

## Safeguarding National Security Bill

### Debate and voting arrangements

**Object of the Bill** : To improve the law for safeguarding national security in the Hong Kong Special Administrative Region of the People's Republic of China; and to provide for related matters.

<b>Joint debate</b>	: <b>Clauses with no amendment, clauses and headings with amendments and new clauses proposed by the Secretary for Security (“S for S”)</b>	– <b>Clauses 1 to 181, and proposed new clauses 19A, 29A, 63A, 106A, 107A, 107B, 113A, 113B and 177A</b>
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Joint debate on the original clauses and the amendments (including amendments to headings and proposed new clauses) (as set out in the table in **Annex 1**).

### **A total of 91 amendments proposed by S for S**

The amendments seek to amend the Bill in respect of the following matters (please refer to **Annex 2** for details):

1. Revising the definition of “international organization”
2. Providing for the offence of “misprision of treason” as a statutory provision
3. The scope of “public officers”
4. Provisions relating to offences in connection with state secrets and espionage
5. The scopes of “public infrastructure” and “public services” in the provisions on sabotage endangering national security
6. The name of the offence of “external interference” and related provisions
7. Organizations engaging in activities endangering national security
8. Enforcement powers and other matters in connection with investigation
9. Absconders in respect of offences endangering national security
10. Mechanisms for safeguarding national security and relevant protections
11. Other drafting amendments

<b>Voting order</b>	: <ol style="list-style-type: none"> <li>1. Clauses with no amendment standing part of the Bill</li> <li>2. S for S’s amendments (excluding the addition of new clauses)</li> <li>3. Clauses with or without amendments standing part of the Bill</li> <li>4. Proposed new clauses be read the second time and added to the Bill</li> </ol>
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### **S for S’s amendments**

(set out in LC Paper No. CB(3)214/2024(01) issued on 16 March 2024)

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<b>Clauses with no amendment</b>	Clauses 1, 2, 4, 5, 7 to 11, 13, 14, 16 to 18, 20 to 27, 29 to 31, 33 to 37, 42 to 44, 46, 48, 49, 51, 52, 54, 55, 57, 58, 61 to 71, 73, 75, 78, 79, 81 to 85, 87, 90, 91, 94 to 101, 103 to 106, 110, 112 to 118, 120, 121, 123 to 125, 127 to 157 and 159 to 181
<b>Clauses and headings with amendments proposed by the Secretary for Security (“S for S”) (excluding proposed new clauses)</b>	Clauses 3, 6, 12, 15, 19, 28, 32, 38 to 41, 45 and 47, the heading of Part 6, the heading of Division 1 of Part 6, clauses 50, 53, 56, 59, 60, 72 and 74, the heading of Subdivision 2 of Division 1 of Part 7, clauses 76, 77 and 80, the heading of Division 2 of Part 7, clauses 86, 88, 89, 92, 93, 102, 107 to 109, 111, 119, 122, 126 and 158
<b>New clauses proposed by S for S</b>	Clauses 19A, 29A, 63A, 106A, 107A, 107B, 113A, 113B and 177A

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### Amendments proposed by the Secretary for Security

<i>Main objects of the amendments</i>	<i>Clause(s) involved</i>
<b>1. Revising the definition of “international organization”</b> <ul style="list-style-type: none"> <li>- In response to the views of the members of the Bills Committee (“BC members”), to revise the wording of the definition of “international organization” so as to avoid giving the wrong impression that certain international organizations can have only one member.</li> </ul>	Clauses 3 and 158
<b>2. Providing for the offence of “misprision of treason” as a statutory provision</b> <ul style="list-style-type: none"> <li>- To amend clause 12 to reflect more clearly that the clause provides for the offence of “misprision of treason” under common law as a statutory provision with appropriate improvements.</li> </ul>	Clause 12
<b>3. The scope of “public officers”</b> <ul style="list-style-type: none"> <li>- In response to BC members’ suggestions, to empower the Chief Executive in Council, by order published in the Gazette, to specify persons of certain categories as public officers in respect of the offence of “incitement to disaffection” or offences in connection with state secrets. Such order will have legislative effect and will be subsidiary legislation subject to negative vetting by the Legislative Council under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1).</li> </ul>	Clauses 19 and 28; and proposed new clauses 19A and 29A
<b>4. Provisions relating to offences in connection with state secrets and espionage</b> <ul style="list-style-type: none"> <li>- As conveyance under the provision for the offence of “unlawful possession of state secrets when leaving HKSAR” refers to a conveyance engaged on a journey leaving the Hong Kong Special Administrative Region (“HKSAR”), to revise the term of “cross-boundary conveyance” as “departure conveyance” to make it more in line with the actual scenario.</li> <li>- In response to the views of BC members, to state clearly that the Chief Executive will declare a place as a prohibited place by order published in the Gazette.</li> <li>- In response to the views of BC members that whether a statement is misleading can be understood in common sense and no definition is required, the Administration agrees that it is not necessary to provide a definition for misleading statements and the definition can be deleted.</li> </ul>	Clauses 32, 40 and 41

