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**Report of the Bills Committee on
National Security (Legislative Provisions) Bill**

PURPOSE

This paper reports on the deliberations of the Bills Committee on National Security (Legislative Provisions) Bill.

BACKGROUND

2. Article 23 of the Basic Law (BL23) provides that the Hong Kong Special Administrative Region (HKSAR) shall 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 HKSAR, and to prohibit political organizations or bodies of HKSAR from establishing ties with foreign political organizations or bodies.

3. On 24 September 2002, the Administration issued a Consultation Document on "Proposals to implement Article 23 of the Basic Law". Following a three-month public consultation exercise on the Administration's proposals to implement BL23 which ended on 24 December 2002, the Administration issued a Compendium of Submissions on 28 January 2003. On 12 February 2003, the Administration announced that it would introduce the National Security (Legislative Provisions) Bill into the Legislative Council (LegCo) on 26 February 2003. The Bill was gazetted on 14 February 2003.

The BILL

4. Introduced into LegCo on 26 February 2003, the Bill seeks to provide for -

- (a) the offences of treason, subversion, secession and sedition;
- (b) the prohibition of unauthorized disclosure of certain official information;
- (c) the proscription of certain organizations if it is necessary in the interests of national security and is proportionate for such purpose;
- (d) the power of entry, search, seizure, detention and removal by the police without warrant for the investigation of treason, subversion, secession, sedition and handling seditious publication;
- (e) the election of trial by jury in respect of sedition by inciting violent public disorder, handling seditious publication and any of the offences of unlawful disclosure;
- (f) the removal of existing time limits for prosecution of offences; and
- (g) related, incidental and consequential amendments.

THE BILLS COMMITTEE

5. At the House Committee meeting 28 February 2003, Members formed a Bills Committee to study the Bill. The membership list of the Bills Committee is in **Appendix I**.

6. Under the chairmanship of Hon IP Kwok-him, the Bills Committee has held a total of 29 meetings (i.e. 56 two-hour sessions). The Bills Committee has met with 110 organizations/individuals, and has received written submissions from 53 other organizations/individuals. The names of these organizations/individuals are listed in **Appendix II**.

DELIBERATIONS OF THE BILLS COMMITTEE

7. The subjects discussed by the Bills Committee are summarized in the paragraphs below.

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Enforcement to be consistent with the Basic Law

8. The Bill proposes that Parts I, II and IIA of the Crimes Ordinance, Part III of the Official Secrets Ordinance, and the whole of the Societies Ordinance are to be interpreted, applied and enforced in a manner that is consistent with Article 39 of the Basic Law (BL39).

9. Some members consider the interpretation provisions unnecessary. These members have pointed out that as provided in Article 11 of the Basic Law, no law enacted by the legislature of HKSAR shall contravene the Basic Law. Therefore, the Bill must be compatible with the Basic Law, and not BL39 only. These members have queried the legal effect of such express provisions and the implications of them on other parts of the Crimes Ordinance and the Official Secrets Ordinance not covered by these provisions as well as other ordinances.

10. Members have also pointed out that Chapter III of the Basic Law relates to the fundamental rights and freedoms of Hong Kong people, and queried why only BL39 is referred to. Some members have suggested that Chapter III of the Basic Law should be referred to in these interpretation provisions.

11. The Administration has explained that in response to concerns expressed during the consultation period that legislation implementing BL23 might override Article 27 of the Basic Law (BL 27) and BL39, Mr David Pannick, QC, from the United Kingdom (UK) has advised, among others, that for the avoidance of doubt, it may be desirable to state generally in the Bill that nothing in it is intended to contravene BL27 or BL39. Only BL39 is referred to in the Bill as it is the operative clause of the Basic Law which entrenches the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights, and other international labour conventions. The fact that those other Articles are not referred to does not mean that the rights guaranteed by them are not protected. The rights guaranteed by the Basic Law would prevail in the light of BL11.

12. The Administration has further explained that one of the intended effects of the interpretation provisions is to require the courts to interpret the provisions in the legislation in a manner that is consistent with BL39, thereby preserving its validity. In the absence of the interpretation provisions, the court might refuse to give effect to any provision in the legislation if it were to

consider such provision inconsistent with BL39. By interpreting the legislation in a manner that is consistent with BL39, the court will give effect to the legislative intent, ensure that fundamental human rights are protected, and prevent any provision from being declared invalid. The Administration has also advised that any provision that is not subject to the interpretation provisions would, if found to be inconsistent with BL39, not be given effect to.

13. In the light of members' views, the Administration agrees to introduce amendments to replace the reference to "Article 39 of the Basic Law" by "Chapter III of the Basic Law" in the interpretation provisions, and to extend its application to the whole of the Official Secrets Ordinance.

14. Hon Albert HO has proposed amendments to the interpretation provisions by adding the expression "for the avoidance of doubt", and by stating that the provisions inconsistent with Chapter III of the Basic Law would be void.

Issues relating to adaptation of laws

15. Members note that a number of terms in the Crimes Ordinance and the Official Secrets Ordinance such as "Her Majesty's forces", "Governor", "British national", "United Kingdom", "England", "Her Majesty's service" and "Government of the United Kingdom" are not proposed for amendment by the Bill in order that they may be adapted according to established principles. Members have queried the reasons for not doing so and the legal effect of these terms remaining in their present form.

16. The Administration has responded that the "Decision of the Standing Committee of the National People's Congress on Treatment of the Laws Previously in Force in Hong Kong in accordance with Article 160 of the Basic Law on the Hong Kong Special Administrative Region of the People's Republic of China" adopted by the Standing Committee of the National People's Congress on 23 February 1997 sets out the principles on which the previous laws were adopted as the laws of HKSAR and how various expressions in the legislation which are inconsistent with the status of Hong Kong as a Special Administrative Region of the People's Republic of China (PRC) are to be construed. These principles have been enacted as part of the local law by the Hong Kong Reunification Ordinance and are incorporated as section 2A and Schedule 8 of the Interpretation and General Clauses Ordinance (Cap. 1). In line with these general principles, more detailed principles of interpretation have been added to Cap. 1 by the amendments made under the Adaptation of Laws (Interpretative Provisions) Ordinance. The relevant unadapted references in the Ordinances being amended by the Bill are to be construed by following these guiding principles. For instance, the reference to "British national" should be construed as "Chinese national".

17. The Administration has also advised that all military references in the Laws of Hong Kong, including those under sections 6 and 7 of the Crimes Ordinance, will be adapted collectively in a separate exercise. The relevant adaptation of laws bill will be introduced into LegCo before the end of this year. At the request of members, the Administration has undertaken to make a statement in this regard in the speech of Secretary for Security (S for S) to be made at the Second Reading debate on the Bill.

Amendments to the Crimes Ordinance

Treason

Offence of treason

18. The new section 2(1) of the Crimes Ordinance provides that a Chinese national commits treason if he –

- (a) with intent to –
 - (i) overthrow the Central People's Government (CPG);
 - (ii) intimidate the CPG; or
 - (iii) compel the CPG to change its policies or measures,joins or is a part of foreign armed forces at war with the PRC;
- (b) instigates foreign armed forces to invade the PRC with force; or
- (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.

19. Under the new section 2(2), a Chinese national who commits treason is guilty of an offence and is liable on conviction on indictment to imprisonment for life.

Offence under the proposed new section 2(1)(a)

20. Some members have queried why it is necessary to include “intimidate the CPG” and “compel the CPG to change its policies or measures” in the proposed offence of treason. These expressions are vague and broad, and in particular, it is unclear as to how to determine whether the CPG has been intimidated. Members have also asked why the CPG is the object of the intended overthrow, intimidation or compulsion in the new section 2(1)(a).

21. The Administration has pointed out that the proposed offence under new section 2(1)(a) is based on the existing provisions in the Crimes Ordinance, and the subject of protection is "Her Majesty" who used to be the sovereign of Hong Kong when Hong Kong was a colony of the UK. In line with the principles of interpretation provided under section 2A and Schedule 8 of Cap.1, the CPG is the target of protection for the offence of treason after the Reunification. The Administration has also pointed out that under the existing section 2 of the Crimes Ordinance, a person commits treason if he levies war against Her Majesty 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. The concept of compulsion or intimidation is therefore not new.

Offence under the proposed new section 2(1)(b)

22. Regarding the formulation of the offence of instigating foreign armed forces to invade PRC as proposed in new section 2(1)(b), some members have expressed concern that such formulation suggests that the offence could be committed by mere speech. These members have questioned why it is necessary to include such element of instigation in the offence of treason, given that incitement to treason would be an offence of sedition under the proposed section 9A(1)(a). These members have also sought clarification on -

- (a) whether this proposed section when read with the proposed definition of "foreign armed forces", would exclude instigation of armed forces of Taiwan to invade the Mainland; and
- (b) whether requesting the territory of Taiwan to be protected under the missile defence system of the United States or inviting foreign armed forces to enter and protect Taiwan would amount to the offence of treason.

23. The Administration has pointed out that Taiwan is a part of the PRC, armed forces of Taiwan are therefore armed forces based in the PRC. The proposed offence under new section 2(1)(b) is not applicable to the situation referred to in paragraph 22(a) above. As regards the situation referred to in paragraph 22(b) above, the Administration has explained that the word "invade" has an ordinary dictionary meaning of "making hostile inroad into (country, etc)", and the target of instigation and the subject of invasion is limited to foreign armed forces. Whether an act amounts to invasion would be decided by the court taking into account all circumstances and facts. Mere expression of opinion would be different from the act of instigating foreign armed forces since the latter would in practice be directed at those in control of the foreign armed forces. The Administration has also pointed out that the term "instigate" is found in a number of provisions in the Laws of Hong Kong.

24. According to the Administration, in most situations, the offence of instigating foreign armed forces to invade the PRC by force would not amount to the offence of sedition. There is a need, therefore, for its inclusion under treason.

Offence under the proposed new section 2(1)(c)

25. As to the offence of assisting public enemy at war in new section 2(1)(c), some members consider the meaning of "prejudice the position of the PRC in the war" unclear. These members are concerned that expressing anti-war views and providing humanitarian aid to a foreign country at war with the PRC would amount to assisting public enemy. These members have suggested that such acts should be excluded from the offence.

26. The Administration has pointed out that for the offence of assisting public enemy, it would not be sufficient merely to prove that a person intentionally assisted an enemy. The prosecution would also need to prove that the person's purpose in giving such assistance was to prejudice the position of the PRC in the war, and the person knew that such prejudice was a virtually certain consequence of his acts. Providing humanitarian aid to a foreign country at war with the PRC would not be conducted with such an intent, and therefore would not amount to the offence. It is not necessary to provide an express exclusion in the Bill. The Administration has stressed that mere expression of opinion would not amount to treason.

Application to Chinese nationals

27. As the offence of treason will also apply to any Chinese national who is a Hong Kong permanent resident for acts referred to in new section 2(1) done by him outside Hong Kong, some members have queried whether the offence will apply to such a person who has settled abroad and has acquired foreign nationality. These members have also queried whether such a person would be caught by the offence of treason, if he is enlisted to the army of that foreign country at the time of war with the PRC.

28. The Administration has responded that whether such acts outside Hong Kong would amount to treason would depend on the circumstances of the case, in particular, whether he is a Hong Kong permanent resident who is a Chinese national, and whether such acts themselves would constitute the offence, with the corresponding mental element satisfied. Therefore, a person enlisted in the enemy army at times of war without the necessary intention element of treason may not be caught.

29. On the question of Chinese nationals, the Administration has advised that the "Explanations of Some Questions by the Standing Committee of the National People's Congress Concerning the Implementation of the Nationality Law of the Peoples' Republic of China in the Hong Kong Special Administrative Region" (Explanations) adopted in May 1996 provides for the implementation of

the Nationality Law of the PRC in the HKSAR. The Nationality Law does not recognize dual nationality. Whether a Hong Kong permanent resident of Chinese nationality who has subsequently acquired foreign nationality may lose his Chinese nationality would need to be considered in accordance with the Nationality Law and the Explanations. Such a person would lose his Chinese nationality only if his declaration of change of nationality made in accordance with Paragraph 5 of the Explanations has been approved by the Director of Immigration, or his application for renunciation of Chinese nationality made in accordance with Article 11 of the Nationality Law has been approved by the Director of Immigration.

30. Some members have however pointed out that under Article 9 of the Nationality Law, any Chinese national who has settled abroad and who has been naturalized as a foreign national or has acquired foreign nationality of his own free will shall automatically lose Chinese nationality. There appears to be no requirement for one to apply for a change of nationality. These members have expressed doubt as to whether the Nationality Law should prevail, if inconsistency arises.

31. In response, the Administration has provided the case of TSE Yiu-hon Patrick v HKSAR Passports Appeal Board [2002] 3 HKG which affirmed the understanding of the Administration set out in paragraph 29 above.

32. Members have also discussed the legal basis for the extra-territorial application of the offence of treason, as detailed in paragraphs 54 to 57 below.

Amendments proposed by Members

33. Hon Margaret NG and Hon Audrey EU have proposed various amendments to the proposed new section 2. These include -

- (a) deleting the intent of intimidation of the CPG and compulsion of the CPG to change its policies or measures;
- (b) restricting the scope of instigation; and
- (c) excluding certain acts from treason.

34. Hon Albert HO has proposed various amendments to the proposed new section 2, including -

- (a) deleting the intent of intimidating the CPG and compelling the CPG to change its policies or measures;
- (b) deleting the instigation of foreign armed forces to invade the PRC with force; and

- (c) excluding certain acts from treason. Hon Albert HO has also proposed an avoidance of doubt provision to make clear that "foreign armed forces" does not include armed forces of Taiwan.

35. Hon James TO has also proposed amendments to exclude certain acts from treason, and to expressly provide that "foreign armed forces" does not include armed forces of Taiwan.

Subversion

36. The proposed new section 2A(1) of the Crimes Ordinance provides that a person commits subversion if he –

- (a) disestablishes the basic system of the PRC as established by the Constitution of the PRC;
- (b) overthrows the CPG; or
- (c) intimidates the CPG,

by using force or serious means that seriously endangers the stability of the PRC or by engaging war. Under new section 2A(2), any person who commits subversion is guilty of an offence and is liable on conviction on indictment to imprisonment for life.

37. Serious criminal means is defined in new section 2A(4)(b) as any act which –

- (i) endangers the life of a person other than the person who does the act;
- (ii) causes seriously 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 seriously 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) is done in any place outside Hong Kong, is an offence under the law of that place, and would, if done in Hong Kong, be an offence under the law of Hong Kong.

38. Some members have expressed concern about the proposed offence of subversion. These members have queried why it is necessary to protect the basic system of the PRC and to protect the CPG from being intimidated. These members consider that the meaning of "disestablishes the basic system of the PRC as established by the Constitution of the PRC " and "intimidate the CPG" vague and broad, and that the Bill should provide a definition on the meaning of "the basic system of the PRC as established by the Constitution of the PRC". These members have also expressed doubt as to how and under what circumstances the CPG can be intimidated.

39. The Administration has explained that the CPG exists and operates under and in accordance with the Constitution of the PRC. Under the Constitution, the CPG is the executive body of the highest organ of state power and is the highest organ of state administration. Its functions and powers include adopting administrative measures, enacting administrative rules and regulations, and issuing decisions and orders in accordance with the Constitution, etc. If the basic system of the PRC were disestablished by force or serious criminal means that seriously endangered the stability of the PRC, or by war, the nature and functions of the CPG would have been fundamentally subverted. It could no longer operate in the manner envisaged by the Constitution. It is therefore necessary to protect the CPG from such subversion.

40. The Administration has further explained that a number of jurisdictions specifically protect the constitution or laws of their countries from being overthrown by illegal means. For example, it is treachery in Australia to overthrow the constitution of Australia by revolution or sabotage. Instead of specifying the Constitution of the PRC as a broad target of protection, the Administration proposes to narrow the scope of protection to the basic system of the PRC. The basic system of PRC, as provided in Article 1 of the PRC Constitution, is the socialist system. The PRC is a socialist state under the people's democratic dictatorship led by the working class and based on the alliance of the workers and farmers. Article 2 of the PRC Constitution states that all power in the PRC belongs to the people, who exercise their State power through the National People's Congress and local people's congress at various levels. It is the Administration's view that Articles 1 and 2 of PRC Constitution are important provisions on what constitutes the basic system of the PRC so far as the Bill is concerned. The Preamble and other Articles would also assist in the comprehension of that expression. The Administration considers it inappropriate and unnecessary to define the expression in the Bill.

