	<p>A person who is or has been a public servant or government contractor commits an offence if he makes, without lawful authority, a damaging disclosure of any information —</p> <ul style="list-style-type: none"> (a) that relates to any affairs concerning the HKSAR which are, under the Basic Law, within the responsibility of the Central Authorities; and (b) that is or has been in his possession by virtue of his position as a public servant or government contractor. <p>A disclosure is 'damaging' if it endangers or would likely to endanger national security.</p> <ul style="list-style-type: none"> • In line with the constitutional situation after Reunification, and to more clearly stipulate the scope of protected information, the information on the relations between the HKSAR and the Central Authorities will be taken out from the currently protected category of 'international relations', and be strictly defined as information related to the affairs of the HKSAR that are within the responsibility of the Central Authorities under the Basic Law. Therefore, the free flow of economic and commercial information will not be affected. • The Bill also stipulates that, to constitute an offence in relation to this category of information, public servants or government contractors must know, or have reasonable cause to believe, that the information in question belongs to the category, and that disclosure of it without lawful authority will, or is likely to, endanger national security. • 'National security' is defined according to existing local legislation, i.e. the safeguarding of the territorial integrity and the independence of the PRC. • Disclosures that merely cause embarrassment to the Government will not be penalized.
<p>Information acquired by illegal access</p>	<p>A person possessing any information acquired by means of illegal access, and discloses it without lawful authority and knowing, or having reasonable cause to believe, that the information —</p> <ul style="list-style-type: none"> (a) belongs to a category protected from disclosure under the Official Secrets Ordinance; (b) the disclosure of which would be damaging; and (c) is acquired by means of illegal access <p>commits an offence.</p> <p>'Illegal access' to information is limited to the following circumstances —</p> <ul style="list-style-type: none"> (a) the information comes into or remains in his possession by virtue of an offence of — <ul style="list-style-type: none"> (i) unauthorized access to computer by telecommunications; (ii) access to computer with criminal or dishonest intent; or (iii) theft, robbery or burglary, committed by him in relation to the information; or (b) the information comes into or remains in his possession in exchange for an advantage the offer or acceptance of which is an offence of bribery. <ul style="list-style-type: none"> • Under existing legislation, it is an offence to make a damaging disclosure of protected information that is disclosed by a public servant without lawful authority. However, it is not an offence if the information in question is obtained through unlawful means such as by theft from a confidential registry of the Government. • This is obviously a loophole in the law. The Bill therefore stipulates that it is an offence to make a damaging disclosure, without lawful authority, of protected information obtained as a result of illegal access. • To clearly define what constitutes 'illegal access', the Bill limits the term to the acquisition of information by specified criminal acts under Hong Kong laws, i.e. hacking, theft, robbery, burglary and bribery. • The offence is very narrowly defined. The elements of the offence are listed clearly in the current legislation and in the Bill. Whether a person is convicted will be determined independently by the courts of Hong Kong.

