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Index

Executive Summary

Detailed Summary

1. Crimes that Endanger National Security
2. Responsibilities of the Central Government and the HKSAR
3. Committee for Safeguarding National Security of the HKSAR ("National Security Committee")
4. Jurisdiction; Application of Law and Procedures
5. Rule of Law Should be Upheld
6. Office for Safeguarding National Security of the CPG ("Office") in the HKSAR
7. Scope of Application
8. Conflict with Local Laws; Standing Committee of the National People's Congress Has Final Interpretation Right

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National Security Law in Hong Kong

The Standing Committee of the National People's Congress ("**NPCSC**") of the People's Republic of China ("**PRC**") passed the *Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region* ("**National Security Law**") on 30 June 2020. It is annexed to Annex III of the Basic Law as part of the national laws that apply in the Hong Kong Special Administrative Region ("**HKSAR**"). The National Security Law took effect at 11 pm on 30 June 2020 upon gazettal in the HKSAR.

Executive Summary

The 66-article law criminalizes four types of acts: secession, subversion, terrorist activities, and collusion with a foreign country or with external elements to endanger national security, and stipulates the corresponding penalties, which in the most serious cases, could result in life imprisonment. The HKSAR will establish a new Committee for Safeguarding National Security of the HKSAR, led by the Chief Executive of the HKSAR ("**Chief Executive**"), to be responsible for safeguarding national security in the HKSAR.

The Hong Kong Police Force ("**HKPF**") and the Department of Justice ("**DOJ**") will set up designated departments to handle crimes against national security. The Chief Executive will designate relevant judges to adjudicate such crimes. The executive, legislative and judicial organs must adhere to the rule of law in preventing, suppressing and punishing offences that endanger national security. While safeguarding national security, human rights and the rights and freedom of HKSAR residents should be respected according to the law. Except for specified circumstances, the HKSAR will exercise jurisdiction over offences under the National Security Law.

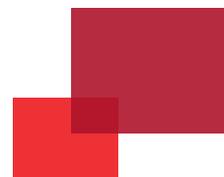
The Central People's Government ("**CPG**") will establish the Office for Safeguarding National Security of the CPG in the HKSAR to oversee and guide the work of the HKSAR in safeguarding national security. In case of conflict between local laws of the HKSAR and the National Security Law, the National Security Law will prevail. The NPCSC has the authority to interpret the National Security Law.

Detailed Summary

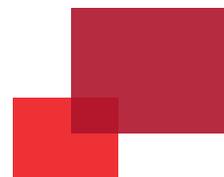
Below is a summary of the National Security Law. The National Security Law has 6 chapters and 66 articles.

1 Crimes that Endanger National Security

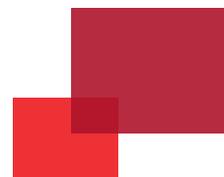
- 1.1 The National Security Law sets out four types of criminal acts that endanger national security: secession, subversion, terrorist activities, and collusion with a foreign country or with external elements to endanger national security.



Offence	Acts	Penalties
Secession	<ul style="list-style-type: none"> ▪ Organizes, plans, commits or participates in: (1) separating the HKSAR or any other part of the PRC from the PRC; (2) altering by unlawful means the legal status of the HKSAR or any other part of the PRC; or (3) surrendering the HKSAR or any other part of the PRC to a foreign country, with a view to committing secession or undermining national unification, whether or not by force or threat of force 	<ul style="list-style-type: none"> ▪ Participation: not more than 3 years fixed-term imprisonment, short-term detention or restriction ▪ Active participation: not less than 3 years but not more than 10 years fixed-term imprisonment ▪ Principal offender or offender of a grave nature: not less than 10 years fixed-term imprisonment or life imprisonment
	<ul style="list-style-type: none"> ▪ Incites, assists in, abets or provides pecuniary or other financial assistance or property for the commission of the offence listed above by other persons 	<ul style="list-style-type: none"> ▪ Minor offence: not more than 5 years fixed-term imprisonment, short-term detention or restriction ▪ Serious offence: not less than 5 years but not more than 10 years fixed-term imprisonment
Subversion	<ul style="list-style-type: none"> ▪ Organizes, plans, commits or participates in: (1) overthrowing or undermining the basic system of the PRC; (2) overthrowing the body of central power of the PRC or the body of power of the HKSAR; (3) seriously interfering, disrupting or undermining the performance of duties and functions of the body of central power of the PRC or the body of power of the HKSAR; or (4) attacking or damaging premises and facilities used by the body of power of the HKSAR to perform its duties and functions, with a view to subverting the State power, by force, or threat of force or other unlawful means 	<ul style="list-style-type: none"> ▪ Participation: not more than 3 years fixed-term imprisonment, short-term detention or restriction ▪ Active participation: not less than 3 years but not more than 10 years fixed-term imprisonment ▪ Principal offender or offender of a grave nature: not less than 10 years fixed-term imprisonment or life imprisonment
	<ul style="list-style-type: none"> ▪ Incites, assists in, abets or provides pecuniary or other financial assistance or property for the commission of the offence listed above by other persons 	<ul style="list-style-type: none"> ▪ Minor offence: not more than 5 years fixed-term imprisonment, short-term detention or restriction ▪ Serious offence: not less than 5 years but not more than 10 years fixed-term imprisonment
Terrorist activities	<ul style="list-style-type: none"> ▪ Organizes, plans, commits, participates in or threatens to commit: (1) serious violence against another person; (2) explosion, arson, or dissemination of poisonous or radioactive substances, pathogens of infectious diseases or other 	<ul style="list-style-type: none"> ▪ Causing serious bodily injury, death or significant loss of public or private property: not less than 10 years fixed-term