41. On the question of intimidating the CPG, the Administration has explained that in order to fully discharge its responsibilities under the PRC Constitution, the CPG must be able to exercise its power at its free will. If

policies or measures are forced onto it by those using force or serious criminal means that seriously endangers the stability of the PRC, or by those engaging in war, the functioning of the CPG in carrying out its responsibilities would have been seriously hampered. Such means of intimidation could legitimately be regarded as a form of subversion. It is therefore appropriate to include "intimidate the CPG" in the offence of subversion.

42. Some members consider that the meaning of the expression "by using force" is unclear, and may create uncertainty if the Bill does not provide a definition for "force". In addition, the meaning of "serious criminal means" is so broad that any act, even non-violent act would be caught. These members are concerned that without a requirement of specific intent for committing the offence, any industrial action or peaceful demonstration which turns into a riot and results in affecting the stability of the PRC, or any act which resulted in the CPG being intimidated inadvertently may be caught by the proposed offence of subversion. These members have also asked whether the following acts would amount to subversion –

- (a) a person calling for the amendment of Article 1 of the PRC Constitution by deleting the reference to the socialist system as the basic system in the Constitution and spreading his message by a mass e-mail campaign that disrupts the normal operation of the HKSAR Government information website;
- (b) a person calling for the overthrow of the CPG by painting slogans with that message on Government property and causing criminal damage to the property;
- (c) a person kidnapping a delegate of the Standing Committee of the National People's Congress and threatening to kill or maim him unless the CPG pays him a ransom of certain amount;
- (d) taking part in a demonstration in Hong Kong in support of the Mainland movement, such as the one in Beijing in June 1989, and bringing traffic to a halt; and
- (e) providing financial support to the Mainland movement such as the one in Beijing in June 1989.

43. The Administration does not think that any of the above situations would have amounted to the proposed offence of subversion. The explanations given by the Administration are as follows -

- (a) for a person to be guilty of the substantive offence of subversion, it would have to be proved beyond reasonable doubt that the results referred to in new section 2A(1) (a), (b) or (c) were achieved by the use of force or serious criminal means that seriously endangers the

stability of the PRC or by engaging in war;

- (b) for a person to be guilty of conspiring or attempting to commit, or inciting, an offence of subversion, it would have to be proved beyond reasonable doubt that he intended to achieve such a result by the use of force or serious criminal means that would seriously endanger the stability of the PRC, or by engaging in war. None of the situations referred to in paragraph 42 involve the engagement in war;
- (c) for any conduct to amount to serious criminal means, it would have to satisfy one of the criteria under the new section 2A(4)(b)(i) to (v), and be committed in a way that amounts to an offence under Hong Kong law. Even if these two conditions were satisfied, or if force were used, it is almost inconceivable that any of those situations could seriously endanger the stability of the PRC;
- (d) even if it might be possible to prove an intention to use force or serious criminal means, that would not be sufficient to secure a conviction for an inchoate offence relating to subversion. The intentional use of force or serious criminal means that seriously endangers the stability of the PRC with the intention to overthrow the CPG etc. would need to be proved. Painting slogans, sending e-mails, stopping traffic in Hong Kong, kidnapping or even threatening to kill or maim a person would not be sufficient to satisfy the threshold; and
- (e) for a person to be guilty of being an accomplice to an offence of subversion, it would have to be proved that an offence of subversion was actually committed, and at the time the person acted, e.g. provided financial support, he was aware of the essential matters that constituted the offence of subversion.

44. The Administration has also stressed that industrial actions and peaceful demonstrations will not be prohibited.

45. Hon Margaret NG and Hon Audrey EU have proposed various amendments to the proposed new section 2A. These include -

- (a) deleting the references to "disestablishes the basic system of the PRC as established by the Constitution of the PRC" and "intimidates the CPG"
- (b) requiring an intent to overthrow the CPG;
- (c) restricting "serious criminal means" to an intentional act of violence; and

- (d) providing certain acts to be excluded from the meaning of "serious criminal means".

46. Hon Albert HO has proposed various amendments to the proposed new section 2A. These include -

- (a) deleting the references to "disestablishes the basic system of the PRC as established by the Constitution of the PRC" and "intimidates the CPG";
- (b) deleting reference to "serious criminal means" and replacing it with causing serious injury to a person other than himself. In a separate amendment, Hon Albert HO proposes different levels of penalty for offences under new section 2A(1)(a), (b) and (c).

47. Hon James TO has also proposed amendments to restrict the meaning of "serious criminal means" to an intentional act of violence and to provide that certain acts are to be excluded from that meaning.

48. Hon Emily LAU opposes the creation of the offence of subversion as formulated and has proposed to delete the new section 2A.

Secession

49. The proposed new section 2B(1) of the Crimes Ordinance provides that a person commits secession if he withdraws any part of the PRC from its sovereignty by using force or serious criminal means that seriously endangers the territorial integrity of the PRC, or by engaging in war. The meaning of "serious criminal means" in the proposed section 2A(4)(b) would apply.

50. According to the Administration, the offence involves a physical withdrawal of a part of the PRC from its sovereignty. From an international law perspective, such acts will involve changes in recognized state boundaries. The target of protection is therefore the territorial integrity of the country. The expression "seriously endangering the territorial integrity of the PRC" qualifies the extent of the "force" or serious criminal means" that might be used to constitute the offence of secession. It is intended that trivial or nominal force or actions would be excluded, notwithstanding that such force or action might have already constituted an offence in another context.

51. Hon Margaret Ng and Hon Audrey EU have proposed various amendments to the proposed new section 2C, including an amendment to the effect that the proof of intention to commit the offence is required. They also propose a provision to declare, for the avoidance of doubt, that anything done in respect of a state of separation existing at the time of commencement does not amount to secession.

52. Hon Albert HO has proposed various amendments to the proposed new section 2C, including an amendment to the effect that the proof of intention to commit the offence is required and deletion of the reference to "serious criminal means".

53. Hon Emily LAU opposes the creation of the offence of secession as formulated and has proposed to delete the new section 2B.

Extra-territorial application of offences of treason, subversion and secession

54. Under the Bill, the offence of treason will apply to acts done outside Hong Kong by any Chinese national who is a Hong Kong permanent resident, while the offences of subversion and secession will apply to acts done outside Hong Kong by any Hong Kong permanent resident. These are provided in the proposed new sections 2(3), 2A(3) and 2B(3) of the Crimes Ordinance respectively.

55. Some members have questioned the legal basis for the extra-territorial application of these offences. These members have pointed out that nothing in the Basic Law authorizes the HKSAR to enact laws having extra-territorial effect. These members also consider it unreasonable to subject Hong Kong permanent residents who are foreign nationals to the offences of subversion and secession for acts done outside Hong Kong. These provisions, if enacted, would have adverse impact on Hong Kong permanent residents residing abroad.

56. The Administration is of the view that there are no provisions in the Basic Law which expressly prohibit the legislature of the HKSAR from legislating extra-territorially. Having regard to Articles 17, 73(1) and 19 of the Basic Law and to the principle of continuity that underpins many aspects of the Basic Law, the Administration considers that LegCo has the power to enact laws having extra-territorial effect where those laws have a sufficient connection with the HKSAR. In the case of the proposed offences of subversion and secession, Hong Kong permanent residents have constitutional rights under the Basic Law, including the right of abode. Hong Kong permanent residents retain those rights, even when they are outside Hong Kong, and therefore continue to have a constitutional connection with the HKSAR. In addition, any act of secession or subversion against the CPG, wherever committed, would affect the HKSAR which is a part of the PRC. It is appropriate to apply the proposed offences of subversion and secession to the acts of permanent residents committed outside Hong Kong. The Administration has pointed out that section 4 of the Prevention of Bribery Ordinance (Cap. 201) and section 7(1A) of the Gambling Ordinance (Cap. 148) respectively enacted before and after Reunification also have extra-territorial effect.

57. Some members are opposed to the extra-territorial application of the proposed offences of treason, subversion and secession. Hon Margaret NG and Hon Audrey EU have proposed amendments to delete proposed new sections

2(3), 2A(3) and 2B(3). Hon Albert HO has also proposed amendments to delete these provisions.

Sedition

Offence of sedition

58. Under the proposed new section 9A(1) of the Crimes Ordinance, a person commits sedition if he –

- (a) incites others to commit an offence of treason, subversion or secession;
or
- (b) incites others to engage, in Hong Kong or elsewhere, in violent public disorder that would seriously endanger the stability of the PRC.

The penalty for the offence of sedition referred to in new section 9A(1)(a) is life imprisonment, and for that under new section 9A(1)(b) is a fine and imprisonment for seven years. The proposed new section 9D expressly provides for certain acts that are not incitement.

59. Some members have queried why it is necessary to enact the offence of sedition in new section 9A(1)(a). These members have also queried why it is necessary to extend the application of the proposed offence of sedition in new section 9A(1)(b) to acts done outside Hong Kong, and whether the common law principles relating to incitement would apply to the proposed offence.

60. Some members have expressed concern that the offence of sedition criminalizes speech or writing. The offence, if enacted, would restrict the freedom of expression and freedom of speech currently enjoyed by Hong Kong people. These members share the view of some deputations that Principle 6 of the Johannesburg Principles on National Security, Freedom of Expression and Access to Information (Johannesburg Principles) should be incorporated for better protection of human rights. These members consider that a requirement for an intent to incite others should be included in the offence of sedition. These members also consider that the requirement for a likelihood test and a direct and immediate connection between the incitement and the commission of offence or the violent public disorder (as the case may be) should be provided for.

61. The Administration considers that Principle 6 of the Johannesburg Principles is unnecessarily restrictive. It would often be too late if threats to national security can only be dealt with when the danger to national security is imminent. The concept of "imminence", if added, would also create uncertainty in the law, as it would be difficult to determine what amounts to imminent danger.

62. Regarding new section 9A(1)(a), the Administration has explained that the provision merely reflects the common law offence of incitement to commit an offence. The incitement of treason, subversion or secession is a serious form of sedition, and therefore should be prohibited by an express provision.

63. As regards new section 9A(1)(b), the Administration has explained that engagement in violent public disorder is not necessarily an offence under Hong Kong law, particularly if it takes place outside Hong Kong. The incitement of such conduct is therefore not the same as the incitement of an offence, and would not be an offence at common law. The Administration considers that such incitement should be prohibited as being a form of sedition. It is also necessary to extend the application of this offence to the conduct incited outside Hong Kong, as it could not rule out the possibility that violent public disorder in places outside Hong Kong might seriously endanger the stability of the PRC. For instance, an incitement done in Hong Kong to incite others to engage in violent public disorder near the border of the PRC might seriously endanger the stability of the PRC.

64. The Administration has advised that even though the element of "intent" is not provided explicitly in the proposed offence of sedition, the prosecution still needs to prove the mental element. In view of members' concern, the Administration has agreed to add the word "intentionally" in new section 9A(1) so that only a person with an intention to incite others would be caught by the offence of sedition.

65. The Administration has also agreed to incorporate the element of "likelihood" in the offence. Under the proposed amendments in new section 9A(1A), an incitement will not constitute an offence of sedition unless the nature of the incitement and the circumstances in which the incitement is made are such that one or more persons incited are likely to be induced, or an ordinary person, if subjected to the incitement, would likely be induced to commit the offence referred to in section 9A(1)(a) or to engage in violent public disorder referred to in section 9A(1)(b).

66. Some members object to the proposed new section 9A(1A) insofar as a person would be caught by the offence of sedition if an ordinary person would likely be incited by words spoken, although the person being addressed was not incited.

Offence of handling seditious publications

67. Under the proposed new section 9C, it will be an offence if a person –

- (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 of treason, subversion or secession. A person who commits the offence is liable on indictment to a fine of \$500,000 and to imprisonment for seven years.

68. Members are concerned that the proposed offence of handling seditious publication could be committed easily as long as a publication is likely to cause the commission of an offence of treason, subversion or secession. It is also unclear as to how to assess whether a publication is seditious. Some members consider that the offence of handling seditious publication is already covered under the offence of sedition in new section 9A(1)(a), and therefore a separate offence is not necessary. These members have pointed out the concern of the media and publishers that the proposed offence, if enacted, would lead to self-censorship; hence undermining the freedom of expression and of publication.

69. The Administration has pointed out that the offence is narrower than the existing provisions on seditious publications. Seditious publication is defined as one that is likely to cause the commission of serious offences, and it provides a high threshold as to what constitutes such publications. To prove an intention to incite others to commit an offence, the prosecution must prove, beyond reasonable doubt, that the defendant has persuaded or encouraged others to commit a crime, with the intention that commission of the offence would take place. The provisions impose no burden on anyone handling publications to assess whether it is seditious. The offence would not be committed without the intent to incite a crime.

70. Having taken into account members' view, the Administration will introduce an amendment to the meaning of seditious publication to the effect that in order to come within the definition of seditious publication, the publication is likely to induce a person to commit (instead of "likely to cause the commission of" as proposed in the Bill) an offence of treason, subversion or secession.

Amendments proposed by Members

71. Some members still consider that the amendments proposed by the Administration are not sufficient to safeguard the freedom of expression and of speech. Hon Margaret NG and Hon Audrey EU have proposed various amendments. These include adding the element of "imminence" to the offence of sedition in new section 9A(1), reducing the level of penalties and deleting section 9C on the offence of handling seditious publications.

72. Hon Albert HO has proposed to delete new section 9A(1)(b).

73. Hon FUNG Kin-kee has proposed to replace the reference to "endangering the stability of the PRC" by "endangering the safety of the PRC", as the term "stability" is vague. Mr FUNG is considering whether or not to amend new section 9A(1A) proposed by the Administration (paragraph 65 refers).

74. Hon James TO has proposed to amend new section 9D to better safeguard the freedom of speech. Hon SIN Chung-kai has proposed to amend new section 9D to add certain acts that are not incitement so as to better protect the free flow of information.

75. Hon Emily LAU has proposed to delete sections 9A and 9C on the offence of sedition and offence of handling seditious publication.

76. Hon Cyd HO is considering whether or not to amend new section 9A(1A) proposed by the Administration (paragraph 65 refers).

Investigation power

77. The proposed new section 18B of the Crimes Ordinance confers entry, search and seizure powers without a judicial warrant on the police, if a police officer of or above the rank of chief superintendent of police reasonably believes that –

- (a) an offence of treason, subversion, secession, sedition or 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.

78. Some members have expressed concern about the proposed provision. These members have pointed out that the existing sections 8 and 13 have provided for the issue of search warrant respectively by a judge and magistrate for the investigation of an offence of incitement to disaffection and the sedition-related offences, and queried the need for the additional power to the police. These members are worried about the possible abuse of power by the police and the proposal will have an impact on human rights protection.

79. Some members have questioned the retention of section 13, which was to be repealed by the Crimes (Amendment) (No. 2) Ordinance 1997 (1997 Ordinance) that was enacted but has not, to date, been brought into operation. The Administration has responded by adding an amendment to repeal the 1997 Ordinance.

80. The Administration has explained that the proposed powers are emergency powers which will only be exercised by a police officer of or above the rank of chief superintendent of police and in tightly defined circumstances as required in the new section. In non-emergency situations, the police is still required to applied for a judicial warrant before entry, search and seizure powers could be exercised. Under emergency situations, if immediate action is not taken, evidence of substantial value to the investigation of the offence in question would be lost and thus may seriously prejudice the investigation. In view of the serious nature of offences undermining national security, the Administration considers that such emergency powers necessary and justifiable. The Administration has pointed out that such powers are not new. They are also provided in other legislation such as the Firearms and Ammunition Ordinance and the Gambling Ordinance.

81. Some members are not convinced by the Administration's explanation. These members have pointed out that according to the information provided by the Judiciary, under the existing arrangements, all magistrates are available to consider urgent applications for warrants outside office hours. The police can contact any of the magistrates who is available to consider an application for a search warrant outside office hours. It usually takes not more than 30 minutes for a magistrate to read the papers and consider an application. Moreover, magistrates are prepared to consider applications for warrants during odd hours, even after midnight. These members consider that it is necessary for the police to first obtain a judicial warrant before entry, search and powers are exercised. In the view of these members, this is the best safeguard against abuse.