<i>Main objects of the amendments</i>	<i>Clause(s) involved</i>
<p><b>5. The scopes of “public infrastructure” and “public services” in the provisions on sabotage endangering national security</b></p> <ul style="list-style-type: none"> <li>- In response to the views of BC members, to clarify the scope of “public infrastructure” to cover public transport infrastructure and logistics infrastructure situated in HKSAR, and to further add non-exhaustive examples of “public services” to illustrate the wide scope of “public services”.</li> </ul>	Clause 47
<p><b>6. The name of the offence of “external interference” and related provisions</b></p> <ul style="list-style-type: none"> <li>- To change the name of the offence of “external interference” to “external interference endangering national security” to highlight the nature of endangering national security of the offence of external interference, with the elements of the offence remaining unchanged.</li> <li>- In response to the views of BC members, and upon further research, noting that the intention of using the term “spiritual injury” under section 15(2)(e) of the National Security Act 2023 of the United Kingdom is not in line with the Government’s intention, as well as considering that clause 113(4) of the Bill (offence of unlawful harassment of persons handling cases or work concerning national security) has used the term “psychological harm”, for the sake of consistency, to change the improper means of “causing mental injury to, or placing undue mental pressure on, a person” to “causing psychological harm to, or placing undue psychological pressure on, a person”, which is more in line with the Government’s policy intent.</li> </ul>	Headings of Part 6 and Division 1 of Part 6; and clauses 50 and 53
<p><b>7. Organizations engaging in activities endangering national security</b></p> <p><u>Matters following prohibition of operation of local organizations</u></p> <ul style="list-style-type: none"> <li>- Regarding the reference to “winding-up provisions” under specified Ordinances, as some specified Ordinances may not use the expression “winding up” in the relevant provisions, to add the expression “or any other provision that has the same effect” to ensure that any other provision that has the same effect will be covered.</li> <li>- As some members of a dissolved prohibited organization may participate in the course of the winding up of the organization for legitimate reasons, they may commit an offence of acting as a member of the prohibited organization as a result. In response to BC members’ suggestions, to include the mechanism of written permission by the Secretary for Security (“S for S”) to provide flexibility so that each case can be dealt with according to the specific circumstances.</li> </ul>	Clauses 59, 60, 119 and 122; and proposed new clause 63A

<i>Main objects of the amendments</i>	<i>Clause(s) involved</i>
<p><u>Amendments to the Companies (Winding Up and Miscellaneous Provisions) Ordinance</u></p> <ul style="list-style-type: none"> <li>- To further amend sections 360C and 360N of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), in order to deal with the situation where a member of a company which has become an “unlawful society” or a “prohibited organization” after its registration is cancelled by order made by the Chief Executive in Council may need to participate in the course of the winding up of the company (such as attending the general meeting) in the capacity of a member of the company for legitimate reasons, but the member may be subject to criminal liability in connection with “unlawful society” under the Societies Ordinance (Cap. 151). The amendments seek to provide that a person shall not be held criminally liable only because the person so acts.</li> </ul> <p><u>Adding provisions for “shadow organizations of prohibited organizations”</u></p> <ul style="list-style-type: none"> <li>- In response to the views of BC members and to avoid future disputes, to add provisions to clearly specify that “prohibited organization” should include the “shadow organization” of the organization (i.e. the organization which holds itself out to be the prohibited organization) so that the offences in connection with “prohibited organization” would also apply to its shadow organization.</li> </ul>	
<p><b>8. Enforcement powers and other matters in connection with investigation</b></p> <ul style="list-style-type: none"> <li>- In response to the views of BC members, regarding that a magistrate may adjourn the hearing of the applications for extension of detention period for a reasonable period, to stipulate what “a reasonable period” refers to. In addition, to delete the word “may” in clause 74(2)(b) to make it explicit that an arrested person is detained in police custody during the adjournment of a hearing.</li> <li>- Taking into account Members’ views that the reference to “lawyer” may bring about ambiguity and is also inconsistent with the terms used in other clauses, to change the reference to “lawyer” to “legal representative”, and to add the clear definition of “legal representative” and “Hong Kong firm”.</li> </ul>	<p>Clause 74; heading of Subdivision 2 of Division 1 of Part 7; and clauses 76 and 77</p>

