

《國家安全 (立法條文) 條例草案》

**NATIONAL SECURITY (LEGISLATIVE
PROVISIONS) BILL**

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A BILL

To

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

Enacted by the Legislative Council.

PART 1

PRELIMINARIES

1. Short title

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

2. Commencement

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

PART 2

AMENDMENTS TO THE CRIMES ORDINANCE

3. Part heading amended

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

4. Sections substituted

Section 2 is repealed and the following substituted—

“2. Treason

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

2A. Subversion

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

2B. Secession

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

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

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

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

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

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

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

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

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

5. Part heading amended

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

6. Sections added

The following are added—

“9A. Sedition

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

9B. Inciting sedition not an offence

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

9C. Handling seditious publication

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

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

9D. Certain acts are not incitement

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

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

7. Part IIA added

The following is added—

“PART IIA

ENFORCEMENT PROVISIONS CONCERNING CERTAIN OFFENCES UNDER PARTS I AND II

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

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

18B. Investigation power

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

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

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

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

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

- (b) may stop and board the conveyance;
- (c) may search the premises, place or conveyance or any person found therein;
- (d) may seize, detain or remove anything found in the premises, place or conveyance which appears to him to be or to contain evidence of an offence under section 2 (treason), 2A (subversion), 2B (secession), 9A (sedition) or 9C (handling seditious publication);
- (e) may detain the conveyance for such time as may be necessary for his exercise of the power conferred by paragraph (c) or (d); and
- (f) may remove by force any person or thing obstructing him in the exercise of any power conferred by this subsection.

(3) If requested, a police officer shall produce his police warrant card for inspection before exercising any power conferred by subsection (2).

(4) A person may be searched under subsection (2)(c) only by a police officer of the same sex.

(5) For the avoidance of doubt, it is declared that section 83 of the Interpretation and General Clauses Ordinance (Cap. 1) and other provisions of Part XII of that Ordinance apply to subsection (2) and any power conferred by it.

(6) For the purposes of this section—

- (a) “conveyance” means any vehicle, tramcar, train, vessel or aircraft;
- (b) “premises” includes any structure.

18C. Consent of Secretary for Justice required

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

18D. Certain offences to be tried by jury

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

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

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

(2) Where—

(a) an accused is charged before a magistrate with an offence under section 9A(2)(b) (sedition by inciting violent public disorder) or 9C (handling seditious publication); and

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

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

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

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

PART 3

AMENDMENTS TO THE OFFICIAL SECRETS ORDINANCE

8. Interpretation

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

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

“(a) any person who holds an office specified in column 2 of Schedule 1 to the Pension Benefits Ordinance (Established Offices) Order (Cap. 99 sub. leg.);

(b) any person who holds an office of emolument under the Government of the Hong Kong Special Administrative Region, whether such office is permanent or temporary;”;

(b) by adding—

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

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

9. Section added

The following is added—

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

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

10. Section added

The following is added—

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

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

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

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

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

(a) the disclosure endangers national security; or

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

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

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

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

(1) Section 18(2) is amended—

- (a) in paragraph (b), by repealing “or” at the end;
- (b) in paragraph (c), by repealing the full stop and substituting “; or”;
- (c) by adding—

“(d) acquired by means of illegal access (whether by himself or another) to it,

and for the purposes of paragraphs (a) and (b), “public servant or government contractor” includes a person who was formerly a public servant or government contractor where the information, document or article came into his possession when he was such a public servant or government contractor.”.

(2) Section 18 is amended by adding—

“(5A) For the purposes of subsection (2), a person has illegal access to information or a document or article if—

- (a) the information, document or article, as the case may be, comes into or remains in his possession by virtue of an offence under—
 - (i) section 27A (unauthorized access to computer by telecommunications) of the Telecommunications Ordinance (Cap. 106);
 - (ii) section 161 (access to computer with criminal or dishonest intent) of the Crimes Ordinance (Cap. 200); or
 - (iii) section 9 (theft), 10 (robbery) or 11 (burglary) of the Theft Ordinance (Cap. 210), committed by him in relation to the information, document or article, as the case may be; or
- (b) the information, document or article, as the case may be, comes into or remains in his possession in exchange for an advantage the offer or acceptance of which is an offence under section 4 (bribery) of the Prevention of Bribery Ordinance (Cap. 201).”.