82. The Administration has responded that the 30 minutes are the time for a magistrate to deal with an application for a search warrant. Based on past experience, it generally takes two to four hours, which includes the time for visiting the magistrate's residence to obtain a judicial warrant. Nevertheless, in view of the concern about the possible abuse of power, the Administration will introduce an amendment so that the emergency powers will be exercised by a police officer upon a direction given by a police officer at the rank of assistant commissioner of police or above. The Administration has undertaken to consult the Panel on Security on guidelines for the police in relation to the exercise of authority under new section 18B of the Crimes Ordinance before they are promulgated.

83. Hon Margaret NG and Hon Audrey EU have proposed to delete the new section 18B. Hon FUNG Kin-kee has also made the same proposal.

Time limits for prosecution

84. At present, prosecution of treason must be brought within three years, and that of sedition-related offences within six months after the offence is committed. The Bill proposes to remove these time limits.

85. Some members consider that the existing time limit for prosecution of treason should be retained, so as to ensure that the offence would not be a tool for political persecution. These members also consider that the existing time limit for prosecution of sedition-related offences should be retained. These members have pointed out that whether a speech or publication creates a real danger to the public peace, or for that matter, the stability of the PRC, depends very much on the circumstances prevailing at the material time. If the speech or publication is considered to be seditious, the offence would be prosecuted expeditiously. These members are concerned that the time limit for prosecution against sedition-related offence, if removed, would have a significant "chilling effect" on the freedoms of speech and of expression.

86. Some other members also consider that there should be a time limit for prosecution against the offence of handling seditious publication. These members have suggested that such a time limit be extended to, for instance, one to two years.

87. The Administration has pointed out that at common law, there is no time limit imposed on the prosecution of indictable offences. Statutory time limits for indictable offences in Hong Kong are also rare. The Administration takes the view that as a matter of principle, a serious criminal offence should not be "written off " because of the expiry of a time limit for prosecution. The reprehensible nature of treason and sedition should not diminish with time. Moreover, as time is needed for investigation of these offences, the retention of the existing time limits, especially that in respect of sedition-related offences, would create difficulties for the police. Since the proposed treason and sedition-related offences have been narrowed down, the Administration considers that the proposed removal of existing time limits justifiable.

88. Despite the views held by the Administration and having considered members' views, the Administration has agreed to introduce an amendment to the effect that no prosecution for an offence of handling seditious publication under new section 9C(2) will commence after three years from the date of commission of the offence.

89. Hon Selina CHOW has indicated that Members of the Liberal Party consider that the three years' time limit should be shortened. Hon Miriam LAU has asked the Administration to consider shortening the time limit to 18 months.

Amendments proposed by Members

90. Some members are of the view that the existing time limits for prosecution of treason and sedition offences should be retained. The existing time limit for prosecution of treason should also apply to offences of subversion and secession. Hon Margaret NG and Hon Audrey EU would move amendments to that effect.

91. Hon Cyd HO has proposed amendments to the effect that the time limit for prosecution of treason, subversion and secession be three years and that for sedition, six months.

92. Hon LAU Kong-wah has proposed an amendment to shorten the time limit for prosecution of the offence of handling seditious publication under new section 9C(2) to two years.

Amendments to the Officials Secrets Ordinance

Protection of information and unauthorized disclosure of protected information

93. Under the proposed new section 16A of the Official Secrets Ordinance, any information, document or other article that relates to affairs concerning the HKSAR that are within the responsibility of the Central Authorities under the Basic Law is to be protected. Any person who is or has been a public servant or government contractor would commit an offence if he makes an unauthorized disclosure of such information, document or article if the disclosure is damaging. A disclosure is damaging if it endangers or would be likely to endanger national security. The Bill also proposes to amend section 18 to provide that any person who, knew or had reasonable cause to believe that protected information under sections 13 to 17 had been acquired by means of illegal access, and knew or had reasonable cause to believe that an unauthorized disclosure of such information is damaging, will commit an offence. Under the Bill, "illegal access" means criminal acts of unauthorized access to computer by telecommunications, access to computer with criminal or dishonest intent, theft, robbery, burglary or bribery. As clarified by the Administration, the policy intent of these provisions is to apply them to public servant of the HKSAR. It is not intended to apply them to Mainland officials.

94. Some members have queried why it is necessary to create a new class of protected information. These members have pointed out that under the Basic Law, there are a number of areas that may fall under the category of affairs that are within the responsibility of the Central Authorities, for instance, foreign affairs (BL13), defence (BL14), the appointment of the Chief Executive and principal officials (BL15), the reporting of laws (BL17), and the obtaining of relevant of relevant certificates concerning defence and acts of state (BL19). It is also unclear whether the disclosure of information which has commercial and economic significance would be covered by the provision. These members have suggested that the new class of protected information should be restricted to foreign affairs and defence matters which relate to the HKSAR.

95. Concerning the new offence of disclosure of protected information acquired by illegal access, these members have pointed out that it is the media's concern that journalists may receive information from anonymous sources

without the knowledge of whether it is acquired by one of the prohibited means. Unless information is disclosed through official channels, there is always a possibility that it is acquired by someone by illegal means. These members have also expressed concern about the test of damaging disclosure, as there is no requirement for likelihood of specified harm or the test of clear and present danger.

96. In addition, these members are worried that the amendments to the Official Secrets Ordinance, if enacted, would have a "chilling effect" on the media, thus undermining the freedom of the press and free flow of information in Hong Kong. These members strongly urge that public interest defence and prior publication defence should be provided in the Bill.

97. The Administration has explained that prior to Reunification, information relating to the relationship between Hong Kong and the Mainland was protected. Following the Reunification, it would not be appropriate to protect such information under the rubric of "international relations". The Bill proposes to narrow it to information related to Hong Kong affairs which are, under the Basic Law, within the responsibility of the Central Authorities. While agreeing that the matters under the Basic Law referred to in paragraph 94 above are related to the category, the Administration considers that the reference to "affairs concerning the HKSAR which are, under the Basic Law, within the responsibility of the Central Authorities" should be construed within the framework of the Basic Law. It is a matter for the courts to decide the interpretation of the expression when adjudicating cases. As information relating to defence and foreign affairs is covered by the existing sections 15 and 16 respectively, it would be inappropriate to specify these in the protected information.

98. The Administration has stressed that a person who makes an unauthorized disclosure of protected information under section 18 would only commit an offence if he knows, or has reasonable cause to believe that it is protected information and that it has been acquired by means of illegal access. In the case of information relating to Hong Kong affairs that is within the responsibility of the Central Authorities under the proposed section 16A, a disclosure is only damaging if it endangers national security, or the information, document or article is of such a nature that its unauthorized disclosure would be likely to endanger national security, i.e. the safeguarding of the territorial integrity and the independence of the PRC.

99. The Administration does not consider that it should be in the public interest to make a disclosure that is damaging to national security. Regarding prior publication defence, the Administration takes the view that the second wider disclosure could sometimes be more damaging. As the offences are narrowly defined, the Administration does not consider that the provision of defence of public interest or prior publication is justified.

100. Some members are not convinced. Hon Margaret Ng and Hon Audrey EU have proposed various amendments. These include generally excluding from the damaging test elements of public interest and prior publication, and adding the requirement for causing "real and substantial damage" to national security in determining whether a disclosure of information relating to Hong Kong affairs within the responsibility of the Central Authorities is damaging.

101. Hon Albert HO has proposed various amendments to new section 16A, including restricting information related to Hong Kong affairs within the responsibility of the Central Authorities to defence and foreign affairs under the Basic Law.

102. Hon Emily LAU has proposed to delete the proposed section 16A and the proposed amendments to section 18.

103. Hon James TO has proposed various amendments to existing sections 13, 14, 15, 16 and 17 of the Officials Secrets Ordinance, and to add a defence of public interest for disclosure of information referred to in sections 13 to 20.

104. Hon Martin Lee has proposed to include a defence of public interest for disclosure of information referred to in sections 13 to 20.

105. Hon Cyd HO has proposed to provide for a defence of prior publication for disclosure of information referred to in sections 13 to 20, and to limit the prosecution of unauthorized disclosure of information referred to in sections 13 to 20 to within six months after the offence is committed.

Amendments to the Societies Ordinance

Mechanism for proscription of local organizations endangering national security

Proposals in the Bill

106. The proposed new section 8A(1) of the Societies Ordinance empowers S for S to 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. As provided under the proposed new section 8A(2), the power to proscribe will apply 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 PRC, as officially proclaimed by means of an open decree, by the Central Authorities under the law of the PRC.

Under new section 8A(3), a certificate given by or on behalf of the CPG stating that the operation of the Mainland organization referred to in new section 8A(2)(c) has been prohibited in the Mainland by the Central Authorities will be conclusive evidence of such a prohibition in the Mainland.

Basis for proscription of local organization

107. Some members have expressed strong objection to the proposed proscription mechanism. These members consider that the proposed proscription of local organization subordinate to Mainland organizations is beyond the requirement of BL23, which requires laws to be enacted, among other things, to prohibit foreign political organization from conducting activities in Hong Kong or local organizations from establishing ties with foreign political bodies. There is no mention of proscription of local organizations. Under section 8 of the Societies Ordinance, S for S can prohibit the operation of a society for reason of national security. These members have queried why S for S should be given an additional proscription power and the choice of using different provisions to proscribe local organizations. These members are also concerned about the scope of application, as proscription will apply to any organization in Hong Kong, even statutory bodies such as the Hospital Authority and the Airport Authority.

108. These members are gravely concerned that the provisions in new section 8A(2)(c), if enacted, would introduce Mainland laws or concept of national security into Hong Kong. In addition, since Hong Kong courts are required to accept certificates issued by or on behalf of the CPG as conclusive evidence of the prohibition of Mainland organizations it would undermine the principle of "one country, two systems". These members have also pointed out that the conditions for defining the relationship of a local organization between its parent organization on the Mainland are vague and unreasonable because, according to the new section 8A(5)(h), whether a local organization is subordinate to a Mainland organization depends on whether the local organization solicits or accepts substantial funding from the Mainland organization, or whether the local organization is directly or indirectly under the direction or control of the Mainland organization, or whether the local organization has its policies determined directly or indirectly by the Mainland organization. In their view, the meaning of "substantial" is unclear, and it is also difficult to ascertain what degree of indirect influence will amount to control. These members have also queried the basis for empowering S for S to proscribe any local organization without a requirement for the organization to have committed an offence, and the need for new section 8A(2)(c) in addition to new section 8A(2)(a) and (b).

109. Some other members have however asked the Administration to consider the need to also cover the proscription of a local organization where its subordinate organization in the Mainland is prohibited in the Mainland.

110. The Administration takes the view that due to the highly serious and reprehensible nature of organized crimes that endangers national security, specific and focused measures are necessary to deal such activities. It is possible for there to be activities that threaten national security but not necessarily amounting to criminal offences. It is, therefore, necessary for S for S to be given the power to proscribe a local organization if he reasonably believes that this is necessary in the interests of national security, in accordance with the standards of international human rights conventions.

111. Concerning the need for the new section 8A(2)(c) as an addition to the new section 8A(2)(a) and (b), the Administration has explained that an organization which poses threats to national security may not be attempting or aiming to commit the narrowly defined offences specified in the proposed new section 8A(2)(a) or (b). For example, a local organization which is controlled by a prohibited organization in the Mainland may be involved in activities in preparation for terrorist attacks, or may aim at purchasing chemical weapons for its parent organization. The undertaking of such activities may not constitute the specified offences referred to in section 8A(2)(a) and (b). Nevertheless, it is in the public interest to prohibit the continued operation of such organizations where such prohibition is a necessary and proportionate measure.

112. The Administration has further advised that the proposed section 8A(2)(b) requires an attempt to commit the specified offences. At common law and also under section 159 of the Crimes Ordinance, this requires an act more than merely preparatory to the commission of the offences. Organizations involved in acts that fall short of such criteria, such as recruitment to form an army for a prohibited organization in the Mainland to commit secession by engaging in war, or raising funds for subverting the CPG by force, would not be covered by the proposed section 8A(2)(b). Furthermore, the aim of such an organization, even if it can be proven, may not satisfy all the essential elements of the criminal offences in the proposed section 8A(2)(a). For example, the organization may not be aware of the entire plan of its parent organization. The Administration considers that the prohibition of the continued operation of such organizations would be in the public interest.

113. The Administration has stressed that the provisions in section 8(2) are the pre-conditions for proscription. There is no automatic proscription of an organization subordinate to a prohibited Mainland organization. S for S is required to consider whether the proscription is necessary in the interests of national security and is proportionate for that purpose. The enactment of new section 8(2)(c) will not lead to any introduction of Mainland law or concept of national security into Hong Kong.

114. Regarding the certificate referred to in new section 8A(3), the Administration has pointed out that under the "one country, two systems" principle, the procedures taken by the Mainland authorities in accordance with Mainland laws would be a matter entirely under the jurisdiction of the Mainland. It is not appropriate for the HKSAR to review such procedures or decisions as they are entirely matters for the Mainland authorities. The Administration therefore proposes that a certificate from the CPG stating the fact that a Mainland organization has been prohibited in the Mainland would be conclusive evidence of this fact.

115. Regarding the meaning of "substantial" used for defining the relationship between a local organization and its parent organization on the Mainland, the Administration has advised that judicial authorities indicate that the term is a relative one. The dictionary meaning of "substantial" is "of real importance, of value, of considerable amount". Whether or not an amount of contribution, sponsorship, etc. would be regarded as substantial would depend on the circumstances of each case.

116. Having regard to the concern of the overlap of existing section 8 and new section 8A in terms of proscription of local organizations on national security grounds, the Administration will introduce an amendment to repeal the reference to "national security" in section 8. The effect of the amendment is that proscription of local organizations on national security grounds will only be dealt with under new section 8A.

Prohibition of Mainland organizations

117. The Administration has proposed an amendment to the English text of new 8A(2)(c). The purpose of the proposed amendment is to make it clear that although the prohibition of operation of Mainland organizations by the Central Authorities on the ground of protecting the security of the PRC has to be made under the law of the PRC, the fact of that prohibition need only be officially announced by means of an open proclamation by the Central Authorities in order to satisfy the pre-condition for S for S to exercise her power to order a proscription under new section 8A(1). The Administration has explained that the reference to "an open decree" in the English text of the Bill may suggest a requirement for legal formality which is not intended, and that there is no such implications in the Chinese text.

118. Some members have asked for details of the law of the PRC under which the Central Authorities can prohibit the operation of a Mainland organization on the ground of protecting the security of the PRC and make an official announcement, and how such an announcement would be made. These members consider that the Bill should clearly spell out those laws of the PRC. These members have also expressed concern about the interpretation of the term "Central Authorities", and asked which Mainland authorities will be covered by

the term. These members consider that a definition for the term should be provided in the Bill.

119. The Administration has advised that under Article 4 of the National Security Regulation of the People's Republic of China, any organization or person doing any act that endangers national security shall have legal consequence. Article 34 of the Regulations on Registration Administration of Associations and Article 26 of the Interim Regulations on Registration Administration of Private Non-enterprise Units provide that where the activities of an association violate other laws and regulations, they should be dealt with by the relevant State organs according to law. In addition, under Article 9 of the Interim Measures on Banning Illegal Private Organizations, the registration administration organ should make an announcement in accordance with the law after declaring an organization illegal. The announcement would be made publicly in a manner the Mainland authorities see fit. The Administration does not consider there is a need to specify in the Bill the relevant laws under which the operation of a Mainland organization is prohibited.

120. As regards the term "Central Authorities", the Administration has advised that the term is intended to bear the same meaning as in the Basic Law. The Administration has pointed out that the term appears in the title of Chapter II of the Basic Law. There are also references to the term "Central Authorities" in the existing legislation of Hong Kong, for instance, in section 3 of Cap. 1 and Paragraph 1 of Schedule 8 to Cap. 1. It is clear from these provisions that the term "Central Authorities" includes, but is not limited to the CPG. The reference to "Central Authorities" would exclude other Mainland institutions at or below the provincial level. In the context of prohibition of Mainland organizations, the term would refer to the Central Authorities in Beijing. The Administration considers that it is not appropriate nor is there a need to define the term in the Bill.