<i>Main objects of the amendments</i>	<i>Clause(s) involved</i>
<p><b>9. Absconders in respect of offences endangering national security</b></p> <p><u>Power of Secretary for Security to specify an absconder for application of certain measures against the absconder</u></p> <ul style="list-style-type: none"> <li>- In response to the views of BC members, to make this amendment to the effect that it would not be necessary for S for S to take measures against an absconder only after the warrant of arrest has been issued for 6 months, including the cancellation and application of HKSAR passports of absconders, so as to give S for S the maximum flexibility to deal with the absconders and prevent circumvention from the relevant measures.</li> <li>- Given that the person may abscond at any stage of criminal proceedings, but not limited to the stage at the Magistrates' Court, to amend the scope of clause 86 to make it clear that it applies to the subject of warrant of arrest issued by a Court in relation to an offence endangering national security.</li> </ul> <p><u>Prohibition against certain activities in connection with immovable property</u></p> <ul style="list-style-type: none"> <li>- Given that if an innocent third party has leased a property from an absconder before the absconder is specified by S for S, the third party will instantly commit an offence when the absconder is specified by S for S. While S for S may address this by granting a licence, the Administration proposes that such situation be clearly excluded. According to the Bill, the rent paid by the tenant will be frozen after being deposited into the account of the absconder. As such, the proposed arrangement will not benefit the absconder in practice.</li> </ul> <p><u>Prohibition in connection with joint ventures or partnerships with absconders</u></p> <ul style="list-style-type: none"> <li>- In response to the views of BC members, to amend clause 89 to stipulate that a person is not to be regarded as having contravened clause 89(2) by reason only of entering into any contract, agreement or obligation with a person before the date on which the person becomes a relevant absconder, so as to minimise the impact on third parties including those who have previously established or invested in a joint venture, partnership or any like relationship with a relevant absconder.</li> </ul>	<p>Heading of Division 2 of Part 7; and clauses 86, 88, 89, 92 and 93</p>

<i>Main objects of the amendments</i>	<i>Clause(s) involved</i>
<p><u>Matters on temporary removal of an absconder from office of director</u></p> <ul style="list-style-type: none"> <li>- Given that a company and its shareholders have certain powers exercisable against directors of the company under the common law and documents such as the company's memorandum of association, to expand the scope of clause 92(4) in response to the views of BC members, so that a company and its shareholders may exercise such powers against a relevant absconder.</li> </ul> <p><u>Arrangements for the cancellation of HKSAR passports of absconders</u></p> <ul style="list-style-type: none"> <li>- Given that the statutory appeal mechanism under the Hong Kong Special Administrative Region Passports Ordinance (Cap. 539) is obviously not applicable to the cancellation of HKSAR passports under clause 93, to delete clause 93(3) in response to the views of BC members to avoid confusion.</li> <li>- To deal with the situation where an application for a HKSAR passport is made by a relevant absconder, to stipulate that an application for a passport made by an absconder is to be regarded as invalid for the purpose of section 3(1) of the Hong Kong Special Administrative Region Passports Ordinance (provisions relating to the issue of passports by the Director of Immigration) and all other purposes. The effect of this amendment is that the Director of Immigration is not required to process the application and the applicant cannot lodge an appeal either.</li> </ul>	
<p><b>10. Mechanisms for safeguarding national security and relevant protections</b></p> <p><u>Power of the Chief Executive in Council to make subsidiary legislation for safeguarding national security</u></p> <ul style="list-style-type: none"> <li>- In response to the views of BC members, and with reference to other Ordinances, to empower the Chief Executive in Council to make subsidiary legislation for safeguarding national security, so as to further provide for the specific implementation issues in respect of laws relevant to safeguarding national security (i.e. the Hong Kong National Security Law and its relevant Interpretation, and the Safeguarding National Security Ordinance after its enactment) and deal with unforeseen circumstances.</li> </ul>	<p>Clauses 107, 108 and 111; and proposed new clauses 106A, 107A, 107B, 113A and 113B</p>

