

# Safeguarding National Security Ordinance

## Overview

The Safeguarding National Security Bill was passed by the Legislative Council (LegCo) on March 19, 2024. The new legislation, the Safeguarding National Security Ordinance, took effect in the Hong Kong Special Administrative Region (HKSAR) on March 23, 2024.

The Ordinance is a comprehensive piece of local legislation for safeguarding national security in the HKSAR, fulfilling the constitutional duty and requirement for safeguarding national security under the Basic Law<sup>1</sup>, the “5.28 Decision” of the National People’s Congress<sup>2</sup> and the Hong Kong National Security Law (HKNSL). It seeks to improve the law for safeguarding national security in the HKSAR, and to provide for related matters.

The Ordinance, together with the HKNSL, establish a comprehensive legal system for safeguarding national security in the HKSAR, which is conducive to safeguarding national security, ensuring the resolute, full and faithful implementation of the “one country, two systems” policy, maintaining the prosperity and stability of the HKSAR, protecting rights and freedoms as well as fundamental well-being of HKSAR residents and other people in Hong Kong, and defending the legitimate interests of all Hong Kong and foreign investors in the HKSAR, so that the city can focus its efforts on developing the economy and improving people’s livelihood.

The legislative exercise has gained very wide support from the Hong Kong community.

The new legislation strictly adheres to the principle of rule of law, and fully aligns with the principles of international laws and practices. The provisions are certain and clear, and come with appropriate exceptions and defences.

The Ordinance only targets an extremely small minority of people who endanger national security, with the aim of protecting the lives, properties, freedoms and rights of people in Hong Kong.

Offences under the Ordinance target acts endangering national security with precision and define the elements and penalties of the offences with clarity. The prosecution also has the burden to prove beyond reasonable doubt that the defendant had the actus reus (“guilty act”) and mens rea (“guilty mind”) of an offence before the defendant may be convicted by the court. Normal business operators,

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<sup>1</sup> Article 23 of the Basic Law stipulates 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 organisations or bodies from conducting political activities in the HKSAR, and to prohibit political organisations or bodies of the HKSAR from establishing ties with foreign political organisations or bodies.

<sup>2</sup> On May 28, 2020, the National People’s Congress adopted the Decision (namely the 5.28 Decision) to require the HKSAR to complete the relevant legislative exercise as early as possible, and to require that the HKSAR shall “establish and improve the institutions and enforcement mechanisms for safeguarding national security, strengthen the enforcement forces for safeguarding national security, and step up enforcement to safeguard national security”.

as well as professional bodies complying with normal requirements of regulatory authorities, will not unwittingly violate the law.

### **Properties and investments in the HKSAR protected**

The Ordinance clearly stipulates that properties and investments in the HKSAR are protected by the law, to maintain prosperity and stability of the HKSAR.

The Ordinance clearly defines the boundaries between what is lawful and what is unlawful, and provides for defences and exceptions for certain offences, having taken into full account the need to maintain normal business practices and international exchanges of financial institutions, media and various types of organisations in the HKSAR.

It is everyone's responsibility to abide by the law. The new law seeks to proscribe acts endangering national security, which all law-abiding persons must refrain from doing as their fundamental civic duty. Legitimate businesses should not have any problem with compliance and it is unlikely that additional costs would be involved.

Safeguarding of national security will provide a better business environment to businesses operating in Hong Kong. The efforts to effectively prevent, suppress and impose punishment for illegal acts endangering national security are ultimately for better safeguarding the fundamental rights and freedoms of HKSAR residents and other persons in the HKSAR and ensuring the properties and investments in the HKSAR are protected by law.

Enactment of the Ordinance will only further improve our legal system in safeguarding national security, rendering the business environment in the HKSAR more stable, and better securing the city's law and order. No one would want to do business amid social turmoil, such as the intolerable "black-clad violence" in 2019 during which shops were damaged and normal business operation was impossible.