Prohibition of participating in the activities of proscribed organization

121. Under the proposed new section 8C(1) of the Societies Ordinance, any person who, among other things, acts as an office-bearer or a member of a proscribed organization, or pays money to or gives any other form of aid to a proscribed organization is guilty of an offence. The offence is subject to a fine at level 6 (currently \$100,000) and to imprisonment for three years.

122. To reflect its policy intent that participating in legal proceedings and seeking, providing or receiving any legal services would not be an offence, and to address members' concern that a proscribed organization could not make payment to discharge its legal liability after a proscription order takes effect, the Administration will introduce amendments to provide that the following acts shall not constitute an offence under new section 8C(1) -

- (a) participating in any legal proceedings (whether in one's own right or as the representative of an organization which is a party to such proceedings);
- (b) seeking, providing or receiving any legal services or making or receiving any payment in respect of such services;
- (c) with the prior written approval of S for S, making payment to discharge any legal liability; or
- (d) doing any act which is incidental to an act referred to in paragraph (a), (b) or (c) above.

123. The Administration will also introduce an amendment to clearly reflect its policy intent that the activities referred to in new section 8C(1) would be prohibited after an organization has been proscribed. The Administration also proposes to amend new section 8C(1)(e) to provide that paying money or giving aid to a proscribed local organization without the prior written approval of S for S will be an offence.

Appeal against proscription and rules for appeals

Appeal mechanism

124. The proposed new section 8D provides a right of appeal for an office-bearer or member of an organization proscribed by S for S to appeal to the Court of First Instance against the proscription within 30 days after the proscription takes effect. Under the proposed new section 8E, the Chief Justice (CJ) may make rules for the appeals against proscription to enable proceedings to take place without the appellant being given full particulars of the reasons for proscription, to enable the Court of First Instance to hold proceedings in the absence of the appellant and his legal representative appointed by him, and to enable the Court to give the appellant a summary of any evidence taken in his absence. Where rules made to exclude the appellant and his legal representative in the proceedings, CJ shall make rules to provide for a power to appoint a legal practitioner (special advocate) to act in the interests of the appellant.

Concerns and views of members

125. Some members have expressed grave concern about the proposed provisions. These members have pointed out that although the nature of a proscription order made under proposed new section 8A(1) is regarded as an administrative decision by the Administration, a proscription order will bring about direct criminal consequences. If a person is not allowed to know in full the evidence against him, he cannot conduct the appeal properly. This runs contrary to the principles of natural justice. These members have also pointed out that, Hong Kong residents' rights to confidential legal advice, access to the

courts, choice of lawyers for timely protection of their lawful rights and interests or for representation in the courts, and to judicial remedies that are protected under Article 35 of the Basic Law (BL35) will be undermined by such procedural rules which may provide for the exclusion of the appellant and his legal representative from attending the hearing of the appeal. Moreover, the provisions, if enacted, would deprive appellants of the right to a fair hearing as guaranteed by Article 14 of the ICCPR and protected by BL39.

126. Concerning the appointment of a special advocate, these members have queried what such a special advocate could and could not do, how such a special advocate would be selected, and whether an appellant could appoint a special advocate of his choice. These members have also expressed doubt as to whether the provision would violate BL35, which provides for, among other things, the right to choose lawyers.

Administration's response

127. The Administration takes the view that the decision of S for S to proscribe a local organization under the proposed new section 8A is an administrative decision. Under the common law, a proscribed organization would have no right to appeal to the court, and could only seek to challenge a proscription by way of judicial review. The proposed right of appeal under the Bill will improve the position of proscribed organizations. It will require the court to conduct an overall review of the decision reached by the executive, in a manner which would not be available in the judicial review process. The court will test the sufficiency of evidence in a way that would not be available by way of judicial review. Both the appellant and S for S would be entitled to adduce evidence. The court is unlikely to be satisfied by evidence merely that national security had been considered and accepted as the basis by S for S for his decision. It is likely that the court would demand the sight of sensitive security documents to assess the sufficiency of the evidence. If such evidence is disclosed to the appellant and his legal representatives, national security might be endangered. In the view of the Administration, the purpose of safeguarding national security might not be achieved without the special procedures proposed in the Bill. The Administration has also pointed out the rule-making power similar to that in the proposed section 8E is found in legislation of Canada and the UK.

128. Regarding the appointment of a special advocate, the Administration has explained that the functions of such a special advocate would be modelled on the Special Immigration Appeals Commission (Procedure) Rules 1998 of the UK. It is proposed that a special advocate could represent the interests of the appellant by -

- (a) making submissions to the court in any proceedings from which the appellant and his legal representative were excluded;
- (b) cross-examining witnesses at any such proceedings; and

- (c) making written submissions to the court.

A special advocate is under a statutory duty to represent the interests of an appellant. However, the special advocate will not be responsible to the person whose interests he is appointed to represent, i.e. there is not the usual client-lawyer relationship between the appellant and the special advocate. It is intended that an appellant will select a special advocate from a panel of experienced and independent lawyers that have been approved by the Secretary for Justice.

129. The Administration considers that the restrictions imposed by the special procedures are minimum and necessary for the purpose of protecting national security, and would not deprive the appellant of a fair hearing. As regards the choice of lawyers, the Administration has advised that the appellant would continue to be entitled to choose his own legal representative. It is not considered that BL35 confers a right of such an absolute nature that no material information could be withheld from a legal representative. Such a right would be inconsistent with public interest immunity. In addition, if the appellant and his legal representative were excluded from the hearing, his interests would be adequately protected by the appointment of a special advocate. In the view of the Administration, the special procedures to exclude an appellant and its legal representative, and the appointment of a special advocate would comply with ICCPR and BL35.

Amendments proposed by the Administration

130. In order to address the concerns of some members and some deputations that CJ should be empowered to make such rules, especially when the rules might be subject to legal challenge in proceedings on appeal against proscription, the Administration has proposed to amend the mechanism for making rules of court as follows. First, S for S will be empowered to make regulations providing for the special appeal arrangements including the appointment of the special advocates. Such regulations will be subject to the approval of LegCo, i.e. under the positive vetting procedure Secondly, the Rules Committee constituted under section 55 of the High Court Ordinance, instead of CJ, may, subject to the regulations, make rules of the court in respect of procedural matters.

131. The Administration has also proposed amendments to the proposed new section 8D in order to add to the Bill procedural matters of a more significant nature for endorsement by LegCo. These matters are -

- (a) to allow the Court of First Instance to admit any evidence that would not otherwise be admissible in a court of law;
- (b) to provide for further appeals to the Court of Appeal on grounds

involving a question of law; and

- (c) an appeal to the Court of Appeal may be lodged with leave granted by the Court of First Instance or the Court of Appeal, if the Court of First Instance refuses to grant leave.

132. The Administration has confirmed that before the regulations and rules are in place, an appeal against proscription would be handled in accordance with the Rules of the High Court (Cap. 4, subsidiary legislation A). The Administration has assured members that consultation on the draft regulations will be carried out.

133. Some members have raised the following issues and concerns on the Administration's proposed amendments -

- (a) the regulation-making power of S for S governing the conduct of special procedures might involve a conflict of interest, as S for S has the power to proscribe local organizations;
- (b) the idea of a panel of special advocates might have far-reaching implications on the legal sector;
- (c) the principles and criteria for the selection of special advocate are not set out in the Bill and S for S has wide power to make regulations;
- (d) the court may be accepting evidence which would normally not be admissible, such as hearsay evidence, and information or intelligence provided by Mainland public security authorities, thus making unnecessary inroads into the well established rules of evidence which apply in Hong Kong courts; and
- (e) since an appellant may only appeal against a Court of First Instance's decision to the Court of Appeal on points of law, the appellant will be deprived of his right to appeal on points of fact.

Matters following proscription of organizations

Winding up of proscribed organizations

134. After an organization has been proscribed under new section 8A, the operation of the organization will cease. Members have queried how the assets of a proscribed organization will be dealt with. In response, the Administration has proposed amendments to provide for the dissolution and winding up of proscribed organizations under three categories, i.e. for companies registered under the Companies Ordinance, unregistered companies under the Companies Ordinance and other types of organization.

135. Some members consider that there are serious problems with the amendments proposed by the Administration. These members have pointed out that under the amendments, for instance, if a company registered under the Companies Ordinance is proscribed under section 8A of the Societies Ordinance, the Registrar shall strike the name of such company off the register of companies, publish a notice of the striking off in the Gazette, and upon publication of the notice, such company shall be dissolved. On an application of the Registrar to the Court of First Instance, a company struck off the register shall be wound up. Although the Registrar has the discretion to defer taking action to strike off such a company if he is satisfied that the right to take legal action against the proscription has not been exhausted, the Registrar is not obliged to do so. If the dissolution of a registered company takes place immediately after its proscription by S for S, but not after the appeal is determined, these members have queried whether there is any useful purpose for the provision of appeal avenues. These members have also raised the following issues and concerns -

- (a) why and how unregistered companies are treated differently;
- (b) how the proposed amendments would impact on the statutory regimes for registration of organizations concerning cancellation of registration and appeals;
- (c) the implications of the proposed amendments on innocent third parties who have had dealings with the proscribed organization and whose rights may be affected;
- (d) whether the employees of a proscribed organization could receive wages before the organization is wound up;
- (e) how assets of an proscribed organization would be dealt with pending appeal;
- (f) why provision is not made to set aside certain funds for legitimate uses, such as paying staff wages and legal expenses, similar to that provided in the United Nations (Anti-Terrorism Measures) Ordinance;
- (g) why dissolution should precede winding up, contrary to the usual dissolution procedures.

136. Some members have suggested imposing an obligation to defer action on the part of the Registrar in section 1(2) and 3(3) of Schedule 2 proposed to be added to the Societies Ordinance before an appeal against proscription has been concluded; and if not, to devise a mechanism whereby operation of the proscribed organization would be prohibited, but dissolution of the organization and winding up procedure would not take place before the appeal has been concluded or before the 30-day period referred to in new section 8D(1) expires.

137. The Administration considers that the discretion given to the Registrar is appropriate because proscription is made on national security grounds. The Administration has explained that the Registrar has the discretion to defer taking action to strike off a registered company if he is satisfied that the right to take legal action against the proscription has not been exhausted. The Registrar would have regard to whether an appeal is pending. The existing sections 360D to 360M of the Companies Ordinance relating to winding up of registered companies shall apply to such a proscribed company. Disposal of assets and payment of debts owed would be dealt with in accordance with the provisions under existing legislation.

138. Regarding the winding up of a partnership or an association being proscribed, the Administration has explained that as they fall within the meaning of unregistered company under section 326 of the Companies Ordinance, the winding up provisions in Part X of the Companies Ordinance will apply.

139. As regards a proscribed organization which is registered under an ordinance other than the Companies Ordinance, the Administration has explained that the relevant authority will cancel the registration of the organization and publish a notice of cancellation in the Gazette. Upon the publication of such notice, that organization will be dissolved and the winding up of the organization concerned will follow that provided in the relevant ordinance or, if that ordinance does not contain winding up provisions, Part X of the Companies Ordinance will apply.

140. The Administration has stressed that an organization will have to cease operation when the order of proscription takes effect. The effect of the proposed amendments is to apply existing rules of winding up to proscribed organizations. Nevertheless, in view of members' concern about the discharge of legal liability of a proscribed organization, the Administration will introduce amendments to the effect that if an organization is dissolved pursuant to proposed section 1(1) or 3(1) in new Schedule 2 of the Societies Ordinance, or is regarded as having been dissolved pursuant to proposed section 2(1) in the same new Schedule, the liability, if any, of every director, officer and member of the organization shall continue and may be enforced as if the organization had not been dissolved.

141. On the use of funds of the proscribed organization, the Administration has explained that under new section 8B(4)(b), a proscription order may take effect on a later date as may be specified in it. S for S could defer the effective date of the order if there is no absolute necessity in terms of national security for immediate cessation of operation of the organization. With the amendments to new section 8C referred to in paragraph 122 above, a proscribed organization could make payment to discharge its legal liability with the prior written approval of S for S. The Administration does not consider the suggestion of imposing an obligation on the Registrar to defer action necessary.

Compensation for wrongly proscribed organizations

142. Some members have expressed concern that there is no provision for appellants who succeeded in their appeals against proscription to claim damages from the Government. The Administration has responded that the common law already provides clear principles on the issue of compensation in respect of administrative decisions. As proscription is an administrative decision, the Administration does not consider there is a need to deviate from the common law in this area, nor the need to re-state the common law position in the Bill.

Amendments proposed by Members

143. Some members remain opposed to providing a mechanism for the proscription of local organizations, which, they consider, is beyond the requirement of BL23. They are of the view that the provisions, if enacted, would have adverse impact on the right to association and human rights protection. Hon Margaret NG, Hon Audrey EU and Hon Martin LEE have proposed amendments to delete the proposed new sections 8A to 8E and related provisions in the Bill.

144. Hon Miriam LAU has proposed amendments to new Schedule 2 of the Societies Ordinance to the effect that the Registrar or the appropriate authority shall defer taking action under new section 1(2) and 3(3) as the case may be if he is satisfied that the right to take legal action against the proscription has not been exhausted. As for unregistered companies under the Companies Ordinance, no application shall be made under new section 2(2) if the right to take legal action against proscription has not been exhausted.

Commencement date of the Bill

145. Clause 2 of the Bill provides that the Bill shall come into operation on a day to be appointed by S for S by notice published in the Gazette. Hon Emily LAU has proposed an amendment to the effect that such notice should only be published when the ultimate aim for the election of the Chief Executive and the election of all the members of LegCo by universal suffrage referred to in Articles 45 and 68 of the Basic Law has been achieved.

Need for the Bill to be enacted within the current legislative session

146. Some members are strongly opposed to the enactment of the Bill within the current legislative session. These members consider that the Bill should not be enacted in haste, given its complexity, controversy, and serious implications on human rights, freedom of expression, freedom of the press, free flow of information and freedom of association. These members have also expressed dissatisfaction that not enough time is given for their study of the

papers provided by the Administration nor detailed scrutiny of the Bill.

147. Some other members hold different views. These members consider that as the Bill Committee has thoroughly deliberated the principles and policy aspects of the Bill and has examined the Bill clause by clause as well as the amendments proposed by the Administration, there is no reason why the Bill could not be enacted within the current session.

148. As the Administration has informed the Bills Committee of its intention to resume the Second Reading debate on the Bill at the Council meeting on 9 July 2003, a vote was taken at the meeting on 17 June 2003 on whether the Bills Committee should support the resumption date. The Bills Committee decided by a vote of 21 to 10 that the date of resumption be supported.

COMMITTEE STAGE AMENDMENTS

149. The major Committee Stage amendments (CSAs) to be moved by the Administration are mentioned in paragraphs 13, 64, 65, 70, 79, 82, 88, 116, 117, 122, 123, 130, 131, 134 and 140 above. A full set of the draft CSAs to be moved by the Administration is in **Appendix III**.

150. A copy of the draft amendments proposed by Hon Margaret NG and Hon Audrey EU (as at 24 June 2003) is in **Appendix IV**.

151. A copy of the draft amendments proposed by Hon Cyd HO, Hon Albert HO, Hon Martin LEE, Hon James TO, Hon SIN Chung-kai, Hon Emily LAU and Hon FUNG Kin-kee respectively (as at 24 June 2003) is in **Appendix V**.

152. A copy of the draft amendments proposed by Hon Miriam LAU (as at 26 June 2003) is in **Appendix VI**.

153. A copy of the draft amendments proposed by Hon LAU Kong-wah (as at 26 June 2003) is in **Appendix VII**.

FOLLOW-UP ACTION BY THE ADMINISTRATION

154. The Administration has undertaken to consult the Panel on Security on guidelines for the police in relation to the exercise of authority under new section 18B of the Crimes Ordinance before they are promulgated (paragraph 82 above refers).

RECOMMENDATION

155. The Bills Committee made a verbal report to the House Committee on 20 June 2003, recommending that the Administration's proposal to resume the Second Reading debate on the Bill on 9 July 2003 be supported. The House Committee decided that the Bills Committee's recommendation be supported.

156. The Bills Committee supports the resumption of the Second Reading debate on the Bill at the Council meeting on 9 July 2003, subject to the CSAs to be moved by the Administration.

ADVICE SOUGHT

157. Members are invited to note the deliberations of the Bills Committee and the recommendation of the Bills Committee in paragraphs 155 and 156 above.