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

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

12. Section added

The following is added—

“24A. Election of trial by jury

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

(2) Where—

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

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

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

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

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

PART 4

AMENDMENTS TO THE SOCIETIES ORDINANCE

13. Interpretation

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

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

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

14. Section added

The following is added—

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

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

15. Sections added

The following are added—

“8A. Proscription of organizations endangering national security

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

(2) This section applies to any local organization—

- (a) the objective, or one of the objectives, of which is to engage in treason, subversion, secession or sedition or commit an offence of spying;
- (b) which has committed or is attempting to commit treason, subversion, secession or sedition or an offence of spying; or
- (c) which is subordinate to a mainland organization the operation of which has been prohibited on the ground of protecting the security of the People’s Republic of China, as officially proclaimed by means of an open decree, by the Central Authorities under the law of the People’s Republic of China.

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

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

8B. Procedural requirements for proscription

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

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

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

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

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

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

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

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

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

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

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

8D. Appeal against proscription

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

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

8E. Chief Justice may make rules for appeals

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

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

PART 5

OTHER AMENDMENTS

16. Related, incidental and consequential amendments

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

SCHEDULE

[s. 16]

RELATED, INCIDENTAL AND CONSEQUENTIAL AMENDMENTS

Interpretation and General Clauses Ordinance

1. Interpretation of words and expressions

Section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) is amended by adding—

““Central People’s Government” (中央人民政府) means the Central People’s Government of the People’s Republic of China;”.

Companies Ordinance

2. Section added

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

“291AAA. Registrar shall strike proscribed company off register

(1) Where a company is proscribed under section 8A of the Societies Ordinance (Cap. 151), the Registrar shall—

- (a) strike its name off the register; and
 - (b) publish a notice thereof in the Gazette,
- and upon the publication of the notice the company shall be dissolved.

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

Pensions Ordinance

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

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

Post Office Ordinance

4. Prohibited articles

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

Pension Benefits Ordinance

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

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

Societies Ordinance

6. Long title amended

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

7. Interpretation

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

8. Removing a society from the list

Section 14A is amended by adding—

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

9. Persons allowing unlawful society or proscribed organization on premises

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

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

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

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

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

12. Schedule amended

The Schedule is amended—

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

Crimes Ordinance

13. Sections repealed

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

14. Evidence

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

15. Search warrant

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

Criminal Procedure Ordinance

16. Rules and orders as to practice and procedure

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

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

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

18. Service of documents in transferred proceedings

Section 10A is amended by adding—

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

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

19. Section added

The following is added immediately before section 14—

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

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

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

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

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

20. Trial of offences

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

21. Trial of offences

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

22. Transfer of proceedings

Section 65F is amended by adding—

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

23. Penalties for concealing offences

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

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

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

Legal Aid in Criminal Cases Rules

25. Legal aid in capital cases

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

Magistrates Ordinance

26. Second Schedule amended

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

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

Education Ordinance

27. Grounds for cancellation of registration of manager

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

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

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

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

Pension Benefits (Judicial Officers) Ordinance

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

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

Organized and Serious Crimes Ordinance

29. Authority for search

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

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

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

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

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

- (a) by adding—

“section 8C	participating in the activities of proscribed organization”
before—	
“section 19	penalties on an office-bearer, etc. of an unlawful society”;
- (b) by adding “or proscribed organization” after “society” where it secondly and thirdly appears.

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

- | | |
|-------------|------------------------------------|
| “section 2 | treason |
| section 2A | subversion |
| section 2B | secession |
| section 9A | sedition |
| section 9C | handling seditious publication |
| section 18 | unlawful drilling” |
| before— | |
| “section 24 | threatening a person with intent”. |

Post-Release Supervision of Prisoners Regulation

31. Specified offences

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

Official Secrets Ordinance

32. Interpretation

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

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

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

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

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

Other Ordinances

35. References to treason to include subversion, etc.

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

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

Explanatory Memorandum

The objective of this Bill is to make provisions for—

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

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

Amendments to the Crimes Ordinance (Cap. 200)

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

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

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

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

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

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

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

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

Amendments to the Official Secrets Ordinance (Cap. 521)

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

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

Amendments to the Societies Ordinance (Cap. 151)

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

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

Other Amendments

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

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

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

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

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

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

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

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