Proscription of organization endangering national security

The provisions	Synopsis
<p>Proscription of organization endangering national security</p> <p>The Secretary for Security may by order proscribe any local organization if he reasonably believes that the proscription is necessary in the interests of national security and is proportionate for such purpose.</p> <p>Such proscription is only applicable to a local organization —</p> <ol style="list-style-type: none"> (a) the objective, or one of the objectives, of which is to engage in treason, subversion, secession or sedition or commit an offence of spying; (b) which has committed or is attempting to commit treason, subversion, secession, sedition or an offence of spying; or (c) which is subordinate to a mainland organization the operation of which has been prohibited on the ground of protecting the security of the PRC, as officially proclaimed by means of an open decree, by the Central Authorities under the law of the PRC. <p>‘Subordination’ refers to the following circumstances —</p> <ol style="list-style-type: none"> (a) the local organization solicits or accepts for its operation substantial financial contributions, sponsorship or support, or loans of a substantial amount, directly or indirectly, from the mainland organization; (b) the local organization is under the direction or control, directly or indirectly, of the mainland organization; or (c) the policies of the local organization are determined, directly or indirectly, by the mainland organization. 	<ul style="list-style-type: none"> • The Bill expressly provides for a number of safeguards in respect of the proscription mechanism. • The following criteria must be satisfied for the proscription of a local organization that is subordinate to a Mainland prohibited organization: <ul style="list-style-type: none"> ■ There must be reasonable ground to believe that it is necessary and proportionate for the interests of national security to proscribe the local organization; ■ The Mainland organization concerned must be prohibited by an open decree on the ground of national security by the Central Authorities in accordance with national laws; and ■ There must be evidence, in accordance with the laws of Hong Kong, that the local organization is subordinate to the prohibited Mainland organization (subordination includes acceptance of substantial financial sponsorship from the Mainland organization concerned or being under the control of the Mainland organization). Ordinary connection does not amount to ‘subordination’. <p>A local organization that is subordinate to a prohibited Mainland organization will not be automatically proscribed.</p> <ul style="list-style-type: none"> • In addition, the Bill explicitly specifies that the provisions relating to the proscription mechanism must be interpreted, applied and enforced in a manner that is consistent with Article 39 of the Basic Law, which incorporates the ICCPR standards. • Any decision to proscribe an organization in Hong Kong is subject to appeal, to be adjudicated by the local courts in accordance with Hong Kong laws. • Articles 27 and 39 of the Basic Law provide constitutional safeguards to freedom of association. Legislation that implements Article 23 and the exercise of the relevant powers are subject to these safeguards.

	The provisions	Synopsis
<p>Offence relating to proscribed organization</p>	<p>A person who —</p> <ul style="list-style-type: none"> (a) is or acts as an office-bearer or professes to be or claims to be an office-bearer of; (b) manages or assists in the management of; (c) is or acts as a member of; (d) attends a meeting of; or (e) pays money to or gives any other form of aid to, <p>a proscribed organization is guilty of an offence. Nevertheless the following circumstances can serve as a defence —</p> <ul style="list-style-type: none"> (a) the person did not know and had no reason to believe that the organization has been proscribed; (b) in relation to his being or acting as an office-bearer or a member of an organization, the person had taken all reasonable steps to cease to be such office-bearer or member. 	<ul style="list-style-type: none"> • The decision to proscribe an organization is targeted at the continued operation of the organization. It is not a criminal offence aimed at an individual. A person will be prosecuted only if he disregards the proscription order and continues to support the operation of the organization after it has been proscribed. • Any person who has no knowledge of the proscription of a local organization will not be punished for being an office-bearer or a member of that organization. • The offence must be adjudicated by the courts in accordance with Hong Kong laws. No one will be presumed guilty without trial.

Protection of rights and freedoms

Basic Law

The Basic Law was enacted by the National People's Congress in accordance with the Constitution of the PRC and is the constitutional document of the HKSAR. The systems and policies practised in the HKSAR, including the social and economic systems, the system for safeguarding the fundamental rights and freedoms of its residents, the executive, legislative and judicial systems shall be based on the provisions of the Basic Law.

No law enacted by the legislature of the HKSAR shall contravene the Basic Law, including its provisions on the protection of freedoms and rights.

Freedoms are fundamental rights

In an open and democratic society, the government is subject to close public scrutiny. Protection of the freedom of speech serves to guarantee the rights of the public to form and effectively communicate their opinions, including those that are critical of government policies and measures. The right of assembly and the freedom of association enable citizens to join forces to express their views more effectively.

Freedom of speech, of assembly and of association are not absolute, as the exercise of the rights of the individual can have a detrimental effect on the rights of others and on society as a whole and should therefore be subject to necessary restrictions. As recognized under many international covenants, constitutions and legislation, the exercise of freedoms and rights of the individual carries with it special duties and responsibilities.