Council Business Division 2
Legislative Council Secretariat

27 June 2003

Appendix I

Bills Committee on National Security (Legislative Provisions) Bill

Membership list

Chairman	Hon IP Kwok-him, JP
Deputy Chairman	Hon Ambrose LAU Hon-chuen, GBS, JP
Members	Hon Kenneth TING Woo-shou, JP Dr Hon David CHU Yu-lin, JP Hon Cyd HO Sau-lan Hon Albert HO Chun-yan Ir Dr Hon Raymond HO Chung-tai, JP Hon LEE Cheuk-yan Hon Martin LEE Chu-ming, SC, JP Hon Eric LI Ka-cheung, JP Hon Fred LI Wah-ming, JP Dr Hon LUI Ming-wah, JP Hon NG Leung-sing, JP Hon Margaret NG Hon Mrs Selina CHOW LIANG Shuk-yee, GBS, JP Hon James TO Kun-sun Hon CHEUNG Man-kwong Hon HUI Cheung-ching, JP Hon CHAN Kwok-keung Hon Bernard CHAN, JP Hon CHAN Kam-lam, JP Hon LEUNG Yiu-chung Hon SIN Chung-kai Hon Andrew WONG Wang-fat, JP Dr Hon Philip WONG Yu-hong Hon WONG Yung-kan Hon Jasper TSANG Yok-sing, GBS, JP Hon Howard YOUNG, JP Hon YEUNG Yiu-chung, BBS Hon LAU Chin-shek, JP Hon LAU Kong-wah Hon LAU Wong-fat, GBS, JP Hon Miriam LAU Kin-yee, JP Hon Emily LAU Wai-hing, JP Hon CHOY So-yuk Hon Andrew CHENG Kar-foo

Hon SZETO Wah
Hon Timothy FOK Tsun-ting, SBS, JP
Dr Hon LAW Chi-kwong, JP
Hon TAM Yiu-chung, GBS, JP
Dr Hon TANG Siu-tong, JP
Hon Abraham SHEK Lai-him, JP
Hon Henry WU King-cheong, BBS, JP
Hon Michael MAK Kwok-fung
Hon LEUNG Fu-wah, MH, JP
Dr Hon LO Wing-lok
Hon WONG Sing-chi
Hon LAU Ping-cheung
Hon Audrey EU Yuet-mee, SC, JP
Hon MA Fung-kwok, JP

Total: 50 Members

Clerk	Mrs Sharon TONG LEE Yin-ping
Legal Adviser	Mr Jimmy MA Ms Bernice WONG
Date	6 March 2003

Appendix II

Bills Committee on National Security (Legislative Provisions) Bill

A. Organizations and individuals which/who have given oral representations to the Bills Committee

1. Professor Albert H Y CHEN, Faculty of Law, University of Hong Kong
2. Joint Committee of Hong Kong Fishermen's Organizations
3. Hong Kong Fishermen's Association
4. Hong Kong Youth Association
5. New Century Forum
6. Federation of Hong Kong Guangdong Community Organizations Ltd
7. The Association of Hong Kong Health Care Professionals
8. Hong Kong Polytechnic Alumni Association
9. Federation of Hong Kong Kowloon New Territories Hawker Associations
10. Tai Po Tertiary Student Association
11. The Hong Kong Island Federation
12. The Association of the Hong Kong Central and Western District Limited
13. The Hong Kong Southern District Alliance
14. Kowloon City, Kwun Tong and Wong Tai Sin Resident's Association Company Limited
15. The Chinese Muslim Cultural & Fraternal Association and Hong Kong Chinese Islamic Federation Ltd
16. Miss WONG Wai-yee

17. New Century Society Ltd
18. Yau Tsim Mong Federation of Association
19. Hong Kong Federation of Fujian Association
20. Jin Jiang Clans Association (H.K.) Limited
21. Puning Clansmen's Association Limited
22. Mr NG Wai-tat, Jacky
23. Mr LAM Fan-i
24. Mr Harvey S K PONG
25. Mr K K LIU
26. Hong Kong Federation of Education Workers
27. Mr WONG Chun-kong
28. Mr CHAN Ping-woon
29. The King Chung Association
30. Hong Kong Bar Association
31. Hong Kong Chinese Reform Association Ltd
32. New Territories Association of Societies
33. Hong Kong Journalists Association
34. Hong Kong Political Science Association
35. Hong Kong Association of Falun Dafa
36. Sham Shui Po Community Association Limited
37. Kowloon Federation of Associations
38. Hong Kong Federation of Trade Unions Social Policy Committee
39. Mr LOK Kung-nam, Peter
40. The Hong Kong Wan Chai District Association Ltd

41. China Universities Alumni (H.K.) Association
42. Miss Alice MAK, member of Kwai Tsing District Council
43. The Chinese Manufacturers' Association of Hong Kong
44. Hong Kong Political, Economic and Cultural Society
45. Shaoguan Friendship Liaison Association Limited
46. Zhongshan University Law Faculty Hong Kong Students Association Limited
47. Miss PANG Melissa Kaye
48. The Unified Association of Kowloon West Limited
49. Hong Kong Senior Education Workers Association Limited
50. Fukien Chamber of Commerce
51. Hong Kong New Generation Pulse
52. Titron Industries Limited
53. Mr WONG Chat-chor, Samuel
54. Miss Sylvia SIU
55. Mr Michael C. BLANCHFLOWER
56. The Hong Kong Buddhist Association
57. Hong Kong Culture Association Limited
58. Hong Kong Christian Institute
59. The Association for the Advancement of Feminism
60. Hong Kong Confederation of Trade Unions
61. Mr WONG Man-cheung
62. Hong Kong Alliance in Support of Patriotic Democratic Movements of China

63. Hong Kong Alliance Youth Group
64. April Fifth Action
65. Amnesty International Hong Kong Section
66. Hong Kong Youth & Tertiary Students Association
67. Justice & Peace Commission of the Hong Kong Catholic Diocese
68. Democratic Party
69. Hong Kong Human Rights Monitor
70. Civil Human Rights Front
71. Hong Kong Voice of Democracy
72. Mr TSANG Kin-shing
73. Hong Kong Professional Teachers' Union
74. The Chinese University of Hong Kong Student Union
75. Mr CHAU Chun-yam
76. New Youth Forum
77. Kowloon City District Resident Association
78. Kwun Tong Resident Association
79. Choi Shek Resident Service Centre
80. China Democratic Party
81. Mr CHUI Pak-tai, member of Wong Tai Sin District Council
82. Hong Kong Catholic Social Communications Office
83. The Frontier
84. The Hong Kong Overseas Chinese General Association
85. Hong Kong Federation of Students
86. Article 23 Concern Group

87. Law Association, Hong Kong University Student Union
88. Hong Kong Polytechnic University Student Union
89. Union of Hong Kong Catholic Organizations in Support of the Patriotic & Democratic Movement in China
90. The Law Society of Hong Kong
91. The Hong Kong Executive, Administrative & Clerical Staff Association
92. Hong Kong Federation of Women
93. Tseung Kwan O Fujianese Association
94. The Hong Kong Eastern District Community Association
95. The Foochow Association Limited
96. The University of Hong Kong Students Union
97. The Joint Committee of Hong Kong Free Societies concerning the Legislation of Article 23 of the Basic Law
98. Asian Human Rights Commission
99. Hong Kong Federation of Employees in Public Utilities
100. Hong Kong Construction Industry Employees General Union
101. The Student Union of the Hong Kong Shue Yan College
102. Hong Kong Federation of Journalists
103. Neighbourhood and Worker's Service Centre
104. Hong Kong News Executives' Association
105. Mr LO Wai-ming
106. The Society of Publishers in Asia
107. Mr Benjamin Tsz-ming LIU
108. Mr GU Minkang, School of Law, City University of Hong Kong

109. China Labour Bulletin

110. Hong Kong Federation of Catholic Students

B. Organizations and individuals which/who have provided written submissions only

1. Ms Anne HAKOSALO
2. Mr TC Billy LEUNG
3. Mr BAHRUNANEE
4. Committee to Protect Journalists
5. International Publishers' Association
6. C & J Associates Ltd
7. 愛國營商小組
8. Heung Yee Kuk New Territories
9. Sha Tin District Council
10. Mr FAN Kwok-wai, member of Sai Kung District Council
11. Mr WONG Hing-wah, member of Sai Kung District Council
12. Dr Clement K M LEUNG
13. Ms 費斐
14. Mr 溫嘉旋
15. Mr YEUNG Wai-sing, member of Eastern District Council
16. Hong Kong Liner & Gillnetting Fisherman Association
17. Hong Kong & Kowloon Fishermen Association Limited
18. 葵涌南居民聯會主席 Mr Peter CHEUNG
19. New Territories Fishermen Fraternity Association

20. Mr NGAI Shiu-kit
21. Hong Kong General Chamber of Commerce
22. Eating Establishment Employees General Union
23. Mr Gerard MCCOY, SC
24. Motor Transport Workers General Union
25. Mr Wilfred LEE
26. Mr Thomas CHOO
27. Mr 李精良
28. Mr Mark COLQUHOUN
29. Mr David AKERS-JONES
30. Mr 曾憲緯
31. Mr WONG Ying-ho, Kennedy
32. Hong Kong Baptist University Students Union
33. The Association of the Bar of the City of New York and Joseph R Crowley Program in International Human Rights at Fordham School of Law
34. 香港中文大學學生會學生福音團契
35. Mr P M TISMAN
36. Centre for Human Rights and Democratic Studies
37. Professor Johannes CHAN, Faculty of Law, University of Hong Kong
38. Human Rights Watch
39. Mr Robert RUTKOWSKI
40. Mr FUNG Hong-tai

41. The Hong Kong Institution of Engineers
42. Centre for Comparative and Public Law, Faculty of Law, The University of Hong Kong
43. The Society for Truth and Light
44. Mr Simon YUNG
45. Legal Aid Services Council
46. Mr 于心雲
47. Mr Moses MOK Wai-hung, member of Shatin District Council
48. Mr CHOW Ka-kong, member of Shatin District Council
49. Mr CHENG Tsuk-man, member of Shatin District Council
50. Mr Winston POON, QC
51. International Chamber of Commerce - Hong Kong, China Business Council
52. The Bar of England and Wales
53. Mr WU Ming-shi

Appendix III

NATIONAL SECURITY (LEGISLATIVE PROVISIONS) BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Security

<u>Clause</u>	<u>Amendment Proposed</u>
4	In the proposed section 2(1)(c), by deleting “，藉着作出任何作為而” and substituting “而作出任何作 為，藉此”.
5	By adding “的” after “安全”.
6	(a) In the proposed section 9A(1)(a), by adding “intentionally” before “incites”. (b) In the proposed section 9A(1)(b), by adding “intentionally” before “incites”. (c) In the proposed section 9A, by adding - “(1A) An incitement shall not constitute an offence under subsection (1) unless the nature of the incitement and the circumstances in which the incitement is made are such that -

- (a) one or more persons
incited are likely to
be induced; or
- (b) an ordinary person
would, if subjected to
the incitement, likely
be induced,

to (where subsection (1)(a) applies)
commit the offence or to (where
subsection (1)(b) applies) engage in
violent public disorder."

- (d) In the proposed section 9C(1), by deleting
"cause the commission of" and substituting
"induce a person to commit".

- (e) In the proposed section 9C, by adding -

"(3) No prosecution for an
offence under subsection (2) shall be
commenced after 3 years from the date
of commission of the offence."

- (f) In the proposed section 9D(3)(d), by
deleting "組別" and substituting "階層".

7

- (a) In the proposed section 18A, by deleting
"Article 39" and substituting "Chapter
III".

- (b) In the proposed section 18B(1), by deleting
"chief superintendent" and substituting
"assistant commissioner".

New By adding immediately before clause 8 -

"7A. Section added

The Official Secrets Ordinance (Cap.
521) is amended by adding in Part I -

**"1A. Enforcement, etc.
of this Ordinance
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 Chapter III of the
Basic Law."."

8(1) By deleting "of the Official Secrets Ordinance
(Cap. 521)".

9 By deleting the clause.

14 In the proposed section 2A, by deleting "Article
39" and substituting "Chapter III".

New By adding -

**"14A. Prohibition of
operation of
societies**

Section 8(1)(a) is amended by
repealing "national security or".

- 15
- (a) In the proposed section 8A(1), by deleting "國家安全利益" and substituting "維護國家安全".
 - (b) In the proposed section 8A(2)(c), by deleting ", as officially proclaimed by means of an open decree," and substituting "(as officially announced by means of an open proclamation)".
 - (c) In the proposed section 8A(3)(b), by deleting ", as officially proclaimed by means of an open decree," and substituting "(as officially announced by means of an open proclamation)".
 - (d) In the proposed section 8A(5)(f)(ii), by deleting "the Schedule" and substituting "Schedule 1".
 - (e) In the proposed section 8C(1)(e), by adding "without the prior written approval of the Secretary for Security," before "pays".
 - (f) In the proposed section 8C(1), by deleting "a proscribed organization" and substituting "a local organization after it has been proscribed under section 8A".
 - (g) In the proposed section 8C, by adding -

"(1A) The following acts shall not constitute an offence under subsection (1) -

- (a) participating in any legal proceedings (whether in one's own right or as the representative of an organization which is a party to such proceedings);
- (b) seeking, providing or receiving any legal services or making or receiving any payment in respect of such services;
- (c) with the prior written approval of the Secretary for Security, making payment to discharge any liability; or
- (d) doing any act which is incidental to an act referred to in

paragraph (a), (b) or
(c).".

- (h) By deleting the proposed section 8D(2).
- (i) In the proposed section 8D(3)(a), by adding "not" before "satisfied".
- (j) In the proposed section 8D(3)(a)(i), by deleting "not".
- (k) In the proposed section 8D(3)(a)(ii) -
 - (i) by deleting "insufficient" and substituting "sufficient";
 - (ii) by deleting "; or" and substituting "; and".
- (l) In the proposed section 8D(3)(a)(iii), by deleting "insufficient" and substituting "sufficient".
- (m) In the proposed section 8D(3)(a)(iii)(A), by deleting "國家安全利益" and substituting "維護國家安全".
- (n) In the proposed section 8D(3)(b), by deleting "not".
- (o) In the proposed section 8D(4), by deleting "under subsection (3)" and substituting "on an appeal under this section".
- (p) In the proposed section 8D(6), by deleting everything after "admit" and substituting "any evidence that would, but for this

subsection, not be admissible in a court of law."

- (q) In the proposed section 8D, by adding -

"(7) A party to an appeal lodged under subsection (1) may appeal to the Court of Appeal against the decision of the Court of First Instance on any ground involving a question of law.

(8) An appeal may only be lodged under subsection (7) with leave to appeal granted by the Court of First Instance or, where the Court of First Instance refuses to grant such leave, by the Court of Appeal."

- (r) In the proposed section 8E, in the heading, by deleting "**Chief Justice may make rules**" and substituting "**Secretary for Security may make regulations**".

- (s) By deleting the proposed section 8E(1) and substituting -

"(1) The Secretary for Security may, subject to the approval of the Legislative Council, make regulations to provide for the handling of appeals under section 8D including matters which are incidental to or

arise out of the hearing of such
appeals.".

- (t) In the proposed section 8E(2), by deleting "rules under this section, the Chief Justice" and substituting "regulations under this section, the Secretary for Security".
- (u) In the proposed section 8E(3), by deleting "Rules" and substituting "Regulations".
- (v) In the proposed section 8E(4), by deleting "rules" where it twice appears and substituting "regulations".
- (w) By adding -

**"8F. Rules Committee
may make rules
for appeals**

The Rules Committee constituted under section 55 of the High Court Ordinance (Cap. 4) may, subject to the regulations made under section 8E, make rules of court 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; and
- (d) such other procedural
matters which are
incidental to or arise
out of the hearing of
such appeals.

**8G. Matters following
proscription**

Schedule 2 has effect in
relation to the proscription of an
organization under section 8A."

Schedule By deleting the subheading immediately before
section 2.

Schedule By deleting section 2.

Schedule,
section 8 In the proposed section 14A(4), by deleting
"under section 8D(3)" and substituting "on an
appeal under section 8D".

Schedule By adding -

**"11A. "Schedule 1" substituted for
"the Schedule"**

Sections 2(2), (2B) and (3), 9(1)(c) and 14A(2) are amended by repealing "the Schedule" and substituting "Schedule 1".

