

## **Note on National Security (Legislative Provisions) Bill**

### ***Objective of the Bill***

To make provisions to amend the Crimes Ordinance (Cap.200), the Official Secrets Ordinance (Cap.521) and the Societies Ordinance (Cap.151), etc. for –

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

pursuant to the obligation imposed by Article 23 of the Basic Law (BL) on the Hong Kong SAR.

### ***Treason***

The new section 2 of the Crimes Ordinance deals with treason.

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 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.

A Chinese national who is a Hong Kong permanent resident is also liable for treason committed outside Hong Kong.

### ***Subversion***

The new section 2A of the Crimes Ordinance provides for the offence of subversion.

A person commits subversion if he –

- (a) disestablishes the basic system of the PRC as established by its Constitution;
- (b) overthrows the Central People's Government; or
- (c) intimidates the Central People's Government, by using force or serious criminal means that seriously endangers the stability of the PRC or by engaging in war.

A conspiracy or an attempt, in Hong Kong, to do, outside Hong Kong, an act which if done in Hong Kong would constitute subversion, would already be an offence (new section 2C).

### ***Secession***

The new section 2B of the Crimes Ordinance provides for the offence of secession.

A person commits secession if he withdraws any part of the PRC from its sovereignty by-

- (a) using force or serious criminal means that seriously endangers the territorial integrity of the PRC; or
- (b) engaging in war.

Conspiring or attempting, in Hong Kong, to do, outside Hong Kong, any act which if done in Hong Kong would constitute secession, would already be an offence (new section 2C)

### ***Sedition and seditious publications***

The new section 9A of the Crimes Ordinance provides for the offence of sedition, namely, inciting others-

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

A person is guilty of the seditious publication offence (under the new section 9C) if he-

- (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 the offence of treason, subversion or secession.
- “Seditious publication” means a publication that is likely to cause the commission of the offence of treason, subversion or secession.

Section 9D provides that a person shall not be regarded having committed the offences of:

- sedition - by reason only that he does a prescribed act; and
- handling seditious publications - by reason only that he does any act constituting the offence of handling seditious publications, with intent only to do a prescribed act.

Prescribed acts means –

- (a) showing that the Central People’s Government or the Government of the Hong Kong SAR 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 PRC or the Hong Kong SAR with a view to the remedying of such errors or defects;
- (c) persuading members of the public in the PRC or in the Hong Kong SAR to attempt to procure, by lawful means, the alteration of any matter provided for in the law of the PRC or of the Hong Kong SAR, 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 PRC or of the Hong Kong SAR with a view to the removal of such matter.

***Theft of state secrets - prohibition of unauthorised disclosure***

The new section 16A (clause 10) of the Official Secrets Ordinance prohibits a person who is or has been a public servant or government contractor from making a damaging disclosure of any information that relates to any affairs concerning the Hong Kong SAR which are, under the BL, within the responsibility of the Central Authorities (i.e. covering defence and foreign affairs relating to Hong Kong).

- A disclosure is damaging if it endangers national security or if the information in question is of such a nature that its unauthorised disclosure would be likely to endanger national security.
- “National security” means the safeguarding of the territorial integrity and the independence of the PRC.

Clause 11 amends section 18 of the Official Secrets Ordinance to provide that a person who discloses protected information without lawful authority commits an offence if he knows or has reasonable cause to believe that it has come into his possession after it has been acquired by means of illegal access, whether by himself or another.

- Illegal access includes only computer hacking, theft, robbery, burglary and bribery.

Protected information includes those that relate to-

- (a) security or intelligence
- (b) defence
- (c) international relations
- (d) affairs concerning the Hong Kong SAR which are, under the BL, within the responsibility of the Central Authorities

Apart from category (d), i.e. information relating to affairs concerning the Hong Kong SAR which are, under the BL, within the responsibility of the Central Authorities, all the other categories are already in the existing Official Secrets Ordinance.

### ***Proscription of organisations endangering national security***

The Societies Ordinance is amended to confer a power on the Secretary for Security to proscribe a local organisation.

The power is exercisable when the Secretary for Security reasonably believes that the proscription is necessary in the interests of national security (defined in section 2(4) of the Ordinance as the safeguarding of the territorial integrity and the independence of the PRC) and is proportionate for such purpose.

Circumstances for proscription include where the local organisation is subordinate to a mainland organisation which has been lawfully proscribed by the Central Authorities on the ground of protection of the security of the PRC.

The new section 8C prohibits participation in the activities of a proscribed organisation, e.g. by acting as an office-bearer or member of, attending a meeting of, or giving any form of aid to, the organisation.

(Under existing provisions in the Societies Ordinance, the Hong Kong SAR Government already has the power to refuse to register (section 5A), cancel the registration of (section 5D) or prohibit the operation of (section 8) a local society on the ground of national security.)

### ***Enforcement provisions***

The new section 18B of the Crimes Ordinance confers on the police a power to search without warrant (except for journalistic materials [defined in section 82 of the Interpretation and General Clauses Ordinance as any material acquired or created for the purposes of journalism, and is in the possession of a person who acquired or created it for the purposes of journalism], in which case the search power cannot be exercised without a court warrant). The power includes, e.g. the power to enter, and search the premises, place or conveyance or any person found therein, and seize, detain or remove anything found in the premises, place or conveyance which appears to a police officer of or above the rank of Chief Superintendent likely to be or to contain evidence of substantial value to the investigation of the offence of treason, subversion, secession, sedition or handling seditious publication having or is been committed, and that such evidence would be lost and the investigation of the offence would be seriously prejudiced as a result unless immediate action is taken.

(The police already have substantial investigation powers (e.g. to enter and search premises without a warrant) under the existing law, e.g. section 50 of the Police Force Ordinance (Cap.232), section 11(2) of the Official Secrets Ordinance, section 14 of the Crimes Ordinance, and section 33 of the Societies Ordinance.)

11 March 2003