<i>Main objects of the amendments</i>	<i>Clause(s) involved</i>
<p><u>Chief Executive issues administrative instructions in connection with safeguarding national security</u></p> <ul style="list-style-type: none"> <li>- In addition to stipulating that the Chief Executive can issue administrative instructions to any public servant, to also provide that relevant administrative instructions can be issued to any department or agency of the Government, and any department or agency of the Government must also comply with the relevant administrative instructions.</li> </ul> <p><u>Judgements and decisions of the Committee for Safeguarding National Security of the Hong Kong Special Administrative Region (“National Security Committee”)</u></p> <ul style="list-style-type: none"> <li>- BC members were of the view that one of the purposes of enacting a new “Safeguarding National Security Ordinance” is to fully implement the constitutional responsibilities and obligations stipulated in the Decision of the National People’s Congress on Establishing and Improving the Legal System and Enforcement Mechanisms for the Hong Kong Special Administrative Region to Safeguard National Security (i.e. “5.28 Decision”) and the Hong Kong National Security Law. The Interpretation of Article 14 and Article 47 of the Hong Kong National Security Law was adopted by the Standing Committee of the National People’s Congress on 30 December 2022, but the Interpretation was not reflected in local legislation. In response to the views of BC members, the amendments seek to clearly include the relevant requirements in the Bill to ensure that if the law of the HKSAR confers any function on a person, any person, in making any decision in the performance of the function, must respect and execute the judgements and decisions of the National Security Committee in accordance with the law.</li> </ul> <p><u>Provision of advice, or giving of directions, in relation to national security education etc. by the Chief Secretary for Administration</u></p> <ul style="list-style-type: none"> <li>- In response to the views of BC members, to ensure the requirements related to taking forward national security education are implemented in a better way, the Chief Secretary for Administration, as the Chairman of the Constitution and Basic Law Promotion Steering Committee, should be empowered to give direction to any person whom the Chief Secretary for Administration considers appropriate, for the public communication, guidance, supervision and regulation of national security education, etc.</li> </ul>	



<b><i>Main objects of the amendments</i></b>	<b><i>Clause(s) involved</i></b>
<p><u>Public servants to assist in work on safeguarding national security</u></p> <ul style="list-style-type: none"> <li>- In response to the views of BC members, to further improve the relevant provision to provide specific responsibilities of public servants relating to the safeguarding of national security, to stipulate that a public servant must provide any department or agency that is responsible for the work on safeguarding national security, and its personnel, in the HKSAR, with all reasonable facilitation, support, backing and protection in a timely manner, including providing the necessary manpower and other necessary resources in a timely manner, and that a public servant must exercise all powers and discretions that the public servant has (including any power and discretion concerning the giving of any exemption) to discharge his or her duty in providing assistance in the work on safeguarding national security.</li> </ul> <p><u>Protection to persons handling non-national security cases</u></p> <ul style="list-style-type: none"> <li>- In response to the views of BC members that there is a possibility that officers handling cases not related to national security may also be doxxed, in order to provide greater protection to them, to expand the scope of the mechanism under clause 111 by stipulating that “specified cases” cover, in addition to cases concerning national security, a case in which a party to the case is also a party to proceedings instituted for the party’s offence concerning national security. Moreover, to add the proposed new clauses 113A and 113B, to empower that a specified Court may on application take anonymity measures, and to provide for the offences for contravening order prohibiting disclosure of identity.</li> </ul>	
<b>11. Other drafting amendments</b>	Clauses 6, 15, 38, 39, 45, 56, 72, 80, 102, 109 and 126; and proposed new clause 177A