Schedule,
section 12

By deleting paragraph (a) and substituting -

"(a) by repealing -

"SCHEDULE [s. 2]"

and substituting -

"SCHEDULE 1 [ss. 2, 8A,
9 & 14A]" ;".

Schedule

By adding immediately after section 12 -

"12A. **Schedule 2 added**

The following is added -

"SCHEDULE 2 [s. 8G]

MATTERS FOLLOWING PROSCRIPTION
OF AN ORGANIZATION UNDER
SECTION 8A OF THIS
ORDINANCE

1. **Companies registered
under Companies
Ordinance**

(1) If a company registered
under the Companies Ordinance (Cap.
32) is proscribed under section 8A of
this Ordinance, the Registrar of
Companies shall -

(a) strike the name of
such company off the
register of companies

kept by the Registrar;

and

- (b) publish a notice of
the striking off in
the Gazette,

and upon the publication of the
notice such company shall be
dissolved.

(2) The Registrar of Companies
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.

(3) On an application of the
Registrar of Companies to the Court
of First Instance, a company struck
off the register under subsection (1)
shall be wound up and sections 360D,
360E, 360F, 360G, 360H, 360I, 360J,
360K, 360L and 360M of the Companies
Ordinance (Cap. 32) shall apply to
such company as if such company were
a company struck off the register and
dissolved under section 360C of that
Ordinance.

**2. Unregistered companies
under Companies
Ordinance**

(1) An unregistered company within the meaning of section 326 of the Companies Ordinance (Cap. 32) which is proscribed under section 8A of this Ordinance shall for the purpose of section 327(3) of the Companies Ordinance (Cap. 32) be regarded as having been dissolved.

(2) On an application of the Registrar of Companies to the Court of First Instance, the company referred to in subsection (1) shall be wound up and Part X of the Companies Ordinance (Cap. 32) shall apply to such company.

**3. Other types of
organizations**

(1) If an organization that is proscribed under section 8A of this Ordinance is not registered under the Companies Ordinance (Cap. 32) but is registered under any other Ordinance, the appropriate authority shall -

(a) cancel the
registration of that

organization and (if applicable under that other Ordinance)

remove or strike its name off the relevant register or any other similar record; and

- (b) publish a notice of the cancellation in the Gazette,

and upon the publication of the notice -

- (c) that organization shall be dissolved for the purposes of that other Ordinance and all other purposes; and

- (d) the provisions (if any) of that other Ordinance applicable to -

- (i) the dissolution of that organization shall apply

as if it
were
dissolved
under that
other
Ordinance;
(ii) the winding
up of
organizations
shall apply
to that
organization.

(2) Subject to subsection
(1)(d), an organization referred to
in subsection (1) shall, on an
application of the appropriate
authority to the Court of First
Instance, be wound up and Part X of
the Companies Ordinance (Cap. 32)
shall apply as if such organization
were an unregistered company within
the meaning of section 326 of that
Ordinance.

(3) The appropriate authority
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.

(4) In this section,
"appropriate authority" means -

- (a) where a person has
authority under the
relevant Ordinance to
cancel the
registration of the
relevant organization
under that Ordinance,
that person; or
- (b) in any other case, the
Registrar of
Companies.

**4. Liabilities of members,
etc. shall continue
notwithstanding
dissolution**

If an organization -

- (a) is dissolved pursuant
to section 1(1) or
3(1); or
- (b) is regarded as having
been dissolved
pursuant to section
2(1),

the liability, if any, of every director, officer and member of the organization shall continue and may be enforced as if the organization had not been dissolved."

Schedule,
section 13

By adding "7(6)," after "5,".

Schedule

By adding immediately before section 29 -

"28A. Interpretation

Section 2(1) of the Organized and Serious Crimes Ordinance (Cap. 455) is amended -

(a) in the definition of "Schedule 1 offence", by repealing "of any of those offences;" and substituting -

"of any of those offences,

but an act that is not itself an offence shall not be a Schedule 1 offence by virtue of paragraph

(b), (c), (d) or
(e);";

(b) in the definition of
"specified offence", by
repealing "of any of those
offences;" and
substituting -

"of any of
those
offences,

but an act that is not
itself an offence
shall not be a
specified offence by
virtue of paragraph
(b), (c), (d) or
(e);".".

Schedule,
section 29

- (a) By deleting "of the Organized and Serious Crimes Ordinance (Cap. 455)".
- (b) In the proposed section 5(9)(a), by adding "or" at the end.
- (c) In the proposed section 5(9)(b), by deleting "; or" at the end and substituting a comma.
- (d) By deleting the proposed section 5(9)(c).

Schedule By adding immediately after section 34 -

**"Crimes (Amendment) (No. 2)
Ordinance 1997**

34A. Repeal

The Crimes (Amendment) (No. 2)
Ordinance 1997 (89 of 1997) is repealed."

附錄 IV
Appendix IV

**吳靄儀議員及余若薇議員
提出的修正案的擬稿
(截至 2003 年 6 月 24 日)**

**Draft amendments proposed by
Hon Margaret NG and Hon Audrey EU
(as at 24 June 2003)**

A B

Draft Amendments
T Article 23 Concern Group
13 June 2003

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

Sections 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 by means other than speech, words, gesture or expression 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.~~

(3) (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.

(d) (i) nothing done to protest against a war between the People's Republic of China and any other foreign country or government shall amount to an offence under section 2(1);

(ii) nothing done with the intent or effect of providing medical or humanitarian assistance to a foreign country or government at war with the People's Republic of China shall amount to an offence under section 2(1); and

(iii) nothing done with the intent of promoting peace or the cessation of war between the People's Republic of China and any foreign country or government shall amount to an offence under section 2(1).

(4) (5) The common law offence of misprision of treason is abolished.

(5) (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) with intent to overthrow 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.~~

(3) (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 intentional act of violence 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.

Provided that the following are expressly excluded from the meaning of "serious criminal means" —

- (i) any advocacy, protest, dissent or industrial action;
- (ii) any peaceful advocacy in public or otherwise with a view to pursuing such "prescribed act" as defined under section 9C(3);
- (iii) any offence, if committed in Hong Kong, the conviction of which renders the offender liable for imprisonment for not more than 7 years.

2B. Secession

(1) A person commits secession if he ~~withdraws any part of the People's Republic of China from its sovereignty by engages in war or uses~~

~~(a) — using force or serious criminal means that seriously endangers the territorial integrity of the People's Republic of China; or~~ China with intent to withdraw any part of the People's Republic of China from its sovereignty.

~~(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.~~

(3)(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).

(4)(5) For the avoidance of doubt, it is hereby declared that anything done in respect of a state of separation existing at the time of the commencement of this Ordinance does not amount to an offence under subsection (1).

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) intentionally incites others another person immediately to commit an offence under section 2 (treason), 2A (subversion) or 2B (secession); or
- (b) intentionally incites another person immediately 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,

and the nature of the incitement and the circumstances in which the incitement is made are such that that person is likely to be induced to (where paragraph (a) applies) immediately commit the offence or to (where) paragraph (b) applies) immediately engage in violent public disorder.

(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 7 years;
- (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 5 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.~~

9DC. 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 purpose 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 mentioned act with intent to incite others to commit an offence under section 2 (treason), 2A (subversion) or 2B (secession):~~

(2) (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 or removal 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 alteration or removal of or in order to draw attention to such matter; or

- (e) engaging in reporting news of the People's Republic of China or of the Hong Kong Special Administrative Region.

Amend Section 4 of the Crimes Ordinance

by deleting the whole section
and substituting the following:

"No prosecution for an offence under section 2 (treason), 2A (subversion), 2B (secession) shall be commenced after 3 years from the date of commission of the offence."

Amend Section 11 of the Crimes Ordinance

- by deleting the words "section 10" and substituting them with "section 9A" wherever they occur, and
- by deleting the words "Attorney General" and substituting them with "Secretary for Justice"

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.~~

~~18B 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.

~~18C 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.

NATIONAL SECURITY (LEGISLATIVE PROVISIONS) BILL

**18D 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; China, but shall not include protecting a government from embarrassment or exposure of wrongdoing, or concealing information about the functioning of its public institution, or entrenching a particular ideology, or suppressing industrial unrest."

(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".

(3) Section 12 is amended by adding —

"(8) In this Part, disclosure of any information, document or article shall be presumed to be not damaging if the information,

document or article has already been published or is otherwise available in the public domain.

(9) In this Part, disclosure of any information, document or article shall be deemed to be not damaging if the disclosure is to reveal an abuse of power or a breach of trust by the Government or a Government official or is otherwise in the public interest."

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 causes real and substantial damage to
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 cause real and substantial damage 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)."

(1) Section 18(2) is amended—

- (a) in paragraph (h), 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 (h), “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”.

"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."

(5) For the avoidance of doubt, an accused who exercises his right to elect to stand trial before the Court of First Instance pursuant to subsections (1) and (3) shall not face a heavier penalty than he would have received had he decided not to exercise his right of election."

PART 4

AMENDMENTS TO THE SOCIETIES ORDINANCE

~~13. Interpretation~~

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

~~" "prescribed organization" (受取締組織) means an organization prescribed 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 an 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—~~

~~“291A.4A. 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 11A 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 ^{section} ~~10~~ and substituting Section 2, 2A, 2B or 9A or 9G.

15. Search warrant

Section 13 is amended by repealing "10" where it twice appears and substituting "9A or 9G"

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 "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, ^{or} 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 9G 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~~

~~(1) its registration or exemption from registration cancelled under section 3D of the 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 prescribed 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 2C (secession 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).

何秀蘭議員、何俊仁議員、
李柱銘議員、涂謹申議員、單仲偕議員、
劉慧卿議員及馮檢基議員
分別提出的修正案的擬稿
(截至 2003 年 6 月 24 日)

**Draft amendments proposed by
Hon Cyd HO, Hon Albert HO, Hon Martin LEE,
Hon James TO, Hon SIN Chung-kai, Hon Emily LAU
and Hon Frederick FUNG respectively
(as at 24 June 2003)**

《國家安全（立法條文）條例草案》修正案建議

第5稿 (2003年6月20日)

《刑事罪行條例》

叛國罪

由何俊仁議員
提出修訂

2. 叛國

(1) 任何中國公民懷有推翻中央人民政府的意圖而——

(a) 加入與中華人民共和國交戰的外來武裝部隊或作為其中一分子；或

(b) 協助在戰爭中與中華人民共和國交戰的公敵，

即屬叛國。

~~(1) 任何中國公民——~~

~~(a) 懷有——~~

~~(i) 推翻中央人民政府；~~

~~(ii) 恐嚇中央人民政府；或~~

~~(iii) 脅逼中央人民政府改變其政策或措施——~~

~~的意圖而加入與中華人民共和國交戰的外來武裝部隊或作為其中一分子；~~

~~(b) 鼓動外來武裝部隊以武力入侵中華人民共和國；或~~

~~(c) 懷有損害中華人民共和國在戰爭中的形勢的意圖，而藉著作出任何作為而協助在該場戰爭中與中華人民共和國交戰的公敵——~~

~~即屬叛國。~~

(2) 任何中國公民叛國，即屬犯罪，一經循公訴程序定罪，可處終身監禁。

~~(3) 第(1)及(2)條亦就任何屬香港永久性居民的中國公民在香港境外作出的第(1)款提述的任何作為而適用於他——~~

~~(4) 就本條而言——~~

~~(a) “外來武裝部隊”指——~~

~~(i) 屬於某外國的武裝部隊；~~

~~(ii) 受某外國的政府指示或控制的武裝部隊；或~~

~~(iii) 並非以中華人民共和國為基地亦不屬於中華人民共和國的武裝部隊；~~

~~(b) “與中華人民共和國交戰的公敵”指——~~

~~(i) 與中華人民共和國交戰的某外國的政府；或~~

~~(ii) 與中華人民共和國交戰的外來武裝部隊；~~

~~(c) 當——~~

~~(i) 武裝部隊之間發生公開武裝衝突；或~~

~~(ii) 已作出公開宣戰，~~

~~戰爭狀態即告存在，而“交戰”須據此解釋。~~

(d) (i) 任何作為目的是抗議中華人民共和國與某外國或某外國政府交戰，則不構成第2(1)條所訂罪行；

“恐嚇”、“脅逼”、“損害在戰爭中的形勢”的意圖過於空泛及模糊，“鼓動”與煽動相近。

刪去“域外效力”條文。

加入和平、反戰、人道及醫療救援作為不構成罪行。

加入為免生疑問條文，明確訂明外來武裝部隊不包括台灣的部隊。

	<p>(ii) 任何作為目的是或其效果是為與中華人民共和國交戰的外國或外國政府提供醫療或人道援助，則不構成第 2(1)條所訂罪行；</p> <p>(iii) 任何作為目的是促進和平或終止中華人民共和國與某外國或外國政府交戰，則不構成第 2(1)條所訂罪行。</p> <p>(3A) 為免生疑問，就第(3)款而言，“外來武裝部隊”不包括以台灣為基地的武裝部隊。</p> <p>(54) 隱匿叛國此項普通法罪行現予取消。</p> <p>(65) 收受代價而不檢控叛國此項普通法罪行現予取消。</p>	
由涂謹申議員提出修訂	<p>(4) 就本條而言——</p> <p>(a) “外來武裝部隊”指——</p> <p>(i) 屬於某外國的武裝部隊；</p> <p>(ii) 受某外國的政府指示或控制的武裝部隊；或</p> <p>(iii) 並非以中華人民共和國為基地亦不屬於中華人民共和國的武裝部隊；</p> <p>(b) “與中華人民共和國交戰的公敵”指——</p> <p>(i) 與中華人民共和國交戰的某外國的政府；或</p> <p>(ii) 與中華人民共和國交戰的外來武裝部隊；</p> <p>(c) 當——</p> <p>(i) 武裝部隊之間發生公開武裝衝突；或</p> <p>(ii) 已作出公開宣戰，</p> <p>戰爭狀態即告存在，而“交戰”須據此解釋。</p> <p>(d) (i) 任何作為目的是抗議中華人民共和國與某外國或某外國政府之間的戰爭，則不構成第 2(1)條所訂罪行；</p> <p>(ii) 任何作為目的是或其效果是為與中華人民共和國交戰的外國或外國政府提供醫療或人道援助，則不構成第 2(1)條所訂罪行；</p> <p>(iii) 任何作為目的是促進和平或終止中華人民共和國與某外國或外國政府交戰，則不構成第 2(1)條所訂罪行。</p> <p>(4A) 為免生疑問，就第(4)款而言，“外來武裝部隊”不包括台灣的武裝部隊。</p>	<p>加入和平、反戰、人道及醫療救援作為不構成罪行。</p> <p>加入為免生疑問條文，明確訂明外來武裝部隊不包括台灣的部隊。</p>

顛覆罪

由劉慧卿議員提出修訂	【刪去顛覆罪條文】	
由何俊仁議員提出修訂	<p>2A. 顛覆</p> <p>(1) 任何人懷有推翻中央人民政府的意圖，而使用嚴重危害中華人民共和國安全的嚴重暴力、進行戰爭或導致任何人（作出該作為的人除外）受嚴重傷害，即屬顛覆。</p> <p>(1) 任何人藉使用嚴重危害中華人民共和國的穩定的武力或嚴重犯罪手段，或藉進行戰爭——</p> <p>(a) 廢止《中華人民共和國憲法》所確立的中華人民共和國根本制度；</p> <p>(b) 推翻中央人民政府；或</p>	<p>“根本制度”、“恐嚇”、“危害穩定”的目的過於空泛及模糊。</p>