Individuals, organisations and enterprises thrive in a stable and safe environment. This new legislation creates stability and safety for everybody. No business owner wants to see his or her investment and business being disrupted or destroyed by violence or instability. Hong Kong will be a stable and secure place for investment decisions to be made, for predictions, and for business interests to be generated.

### **Fundamental well-being and lawful rights and interests of the residents of the HKSAR and other persons in Hong Kong protected**

The Ordinance clearly specifies that the rights and freedoms enshrined in the Basic Law, as well as the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights as applied to Hong Kong, are to be protected in

accordance with the law. This important principle forms a cornerstone of the legislation, and is literally written in the new law.

### **Competitive advantages under “One country, two systems” preserved**

Hong Kong is an international financial, transportation and trade centre, as well as an international offshore Renminbi business hub and asset management centre. We are highly competitive globally in the areas of financial services, business and commerce, logistics and professional services. Our fair and open business environment, highly efficient market and the rule of law have been the driving force of a vibrant and energetic business sector in Hong Kong. We have been attracting a large number of enterprises and investors from overseas and Mainland China to come to Hong Kong for business.

Hong Kong is an open and small economy facing fierce competition from around the world. With the unique advantage of "one country, two systems" and deep pool of talent with global vision, Hong Kong is seizing the enormous opportunities brought about by the development of our nation to achieve further economic success.

The enactment of the Ordinance can ensure that the principle of “one country, two systems” under which “the people of Hong Kong administer Hong Kong” with a high degree of autonomy, is fully and faithfully implemented. The lives, properties and other legitimate rights of residents of the HKSAR and other people in the HKSAR are protected by law.

### **Enacting local legislation to safeguard national security**

It is a constitutional duty, as well as a genuine practical need, for the HKSAR to legislate for Article 23 of the Basic Law. Hong Kong has gone through the painful experience of having our national security seriously threatened, especially in 2019 during which serious violent incidents took place in the HKSAR, causing deterioration of law and order. There were frequent incidents of large-scale riots, arson and attacks on people as well as businesses who did not share the same views as the protesters, resulting in unbearable consequences to our society. And national security risks still exist every day.

Each and every sovereign state has an inherent right to enact laws to safeguard its national security. Many countries have enacted a host of national security laws based on their own national security risks and needs. The United States has at least 21 pieces of legislation; the United Kingdom (UK) has at least 14 pieces; Canada has at least nine pieces; and Singapore has at least six pieces. Many countries are regularly updating their national security laws to ensure that they will be able to deal with new threats and new methodologies. The UK updated and enacted a new national security law in 2023. Canada has also introduced a bill in the Parliament to strengthen its law following consultation.

## **Scope of the Safeguarding National Security Ordinance**

The Ordinance enables the HKSAR to effectively prevent, suppress and punish acts and activities endangering national security, including espionage activities, conspiracies and traps from foreign intelligence agencies, and infiltration and sabotage by hostile forces. "Black-clad violence" and "colour revolution" can be effectively prevented. "Hong Kong independence" and violent destruction can also be effectively prevented.

### ***The Safeguarding National Security Ordinance aligns with three principles, as stipulated in its provisions. These three principles are:***

- the highest principle of the policy of "one country, two systems" is to safeguard national sovereignty, security and development interests;
- human rights are to be respected and protected, and the rights and freedoms, including the freedoms of speech, of the press and of publication, the freedoms of association, of assembly, of procession and of demonstration, enjoyed under the Basic Law and the provisions of two international covenants, namely the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to the HKSAR, are to be protected in accordance with the law; and
- for acts and activities endangering national security, there must be adherence to active prevention in accordance with the principle of the rule of law, and suppression and punishment in accordance with the law.