Constitutional protection under the Basic Law

Chapter 3 of the Basic Law protects the freedom of speech, of the press, of publication, of association, of assembly, of procession, of demonstration, of religious belief, and the freedom to engage in academic research, literary and artistic creation. Restrictions on such rights and freedoms must comply with the provisions of the two international human rights covenants as applied to Hong Kong.

The ICCPR, which is applied to Hong Kong through Article 39 of the Basic Law, spells out the responsibilities carried with the exercise of the rights and freedoms.

"Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice (The exercise of the right to freedom of expression) carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;*
- (b) For the protection of national security or of public order (ordre public), or of public health or morals."*

— for details, see Article 19 of the ICCPR

"Everyone shall have the right to freedom of association No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public)"

— for details, see Article 22 of the ICCPR

All laws that implement Article 23 must not contravene the human rights protections stipulated in the Basic Law.

Clear safeguards stipulated by the Bill

The offences are strictly defined in the Bill and they are consistent with the human rights provisions of the Basic Law. No one will mistakenly breach the law.

An internationally renowned specialist in human rights law, Mr David Pannick, QC, pointed out in his opinion to the HKSAR Government that the proposals in the consultation paper are consistent with the protection of human rights.

The Bill is based on existing legislation. All provisions will be interpreted by the Hong Kong courts in accordance with the common law principles. Mainland legal concepts will in no way be extended to Hong Kong.

Compliance with Article 39 of the Basic Law explicitly specified

To further protect human rights, the Bill explicitly specifies that all provisions must be enforced, applied and interpreted in accordance with Article 39 of the Basic Law. In other words, the provisions must comply with the standards of international human rights covenants.

Freedom of speech will not be undermined

The proposed offence of 'sedition' under the Bill adopts the existing common law concept of 'incitement'. Under common law, 'inciting' others to commit a substantive offence, such as murder or theft, is itself an offence.

To convict a person of the common law offence of 'incitement', the prosecution must prove beyond reasonable doubt that :

- (a) he has compelled or encouraged others to commit a crime; and*
- (b) he has the intention that others, after being incited by him, shall commit the crime.*

Therefore, if the person does not believe that others would commit the offence incited, he does not commit an offence of 'incitement' because he lacks the requisite intention.

Sedition is defined in the Bill to mean 'inciting' others to commit treason, secession or subversion, or inciting others to engage in violent public disorder which would seriously endanger the stability of the PRC. The offence is firmly based on common law principles and is consistent with the international standards on protection of freedom of speech. The scope of criminal law has not been expanded.

Freedom of the press is fully protected

To ensure that the offence of unlawful disclosure would not impede the freedom of the press and the free flow of information, and to ensure that the Government remains open and transparent, the Bill explicitly stipulates that the interpretation of the provisions of unlawful disclosure must also comply with Article 39 of the Basic Law.

When investigating any of the Article 23 offences, judicial warrants must be obtained before journalistic materials can be searched or seized. The proposed emergency investigation powers will not apply to the search and seizure of journalistic materials.

Judicial safeguards

The independence and integrity of the judiciary of Hong Kong is well-recognized by the international community.

Provisions implementing Article 23 are local laws, and will operate entirely within the existing common law framework. The rights of residents are fully protected.

As an additional safeguard, the Bill further provides that the consent of the Secretary for Justice must be obtained before prosecution of the relevant offences can be instituted.

The Bill clearly stipulates that people charged with treason, secession, subversion, sedition or unlawful disclosure will either be tried by jury or given a right to opt for jury trial if they so wish. Whether a person is convicted would ultimately be determined by a jury. Jurors are selected randomly from members of the public, thus guaranteeing that the widely accepted social values will be reflected.

*To find out more about the Bill to implement Article 23 of the Basic Law, please obtain the text of the Bill at the Public Enquiry Service Centres of District Offices or visit the website:
www.basiclaw23.gov.hk*