	<p>(c) 恐嚇中央人民政府—— 即屬顛覆—— (2) 任何人顛覆，即屬犯罪，一經循公訴程序定罪，可處終身監禁。 (3) 第(1)及(2)款亦就任何香港永久居民在香港境外作出的第(1)款提述的任何作為而適用於他—— (43) 就本條而言—— (a) “進行戰爭”一詞須參照第 2(43)(c)條中“交戰”一詞的涵義而解釋——。 (b) “嚴重犯罪手段”指符合以下說明的任何作為—— (i) 危害任何人（作出該作為的人除外）的生命； (ii) 導致任何人（作出該作為的人除外）受嚴重損傷； (iii) 嚴重危害公眾人士或某部分公眾人士的健康或安全； (iv) 導致對財產的嚴重破壞；或 (v) 嚴重干擾電子系統或基要服務、設施或系統（不論屬於公眾或私人）或中斷其運作—— 而且 (vi) 是在香港作出並屬香港法律所訂罪行；或 (vii) (A) 是在香港境外任何地方作出； (B) 屬該地方的法律所訂罪行；及 (C) 假使在香港作出便屬香港法律所訂罪行的——</p>	<p>刪去“域外效力”條文。</p> <p>“武力”、“嚴重犯罪手段”的定義過於寬鬆。</p>
由涂謹申議員提出修訂	<p>(2) (a) 任何人犯第 2A(1)(a)條，即屬犯罪，一經循公訴程序定罪，可處監禁 7 年； (b) 任何人犯第 2A(1)(b)條，即屬犯罪，一經循公訴程序定罪，可處終身監禁； (c) 任何人犯第 2A(1)(c)條，即屬犯罪，一經循公訴程序定罪，可處監禁 2 年。</p>	<p>不同程度的作為應有不同程度的刑罰。</p>
由涂謹申議員提出修訂	<p>(4) 就本條而言—— (a) “進行戰爭”一詞須參照第 2(4)(c)條中“交戰”一詞的涵義而解釋； (b) “嚴重犯罪手段”指懷有使用暴力意圖而符合以下說明的任何作為—— (i) 危害任何人（作出該作為的人除外）的生命； (ii) 導致任何人（作出該作為的人除外）受嚴重損傷； (iii) 嚴重危害公眾人士或某部分公眾人士的健康或安全； (iv) 導致對財產的嚴重破壞；或 (v) 嚴重干擾電子系統或基要服務、設施或系統（不論屬於公眾或私人）或中斷其運作， 而且—— (vi) 是在香港作出並屬香港法律所訂罪行，或 (vii) (A) 是在香港境外任何地方作出； (B) 屬該地方的法律所訂罪行；及 (C) 假使在香港作出便屬香港法律所訂罪行的——， 但若有以下的作為，則明文規定不屬於“嚴重犯罪手段”</p>	<p>收窄“嚴重犯罪手段”定義。</p>

	<p>(viii) 任何提出主張、抗議、提出不同意見或工業行動；</p> <p>(ix) 在公眾地方和平地提出主張，或以作出根據第 9D(3) 條所訂的“訂明作為”為出發點的其他作為；或</p> <p>(x) 作出犯罪行為，而所犯罪行如在香港觸犯，定罪則可被判監禁不超過 7 年的罪行。</p>	
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分裂國家罪

由劉慧卿議員 提出修訂	【刪去分裂國家罪條文】	
由何俊仁議員 提出修訂	<p>2B. 分裂國家</p> <p>(1) 任何人懷有將中華人民共和國的部分領土自中華人民共和國的主權分離出去的意圖，而使用嚴重危害中華人民共和國領土完整的嚴重暴力、進行戰爭或導致任何人（作出該作為的人除外）受嚴重傷害，即屬分裂國家。</p> <p>(1) 任何人將——</p> <p>(a) 使用嚴重危害中華人民共和國領土完整的武力或嚴重犯罪手段；或</p> <p>(b) 進行戰爭——</p> <p>而將中華人民共和國的某部分自中華人民共和國的主權分離出去，即屬分裂國家——</p> <p>(2) 任何人分裂國家，即屬犯罪，一經循公訴程序定罪，可處終身監禁。</p> <p>(3) 第(1)及(2)款亦就任何香港永久性居民在香港境外作出的第(1)款提述的任何作為而適用於他——</p> <p>(43) 就本條而言——</p> <p>“進行戰爭”一詞須參照第 2(43)(c)條中“交戰”一詞的涵義而解釋。</p> <p>(a) “嚴重犯罪手段”的涵義與該詞在第 2A(4)(b)條中的涵義相同——</p> <p>(4) 為免生疑問，現聲明：此條生效時，關乎現存的分治狀態所作出的任何作為，不構成第(1)款的罪行。</p>	<p>“武力”、“嚴重犯罪手段”的定義過於寬鬆。</p> <p>刪去“域外效力”條文。</p> <p>加入為免生疑問條文，訂明現存分治狀態所關乎的任何作為不構成犯分裂國家罪。</p>

對叛逆等的審訊的限制

由何秀蘭議員 提出修訂	<p>4. 對叛逆等叛國、顛覆、分裂國家的審訊的限制</p> <p>(1) 除非檢控是在犯罪後 3 年內開始進行，否則任何人不得就第 2、2A 或 2B 條所訂的罪行被檢控。</p> <p>(2) 叛國、顛覆或分裂國家的審訊程序，與審訊謀殺的程序相同。</p>	對叛國、顛覆及分裂國家罪設定 3 年的檢控時限。
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煽動叛亂罪

由劉慧卿議員 提出修訂	【刪去煽動叛亂罪及現時的「作出具煽動意圖的作為」的罪行】	
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由何俊仁議員 提出修訂	<p>9A. 煽動叛亂</p> <p>(1) 在不抵觸第 9D 條的條文下，任何人——</p> <p>(a) <u>故意煽惑他人犯第 2 (叛國)、2A (顛覆) 或 2B (分裂國家) 條所訂罪行；或</u></p> <p>(b) 故意煽惑他人於香港或其他地方進行會嚴重危害中華人民共和國的穩定的公眾暴亂，</p> <p>即屬煽動叛亂。</p> <p>(1A) <u>除非有關煽惑的性質及作出該項煽惑所處的情況——</u></p> <p>(a) <u>令一名或多於一名被煽惑的人相當可能；或</u></p> <p>(b) <u>令一名普通人假使受到該項煽惑便相當可能會，</u></p> <p><u>被懲罰（如第(1)(a)款適用）犯有關罪行或（如第(1)(b)款適用）進行公眾暴亂，否則該項煽惑不構成第(1)款所訂罪行。</u></p>	<p>不應包括“公眾暴亂”。</p> <p>【仍在考慮是否對政府新建議作修訂】</p>
由何秀鵬議員 提出修訂	<p>9A. 煽動叛亂</p> <p>(1) 在不抵觸第 9D 條的條文下，任何人——</p> <p>(a) <u>故意煽惑他人犯第 2 (叛國)、2A (顛覆) 或 2B (分裂國家) 條所訂罪行；或</u></p> <p>(b) <u>故意煽惑他人於香港或其他地方進行會嚴重危害中華人民共和國的穩定的公眾暴亂，</u></p> <p>即屬煽動叛亂。</p> <p>(1A) <u>除非有關煽惑的性質及作出該項煽惑所處的情況——</u></p> <p>(a) <u>令一名或多於一名被煽惑的人相當可能；或</u></p> <p>(b) <u>令一名普通人假使受到該項煽惑便相當可能會，</u></p> <p><u>被直接及即時懲罰（如第(1)(a)款適用）犯有關罪行或（如第(1)(b)款適用）進行公眾暴亂，否則該項煽惑不構成第(1)款所訂罪行。</u></p> <p>(1B) <u>對第 (1)款所訂罪行的檢控，不得在犯該罪行的日期的 6 個月後提出。</u></p>	<p>加入“約翰內斯堡原則”，及有 6 個月的檢控時限。</p> <p>【仍在考慮是否對政府新建議作修訂】</p>
由馮檢基議員 提出修訂	<p>9A. 煽動叛亂</p> <p>(1) 在不抵觸第 9D 條的條文下，任何人——</p> <p>(a) <u>故意煽惑他人犯第 2 (叛國)、2A (顛覆) 或 2B (分裂國家) 條所訂罪行；或</u></p> <p>(b) <u>故意煽惑他人於香港或其他地方進行會嚴重危害中華人民共和國的穩定安全的公眾暴亂，</u></p> <p>即屬煽動叛亂。</p> <p>(1A) <u>除非有關煽惑的性質及作出該項煽惑所處的情況——</u></p> <p>(a) <u>令一名或多於一名被煽惑的人相當可能；或</u></p> <p>(b) <u>令一名普通人假使受到該項煽惑便相當可能會，</u></p> <p><u>被懲罰（如第(1)(a)款適用）犯有關罪行或（如第(1)(b)款適用）進行公眾暴亂，否則該項煽惑不構成第(1)款所訂罪行。</u></p> <p>(2) 任何人——</p> <p>(a) <u>藉作出第(1)(a)款提述的作為而煽動叛亂，即屬犯罪，一經循公訴程序定罪，可處終身監禁或 7 年；</u></p> <p><u>藉作出第(1)(b)款提述的作為而煽動叛亂，即屬犯罪，一經循公訴程序定罪，可處罰款及監禁 7 年。</u></p>	<p>“穩定”過於空泛及模糊，危害中國的穩定與危害中國的安全不同，應改為“安全”。</p> <p>【仍在考慮是否對政府新建議作修訂】</p> <p>刑罰過重。</p>

處理煽動性刊物罪

由劉慧卿議員 提出修訂	【刪去處理煽動性刊物罪】	
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若干作為並非煽惑

由涂謹申議員 提出修訂	<p>9D 若干作為並非煽惑</p> <p>(3) 在本條中，“訂明作為”指——</p> <p>(a) 顯示中央人民政府或香港以外的<u>中華人民共和國地方政府</u>或香港特別行政區政府在其任何措施上被誤導或犯錯誤或懷疑被誤導或懷疑犯錯（包括過去的誤導或錯誤）或相關的批評；</p> <p>(b) 以矯正<u>中華人民共和國或香港特別行政區的指出中華人民共和國或香港特別行政區以下的錯誤或缺失或懷疑錯誤或懷疑缺失（包括過去的錯誤或缺失）——</u></p> <p>(i) 管治或憲制；</p> <p>(ii) 法律；或</p> <p>(iii) 司法——</p> <p>中的錯誤或缺失為出發點，指出該等錯誤或缺失；</p> <p>(c) 慫恿<u>中華人民共和國或香港特別行政區的公眾人士任何</u>人嘗試以<u>合法非暴力</u>手段，促致改變或消除<u>中華人民共和國或香港特別行政區（視屬何情況而定）的法律所規定的任何事宜；或</u></p> <p>(d) 以指出——</p> <p>(i) 消除；</p> <p>(ii) 改變；或</p> <p>(iii) 嘗試促使關注，</p> <p>任何在或傾向在<u>中華人民共和國或香港特別行政區人口中不同階層之間製造怨恨或敵意的任何事宜為出發點，指出該等事宜；或</u></p> <p>(e) 從事與<u>中華人民共和國或香港特別行政區有關的新聞報導。</u></p>	<p>增加“訂明作為”的涵蓋範圍，保障言論自由。</p> <p>【具體字眼會再作修訂】</p>
由單仲偕議員 提出修訂	<p>9D 若干作為並非煽惑</p> <p>(3) 在本條中，“訂明作為”指——</p> <p>(a) 顯示中央人民政府或香港特別行政區政府在其任何措施上被誤導或犯錯誤；</p> <p>(b) 以矯正<u>中華人民共和國或香港特別行政區的——</u></p> <p>(i) 管治或憲制；</p> <p>(ii) 法律；或</p> <p>(iii) 司法，</p> <p>中的錯誤或缺失為出發點，指出該等錯誤或缺失；</p> <p>(c) 慫恿<u>中華人民共和國或香港特別行政區的公眾人士嘗試以合法手段，促致改變中華人民共和國或香港特別行政區（視屬何情況而定）的法律所規定的任何事宜；或</u></p>	<p>增加“訂明作為”的涵蓋範圍，保障資訊自由。</p>

	<p>(d) 以消除任何在或傾向在中華人民共和國或香港特別行政局人口中不同階層之間製造怨恨或敵意的任何事宜為出發點，指出該事宜；</p> <p>(e) 操作或提供任何器材、系統或服務，藉此可令刊物以電子形式翻查、複製、分發、展示或提供；或</p> <p>(f) 操作或提供連接至任何通訊系統，藉此在不能作有效控制的情況下傳遞或提供刊物。</p>	
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人權保障條文

由何俊仁議員 提出修訂	<p>18A. 第 I 及 II 部及本部等執行須符合《基本法》 <u>為免生疑問，第 I 及 II 部及本部的條文須以符合《基本法》第三章的方式而解釋、適用及執行，如不符合《基本法》第三章的規定，即屬無效。</u></p>	清楚訂明若落實條文時與基本法不符，即屬無效。
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調查權力

由馮檢基議員 提出修訂	【刪去新加的調查權力】	
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《官方機密條例》

REVISED

保安及情報資料—部門成員及獲知會人士

由涂謹申議員 提出修訂	<p>13. 保安及情報資料——部門成員及獲知會人士</p> <p>(1) 任何屬或曾經屬——</p> <p>(a) 保安及情報部門的成員的人士；或</p> <p>(b) 獲知會受本款條文規限的人士，</p> <p>如在以下情況——</p> <p>(c) 沒有合理權限的情況下；及</p> <p>(d) 在作出披露時知道或有合理理由相信——</p> <p>(i) 所披露的是關乎保安或情報的資料、文件或其他物品；及</p> <p>(ii) 披露會導致或相當可能會導致對保安或情報部門或其任何部分的工作的嚴重損害，</p> <p><u>披露作出一項具嚴重損害性的披露，而所披露的是憑藉他作為任何該等部門的成員的身分或於該項知會有效或曾經有效期間在其工作過程中而由或曾經由他管有，並關乎保安或情報的資料、文件或其他物品，即屬犯罪。</u></p> <p>(1A) 就第(1)款而言，如披露導致或相當可能會導致對保安或情報部門或其任何部分的工作的嚴重損害，披露即屬具嚴重損害性。</p> <p>(2) 第(1)款中提述披露關乎保安或情報的資料之處，包括提述作出本意是披露該等資料的陳述，亦包括提述作出擬被其所致予的人視為該等披露的陳述——</p> <p>(3) 被控犯本條所訂罪行的人如證明在指稱的罪行發生時，他既不知道亦或無合理理由相信有關的資料、文件或物品是關乎保安或情報的，即可以作為免責辯護——</p> <p>(a) 有關的資料、文件或物品關乎保安或情報；或</p> <p>(b) 披露會屬第(1A)款所指的具嚴重損害性，</p> <p>即可以此作為免責辯護。</p>	<p>披露相當可能導致嚴重損害才入罪。</p> <p>修訂免責辯護包括不知道或無合理理由相信披露是具嚴重損害性。</p>
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保安及情報資料—公務人員及承辦商

由涂謹申議員 提出修訂	<p>14. 保安及情報資料——公務人員及承辦商</p> <p>(1) 屬或曾經屬公務人員或政府承辦商的人，</p> <p>如在以下情況——</p> <p>(a) 沒有合理權限的情況下；及</p> <p>(b) 在作出披露時知道或有合理理由相信——</p> <p>(i) 所披露的是關乎保安或情報的資料、文件或其他物品；及</p> <p>(ii) 披露會導致或相當可能會導致對保安或情報部門或其任何部分的工作的嚴重損害，</p> <p>作出一項具嚴重損害性的披露，而所披露的是憑藉他作為公務人員或政府承辦商的身分（但並非第 13(1)條所述者）而由或曾經由他</p>	<p>收窄受保護資料定義，只包括資料內容會導致或可能導致嚴重損害，而不包括性質或類別。</p> <p>嚴重損害才算犯罪。</p>
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	<p>管有，並關乎保安或情報的資料、文件或其他物品，即屬犯罪。</p> <p>(2) 就第(1)款而言，如——</p> <p>(a) 披露導致或相當可能會導致對保安或情報部門或其任何部分的工作的嚴重損害；</p> <p>(b) 有關資料、文件或物品的性質屬若被未經授權而披露便相當可能會導致該等損害者；或</p> <p>(c) 某種類或類別的資料、文件或物品被未經授權而披露便相當可能會具有該效果，而有關的資料、文件或物品屬於該種類或類別，</p> <p>披露即屬具嚴重損害性。</p> <p>(3) 被控犯本條所訂罪行的人如證明在指稱的罪行發生時，他既不知道亦或無合理理由相信——</p> <p>(a) 有關的資料、文件或物品關乎保安或情報；或</p> <p>(b) 披露會屬第(2)款所指的具嚴重損害性，</p> <p>即可以此作為免責辯護。</p>	
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防務資料