Offence	Acts	Penalties
	<p>substances; (3) sabotage of means of transport, transport facilities, electric power or gas facilities or other combustible or explosible facilities; (4) serious interruption or sabotage of electronic control systems for providing and managing public services, such as water, electric power, gas, transport, telecommunications and the internet; or (5) other dangerous activities that seriously jeopardize public health, safety or security, causing or intended to cause grave harm to the society with a view to coercing the CPG, the HKSAR Government or an international organization or intimidating the public to pursue political agenda</p>	<p>imprisonment or life imprisonment</p> <ul style="list-style-type: none"> ▪ Other circumstances: not less than 3 years but not more than 10 years fixed-term imprisonment
	<ul style="list-style-type: none"> ▪ Organizes or takes charge of a terrorist organization 	<ul style="list-style-type: none"> ▪ Life imprisonment or not less than 10 years fixed-term imprisonment and confiscation of property ▪ Active participation in terrorist organization: not less than 3 years but not more than 10 years fixed-term imprisonment and criminal fine ▪ Other participants: not more than 3 years of fixed-term imprisonment, short-term detention or restriction and criminal fine
	<ul style="list-style-type: none"> ▪ Provides support, assistance or facility to a terrorist organization or a terrorist or for the commission of a terrorist activity, or manufactures or illegally possesses substances or uses other means to prepare for the commission of a terrorist activity 	<ul style="list-style-type: none"> ▪ Serious offence: not less than 5 years but not more than 10 years fixed-term imprisonment, and criminal fine or confiscation of property ▪ Other circumstances: fixed-term imprisonment of not more than 5 years, short-term detention or restriction and criminal fine
	<ul style="list-style-type: none"> ▪ Advocates terrorism or incites the commission of terrorist activity 	<ul style="list-style-type: none"> ▪ Serious offence: not less than 5 years but not more than 10 years fixed-term imprisonment, and criminal fine or confiscation of property

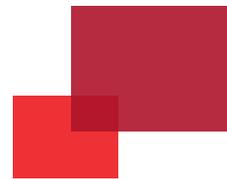


Offence	Acts	Penalties
		<ul style="list-style-type: none"> ▪ Other circumstances: fixed-term imprisonment of not more than 5 years, short-term detention or restriction and criminal fine
Collusion with a foreign country or with external elements to endanger national security	<ul style="list-style-type: none"> ▪ Steals, spies, obtains with payment, or unlawfully provides State secrets or intelligence concerning national security for a foreign country or an institution, organization or individual outside the Mainland, HKSAR and Macao of the PRC ▪ Requests, or conspires with, or directly or indirectly receives instructions, control, funding or other kinds of support from a foreign country or an institution, organization or individual outside the Mainland, HKSAR and Macao of the PRC to: (1) wage a war against the PRC, or use or threaten to use force to seriously undermine the sovereignty, unification and territorial integrity of the PRC; (2) seriously disrupt the formulation and implementation of laws or policies by the HKSAR Government or the CPG which is likely to cause serious consequences; (3) rig or undermine an election in the HKSAR which is likely to cause serious consequences; (4) impose sanctions or blockade or engage in other hostile activities against the HKSAR or the PRC; (5) provoke by unlawful means hatred among HKSAR residents towards the CPG or the HKSAR Government, which is likely to cause serious consequences 	<ul style="list-style-type: none"> ▪ Offence: Not less than 3 years but not more than 10 years fixed-term imprisonment ▪ Offence of a grave nature: life imprisonment or not less than 10 years fixed-term imprisonment ▪ The institution, organization and individual outside the Mainland, HKSAR and Macao of the PRC will be convicted and punished for the same offence.