### ***The Safeguarding National Security Ordinance demonstrates three key objectives:***

- to resolutely, fully and faithfully implement the policy of "one country, two systems" under which the people of Hong Kong administer Hong Kong with a high degree of autonomy;
- to establish and improve the legal system and enforcement mechanisms for the HKSAR to safeguard national security; and
- to prevent, suppress and punish acts and activities endangering national security in accordance with the law, to protect the lawful rights and interests of the residents of the HKSAR and other people in the HKSAR, to ensure the property and investment in the HKSAR are protected by the law, to maintain prosperity and stability of the HKSAR.

### ***The Safeguarding National Security Ordinance has four characteristics:***

- the Ordinance achieves convergence, compatibility and complementarity with the Hong Kong National Security Law and other Hong Kong laws concerning national security;
- the Ordinance makes reference to the experience of other common law jurisdictions, but is implemented in the light of the actual situation in Hong Kong;
- the provisions of the Ordinance are written in line with common law conventions, and are detailed, clear and easy to understand; and
- the Ordinance improves laws that were obsolete and inadequate.

## **Offences under the Ordinance**

The Ordinance covers five categories of offences:

- **prohibiting treason and related acts.** The offences of “treason”, “treasonable offences” and “unlawful drilling” were previously provided for under the then existing Crimes Ordinance, and the offence of “misprision of treason” is also provided for under the common law. The Ordinance improves the relevant offences so as to effectively prevent treasonable acts;
- **prohibiting insurrection, incitement to mutiny and disaffection, and acts with seditious intention.** The Ordinance improves the relevant offences under the then existing Crimes Ordinance to curb acts of incitement to mutiny, incitement to disaffection and incitement of hatred against the fundamental system of the State, the Central Authorities and the bodies of power of the HKSAR. The offence of “insurrection” is introduced to protect the public from violent attacks and coercions that endanger national security;
- **prohibiting theft of state secrets and espionage.** The Ordinance makes reference to the scope of “state secrets” in relevant national laws and provides a detailed definition of “state secrets”. It also improves the offences and provisions relating to “protection of state secrets” and “espionage activities” under the then existing Official Secrets Ordinance, so as to protect the secrets relating to the State or the HKSAR from theft or unlawful disclosure, and to curb the acts of espionage and collusion with external forces to publish to the public a statement of fact that is false or misleading with intent to endanger national security or recklessness as to whether national security would be endangered;
- **prohibiting sabotage and related activities endangering national security.** New offences are introduced to protect public infrastructure from malicious damage or impairment, and to combat acts done in relation to computers or electronic systems which endanger national security; and
- **prohibiting external interference and organisations from engaging in activities endangering national security.** The Ordinance makes improvements based on the provisions in the then existing Societies Ordinance to effectively prevent and suppress the operation in the HKSAR of organisations that engage in activities endangering national security. A new offence of “external interference endangering national security” is introduced to prevent acts of collaborating with external forces with intent to interfere in the affairs of the country or the HKSAR through improper means.

## **Public consultation and legislative process**

The HKSAR Government received over 13,000 submissions of opinions during the consultation period (January 30, 2024 to February 28, 2024), of which 98.6 per cent showed support and gave positive comments, indicating that the legislation has a strong popular support.

The LegCo’s Bills Committee, together with the subcommittee earlier set up by the House Committee to study matters relating to Basic Law Article 23 legislation, convened 25 meetings in total, and devoted nearly 50 hours to scrutinise every clause of the Bill in detail, raising over 1,000 questions and comments and resulting in 91 amendments. The entire legislative process at the LegCo was

conducted in accordance with procedures throughout, and lawmakers scrutinised the Bill diligently and meticulously.

During the public consultation period, the HKSAR Government held nearly 30 consultation sessions to meet with representatives from various sectors. About 3,000 people participated in the consultation sessions, covering representatives from such sectors as local and international businesses, legal, financial, education, media and other professions.

Representatives of national organisations, district personalities, political parties and relevant organisations as well as Consuls-General also attended the sessions. A majority of the participants indicated their support for the legislation.

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