<p>由涂謹申議員 提出修訂</p>	<p>15. 防務資料</p> <p>(1) 屬或曾經屬公務人員或政府承辦商的人， 如在以下情況——</p> <p>(a) 沒有合理權限的情況下；及</p> <p>(b) 在作出披露時知道或有合理理由相信——</p> <p>(i) 所披露的是關乎防務的資料、文件或其他物品； 及</p> <p>(ii) 披露會導致或相當可能會導致第(2)款所述的嚴重損害，</p> <p>作出一項具嚴重損害性的披露，而所披露的是憑藉他作為公務人員或政府承辦商的身分（但並非第 13(1)條所述者）而由或曾經由他管有，並關乎防務的資料、文件或其他物品，即屬犯罪。</p> <p>(2) 就第(1)款而言，如——</p> <p>(a) 披露導致或相當可能會導致對武裝部隊或其任何部分執行任務的能力有損害；</p> <p>(b) 披露引致或相當可能會引致引致武裝部隊成員死亡或受傷，或會引致或相當可能會引致引致武裝部隊或裝置受嚴重損害；或</p> <p>(c) 披露導致或相當可能會導致嚴重危害（但並非以(a)及(b)段所述方式危害）<u>聯合王國中華人民共和國或香港</u>在其他地方的利益、嚴重妨礙<u>聯合王國中華人民共和國或香港</u>促進或保障該等利益或嚴重危害<u>英國國民中國公民或香港永久性居民</u>在其他地方的安全；或</p> <p>(d) 有關資料、文件或物品的性質屬若被未經授權而披露便相當可能會導致該等損害者，</p> <p>披露即屬具嚴重損害性。</p> <p>(3) 被控犯本條所訂罪行的人如證明在指稱的罪行發生時，他</p>	<p>收窄受保護資料定義，只包括資料內容會導致或可能導致嚴重損害，而不包括性質或類別。</p> <p>嚴重損害才算犯罪。</p> <p>修訂過時條文。</p>
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	<p>既不知道亦或無合理理由相信——</p> <p>(a) 有關的資料、文件或物品關乎防務；或</p> <p>(b) 披露會屬第(2)款所指的具嚴重損害性，</p> <p>即可以此作為免責辯護。</p>	
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關乎國際關係的資料

<p>由涂謹申議員 提出修訂</p>	<p>16. 關乎國際關係的資料</p> <p>(1) 屬或曾經屬公務人員或政府承辦商的人， 如在以下情況——</p> <p>(a) 沒有合理權限的情況下；及</p> <p>(b) 在作出披露時知道或有合理理由相信——</p> <p>(i) 所披露的是關乎國際關係或第(d)段所述的資料、 文件或其他物品；及</p> <p>(ii) 披露會導致或相當可能會導致第(2)款所述的嚴 重損害，</p> <p>作出一項具嚴重損害性的披露，而所披露的是——</p> <p>(c) 關乎國際關係的資料、文件或其他物品；或</p> <p>(e) 自<u>聯合王國</u><u>中華人民共和國</u>以外的國家或地區或自國 際組織取得的任何機密的資料、文件或其他物品，且 該等資料、文件或物品是憑藉他作為公務人員或政府 承辦商的身分而由或曾經由他管有的，</p> <p>他即屬犯罪。</p> <p>(2) 就第(1)款而言，如——</p> <p>(a) 披露導致或相當可能會導致嚴重危害<u>聯合王國</u><u>中華人 民共和國</u>或香港在其他地方的利益、嚴重妨礙<u>聯合王 國</u><u>中華人民共和國</u>或香港促進或保障該等利益或嚴重 危害<u>英國國民</u><u>中國公民</u>或香港永久性居民在其他地方 的安全；或</p> <p>(b) 有關的資料、文件或物品的性質屬若被未經授權而披 露便相當可能會具有(a)段所描述的任何效果者，</p> <p>披露即屬具嚴重損害性。</p> <p>(3) 就第(1)(b)款所述的資料、文件或其他物品而言——</p> <p>(a) 確定其屬機密此事實；或</p> <p>(b) 確定其性質或內容；</p> <p>可足以為第(2)(b)款的施行而確定該資料、文件或物品的性質屬若 被未經授權而披露便相當可能具有該款所述的任何效果者。</p> <p>(4) 被控犯本條所訂罪行的人如證明在指稱的罪行發生時，他 既不知道亦或無合理理由相信——</p> <p>(a) 有關的資料、文件或物品屬第(1)款所述者；或</p> <p>(b) 披露會屬第(2)款所指的具嚴重損害性，</p> <p>即可以此作為免責辯護。”</p>	<p>收窄受保護資 料定義，只包 括資料內容會 導致或可能導 致嚴重損害， 而不包括性質 或類別。</p> <p>嚴重損害才算 犯罪。</p> <p>修訂過時條 文。</p> <p>【會加入主觀 意圖辯護理 由：真誠相信 資料不屬於受 保護資料或資 料是合法取得 及直接及即時 損害的修訂， 具體條文仍在 草擬中】</p>
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由劉慧卿議員 提出修訂	【整條刪去】	
由何俊仁議員 提出修訂	<p>16A. 關於中央管理的香港事務的資料</p> <p>(1) 屬或曾經屬公務人員或政府承辦商的人， 如在以下情況——</p> <p>(a) 沒有合理權限的情況下；及</p> <p>(b) 在作出披露時知道或有合理理由相信——</p> <p>(i) 所披露的是關於第(c)段所述的資料、文件或其他物品；及</p> <p>(ii) 披露會導致或相當可能會導致第(2)款所述的嚴重損害，</p> <p>作出一項具嚴重損害性的披露，而所披露的是——</p> <p>(c) 關於與香港特別行政區有關並且根據《基本法》<u>第十三條或第十四條涉及國防或外交事宜，並是由中央人民政府</u>管理的事務；及</p> <p>(d) 憑藉他作為公務人員或政府承辦商的身分而由或曾經由他管有，的資料、文件或其他物品， 他即屬犯罪。</p> <p>(2) 就第(1)款而言，如——</p> <p>(a) 披露導致或相當可能會導致嚴重危害國家安全；或</p> <p>(b) 有關資料、文件或物品的性質屬若被未經授權而披露便相當可能會危害國家安全者</p> <p>披露即屬具嚴重損害性。</p> <p>(3) 被控犯本條所訂罪行的人如證明在指稱的罪行發生時，他既不知道亦或無合理理由相信——</p> <p>(a) 有關的資料、文件或物品屬第(1)(a)款所述者；或</p> <p>(b) 披露會屬第(2)款所指的具嚴重損害性， 即可以此作為免責辯護。</p> <p>(4) 為免生疑問，現聲明：本條所保障的“國家安全”不包括保護中央人民政府及香港特別行政區政府免受尷尬或其錯誤免被暴露。</p>	<p>只應涉及國防或外交的中央政府管理的香港事務，不應過於空泛及模糊。</p> <p>加入為免生疑問條文：令政府尷尬等的披露不屬損害國家安全。</p> <p>具嚴重危害國家安全才算犯罪。</p> <p>只包括資料內容會導致或可能導致嚴重損害，而不包括性質或類別。</p>

關於犯罪及刑事調查的資料

由涂謹申議員 提出修訂	<p>17. 關於犯罪及刑事調查的資料</p> <p>(1) 屬或曾經屬公務人員或政府承辦商的人， 如在以下情況——</p> <p>(a) 沒有合理權限的情況下；及</p> <p>(b) 在作出披露時知道或有合理理由相信——</p> <p>(i) 所披露的是本條適用的資料、文件或其他物品；及</p> <p>(ii) 披露會導致或相當可能會導致第(2)款所述的嚴重損害，</p>	<p>收窄受保護資料定義，只包括資料內容會導致或可能導致嚴重損害，而不包括性質或類別。</p>
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披露本條適用並憑藉他作為公務人員或政府承辦商的身分而由或會經由他管有的資料、文件或其他物品，即屬犯罪。

(2) 本條適用於——

(a) 若被披露便——

- (i) **導致或相當可能會導致導致犯罪的資料、文件或其他物品；**
- (ii) **利便或相當可能會利便某人逃離合法羈押或作出對受合法羈押的人的穩當看管有損害的作為的資料、文件或其他物品；或**
- (iii) **阻礙或相當可能會阻礙防止或偵查罪行，或阻礙或相當可能會阻礙拘捕或檢控疑犯的資料、文物或其他物品；**

(b) 其性質屬若被未經授權而披露便相當可能會具有(a)段所述的任何效果的資料、文物或其他物件；

(c) 因為根據在《電訊條例》(第 106 章)第 33 條下發出的命令採取的行動而取得的資料，而該資料若被披露便——

- (i) **導致或相當可能會導致犯罪；**
- (ii) **利便或相當可能會利便某人逃離合法羈押或作出對受合法羈押的人的穩當看管有損害的作為；或**
- (iii) **阻礙或相當可能會阻礙防止或偵查罪行，或阻礙或相當可能會阻礙拘捕或檢控疑犯；或**

(d) 因為根據在《郵政署條例》(第 98 章)第 13(1)條下發出的手令採取的行動而取得的資料，而該資料若被披露便——

- (i) **導致或相當可能會導致犯罪；**
- (ii) **利便或相當可能會利便某人逃離合法羈押或作出對受合法羈押的人的穩當看管有損害的作為；或**
- (iii) **阻礙或相當可能會阻礙防止或偵查罪行，或阻礙或相當可能會阻礙拘捕或檢控疑犯。**

~~(e) 關乎因為如(c)或(d)段所述採取行動而取得的資料，以及被或曾經被用於(或被或曾經被持有以用於)該等行動的或因為該等行動而取得的文件或其他物品。~~

(3) 就符合第(2)(a)款的描述的披露而被控犯本條所訂罪行的人如證明在指稱的罪行發生時，他既不知道亦無合理理由相信該項披露會有該款所述的任何效果，即可以此作為免責辯護。

(4) 就任何其他披露而被控犯本條所訂罪行的人如證明在指稱的罪行發生時，他既不知道亦或無合理理由相信有關的資料、文件或物品是本條適用的資料、文件或物品，即可以此作為免責辯護。

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因未經授權的披露或違法取覽所得的資料或在機密情況下託付的資料

由劉慧卿議員 提出修訂	【刪去新加入披露違法取覽所得的資料部分】	
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公眾利益免責辯護條文

由李柱銘議員 提出修訂	21A. 公眾利益免責辯護 被控觸犯第 13 至 20 條所訂罪行的被告人，如證明有關披露較不披露更符合公眾利益，即可以此作為免責辯護。	公眾利益免責辯護
由涂謹申議員 提出修訂	21A. 為公眾利益而披露不構成罪行 就被控觸犯第 13 至 20 條所訂罪行而言，如公眾知道有關資料的公眾利益超越披露該資料所導致或可能會導致的損害，則該項披露不構成該等所訂罪行。	公眾利益不構成罪行

事前披露

由何秀蘭議員 提出修訂	21B. 披露事前公開資料不構成罪行 就被控觸犯第 13 至 20 條所訂罪行而言，如所披露的資料、文件或物品已在行銷的報章或刊物或其他公開渠道可得到，則該項披露不構成該等所訂罪行。	加入事前公開不屬犯罪條文
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設定檢控時限

由何秀蘭議員 提出修訂	1A. 對第 13 至 20 條所訂罪行的審訊的限制 對第 13 至 20 條所訂罪行的檢控，不得在犯該罪行的日期的 6 個月後提出。	對損害性披露及非法披露罪行，設定 6 個月的檢控時限。
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人權保障條文

由何俊仁議員 提出修訂	1A. 本條例的執行等須符合《基本法》 為免生疑問，本條例的條文須以符合《基本法》第三章的方式而解釋、適用及執行，如不符合《基本法》第三章的規定，即屬無效。	
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《社團條例》

禁制機制

由李柱銘議員 提出修訂	【刪去與禁制機制有關的條文】	超越 23 條規定及損害結社自由
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人權保障條文

由何俊仁議員 提出修訂	2A. 執行等須符合《基本法》 <u>為免生疑問，本條例的條文須以符合《基本法》第三章的方式而解釋、適用及執行，如不符合《基本法》第三章的規定，即屬無效。</u>	
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其他

生效日期

由劉慧卿議員 提出修訂	(1) 在第(2)款的規限下，本條例自保安局局長以憲報公告指定的日期起實施。 (2) 在第(1)款所指的公告須在《基本法》第四十五條及六十八條提及的普選產生目標達至後方可提出。	
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**劉健儀議員提出的
修正案的擬稿
(截至 2003 年 6 月 26 日)**

**Draft amendments proposed by
Hon Miriam LAU
(as at 26 June 2003)**

MATTERS FOLLOWING PROSCRIPTION OF
AN ORGANIZATION UNDER
SECTION 8A OF THIS
ORDINANCE

1. Companies registered under
Companies Ordinance

(1) If a company registered under the Companies Ordinance (Cap. 32) is proscribed under section 8A of this Ordinance, the Registrar of Companies shall -

- (a) strike the name of such company off the register of companies kept by the Registrar; and
- (b) publish a notice of the striking off in the Gazette,

and upon the publication of the notice such company shall be dissolved.

(2) The Registrar of Companies ^{shall} ~~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.

(3) On an application of the Registrar of Companies to the Court of First Instance, a company struck off the register under subsection (1) shall be wound up and sections 360D, 360E, 360F, 360G, 360H, 360I, 360J, 360K, 360L and 360M of the Companies Ordinance (Cap. 32) shall apply to such company as

if such company were a company struck off the register and dissolved under section 360C of that Ordinance.

2. Unregistered companies under
Companies Ordinance

** unless the right to take legal action against the proscription has not been exhausted,*

(1) An unregistered company within the meaning of section 326 of the Companies Ordinance (Cap. 32) which is proscribed under section 8A of this Ordinance shall ^{*} for the purpose of section 327(3) of the Companies Ordinance (Cap. 32) be regarded as having been dissolved.

(2) On an application of the Registrar of Companies to the Court of First Instance, the company referred to in subsection (1) shall be wound up and Part X of the Companies Ordinance (Cap. 32) shall apply to such company.

** (3) No application shall be made under subsection (2) if the right to take legal action against the proscription has not been exhausted.

3. Other types of organizations

(1) If an organization that is proscribed under section 8A of this Ordinance is not registered under the Companies Ordinance (Cap. 32) but is registered under any other Ordinance, the appropriate authority shall -

- (a) cancel the registration of that organization
- and (if applicable under that other Ordinance)
- remove or strike its name off the relevant
- register or any other similar record; and

(b) publish a notice of the cancellation in the Gazette,

and upon the publication of the notice -

(c) that organization shall be dissolved for the purposes of that other Ordinance and all other purposes; and

(d) the provisions (if any) of that other Ordinance applicable to -

(i) the dissolution of that

organization shall apply as if it were dissolved under that other Ordinance;

(ii) the winding up of organizations shall apply to that organization.

(2) Subject to subsection (1) (d), an organization referred to in subsection (1) shall, on an application of the appropriate authority to the Court of First Instance, be wound up and Part X of the Companies Ordinance (Cap. 32) shall apply as if such organization were an unregistered company within the meaning of section 326 of that Ordinance.

(3) The appropriate authority ^{shall} ~~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.

(4) In this section, "appropriate authority" means -

(a) where a person has authority under the relevant Ordinance to cancel the registration of the

relevant organization under that Ordinance,

that person; or

(b) in any other case, the Registrar of Companies.

4. ~~Liabilities of members, etc. shall~~

~~continue notwithstanding~~

~~dissolution~~

If an organization -

(a) ~~is dissolved pursuant to section 1(1) or 3(1); or~~

(b) ~~is regarded as having been dissolved pursuant to~~

~~section 2(1);~~

the liability, if any, of every director, officer and member

of the organization shall continue and may be enforced as if

the organization had not been dissolved.

附錄 VII
Appendix VII

**劉江華議員提出的
修正案的擬稿
(截至 2003 年 6 月 26 日)**

**Draft amendments proposed by
Hon LAU Kong-wah
(as at 26 June 2003)**

民主建港聯盟

DEMOCRATIC ALLIANCE FOR
BETTERMENT OF HONG KONG

對《刑事罪行條例》的修訂	原因
9C. 處理煽動性刊物 (3) 對第(2)款所訂罪行的檢控，不得在犯該罪行的日期的 <u>3</u> 年 <u>2</u> 年後提出。	3 年的檢控時限 太長，建議改為 2 年。