While the law does not expressly include the removal of political rights of a person as a penalty, a person who is convicted of an offence of endangering national security by a court will be disqualified from standing as a candidate in the elections of the Legislative Council or District Councils or holding any public office in the HKSAR etc.

Furthermore, an incorporated or unincorporated body such as a company or an organization that commits an offence under the National Security Law would be imposed with a criminal fine. Its business operation will be suspended or its license / business permit will be revoked if the body has been convicted under the National Security Law.

Proceeds obtained from the commission of an offence under the National Security Law including financial aid, gains and rewards, and funds and tools



used or intended to be used in the commission of the offence will be seized and confiscated.

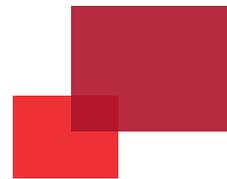
2 Responsibilities of the Central Government and the HKSAR

- 2.1 The CPG assumes overarching responsibility for the national security affairs of the HKSAR. The HKSAR has the constitutional responsibility to safeguard national security. The executive, legislative and judicial authorities of the HKSAR must prevent, suppress and punish any act or activity endangering national security and adhere to the rule of law. It is the common responsibility of all people of the PRC, including people of the HKSAR to safeguard sovereignty, unification and territorial integrity of the PRC. A HKSAR resident who stands for election or assumes public office must confirm in writing or take an oath to uphold the Basic Law and swear allegiance to the HKSAR.
- 2.2 In discharging its duty in safeguarding national security, the HKSAR must: (1) fully enforce the National Security Law and the laws in force in the HKSAR concerning the prevention, suppression, and imposition of punishment for acts and activities which endanger national security; (2) strengthen its work on safeguarding national security and prevention of terrorist activities; (3) take necessary measures to strengthen public communication and supervision over matters concerning national security including matters relating to schools, universities¹, social organizations, the media and the internet etc; and (4) complete legislation for safeguarding national security as stipulated in the Basic Law and must refine relevant laws as soon as possible.
- 2.3 The Chief Executive will submit an annual report to the CPG on the performance of duties of the HKSAR in safeguarding national security.

3 Committee for Safeguarding National Security of the HKSAR ("National Security Committee")

- 3.1 The HKSAR will establish a National Security Committee to be in charge of the national security affairs of the HKSAR. This committee will be supervised and held accountable to the CPG. The Chief Executive will lead the National Security Committee, with members including the Chief Secretary for Administration, the Financial Secretary, the Secretary for Justice, the Secretary for Security, the Commissioner of Police, the head of the department for safeguarding national security of the HKPF, the Director of Immigration, the Commissioner of Customs and Excise, and the Director of the Chief Executive's Office. The Chief Executive will also nominate a Secretary-General who will be appointed by the CPG to head the secretariat of the National Security Committee. The CPG will also

¹ Note that the term "universities" appear in the official English translation of the National Security Law, but the term does not appear in the official Chinese version of the law.

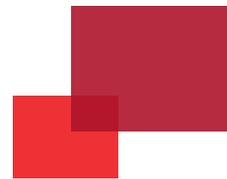


designate a National Security Adviser to provide advice to the National Security Committee.

- 3.2 The duties of the National Security Committee are to analyze and assess developments in relation to the safeguarding of national security in the HKSAR, make work plans, formulate policies, advance the development of the legal system and enforcement mechanisms, and coordinate major work and significant operations. The National Security Committee will be free from any interference from any institution, organization or individual in the HKSAR in performing its duties, and information relating to its work will not be subject to disclosure to the public. Decisions made by the National Security Committee will not be subject to judicial review.
- 3.3 The HKPF and the DOJ will also establish designated divisions to handle national security affairs. The Financial Secretary will, upon the approval of the Chief Executive, provide for a special fund to meet the expenditure for safeguarding national security and approve the establishment of relevant posts. The Financial Secretary will submit an annual report on the control and management of the fund to the Legislative Council.

4 Jurisdiction; Application of Law and Procedures

- 4.1 The National Security Law and the local laws of the HKSAR will apply to procedures such as criminal investigation, prosecution, trial, and execution of penalties for crimes that endanger national security. The HKSAR will have jurisdiction over cases concerning offences under the National Security Law except for "specified circumstances" (see section 6.2 below). Offences will be tried on indictment and conducted in an open court. In circumstances involving State secrets or public order, all or part of the trial will be closed to the media and the public but judgment will be delivered in open court.
- 4.2 A dedicated department under the DOJ is responsible for the prosecution of national security offences. No prosecution of a national security case will be instituted without the written consent of the Secretary for Justice. The Secretary for Justice may issue a certificate to direct that the relevant case be tried without a jury on grounds of, among others, protecting State secrets or involvement of foreign factors in the case. Where a case is to be tried in the Court of First Instance without a jury, a panel consisting of three judges should be constituted.
- 4.3 The Chief Executive will designate a number of judges to handle cases concerning offences that endanger national security. The judges will be selected from magistrates, district court judges, judges of the Court of First Instance, judges of the Court of Appeal, and judges of the Court of Final Appeal. Before making the designation, the Chief Executive may consult the National Security Committee and the Chief Justice. The term of office of the designated judges will be one year.
- 4.4 In handling national security cases, the department in the HKPF responsible for safeguarding national security may adopt any



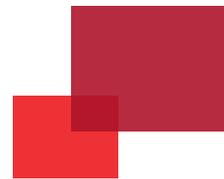
measures that it is currently allowed to take in the investigation of serious crimes under local laws, and can carry out the measures provided in the National Security Law including: carry out interception of communications and covert surveillance upon approval of the Chief Executive on a person who is suspected of having involved in the commission of an offence endangering national security on reasonable grounds, search of premises, require the relevant organizations or individuals to answer questions, and provide or delete information etc.

5 Rule of Law Should be Upheld

- 5.1 When upholding national security, the HKSAR must respect and protect human rights as well as protect the rights and freedom of HKSAR residents according to the relevant provisions of the Basic Law, the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*, including freedom of speech, press and publication, freedom of association, assembly, procession and demonstration.
- 5.2 The rule of law must be adhered to when preventing, suppressing and punishing crimes that endanger national security. No one shall be convicted and punished for an act which does not constitute an offence under the law. The presumption of innocence, right to defence and other rights in judicial proceedings that criminal suspects, defendants and other parties in judicial proceedings are entitled to under the law shall be protected. The "double jeopardy" rule applies --- i.e. no one should be tried or punished again for an offence for which he or she has already been convicted or acquitted in judicial proceedings.

6 Office for Safeguarding National Security of the CPG ("Office") in the HKSAR

- 6.1 The CPG will establish an Office in the HKSAR to oversee and guide the work of implementing the National Security Law. The Office will be responsible for overseeing, guiding, coordinating with and providing support to the HKSAR in safeguarding national security. The Office will analyze and assess developments and sharing of intelligence. The staff of the Office must abide by PRC national laws and HKSAR laws, and be subject to the supervision of the national supervisory authorities.
- 6.2 The Office will have jurisdiction over cases that fall under any of the below three circumstances (upon the CPG's approval of the requests from the HKSAR Government or the Office itself): (1) the case is complex because of the involvement of a foreign country or external elements, which makes it difficult for the HKSAR to exercise jurisdiction over the case; (2) a serious situation occurs where the HKSAR Government is unable to effectively enforce the National Security Law; or (3) a major and imminent threat to national security has occurred.
- 6.3 The Office in exercising jurisdiction over a case concerning an offence endangering national security in the above circumstances, is



empowered to initiate investigation into the case. The PRC Supreme People's Procuratorate is empowered to designate a prosecuting body to prosecute the offence, and the PRC Supreme People's Court will designate a court to adjudicate it.

7 Scope of Application

7.1 An offence will be deemed to have been committed in the HKSAR if an act constituting the offence or the consequences of the offence occurs in the HKSAR. The National Security Law also applies to offences committed on board a vessel or aircraft registered in the HKSAR. It will also apply to a person who is a permanent resident of the HKSAR or an incorporated or unincorporated body set up in the HKSAR if the person or the body commits an offence under the National Security Law outside the HKSAR. The National Security Law will apply to offences committed outside the HKSAR by a person who is not a permanent resident of the HKSAR.

7.2 The National Security Law is not retrospective and will only apply to acts committed after 30 June 2020.

8 Conflict with Local Laws; Standing Committee of the National People's Congress Has Final Interpretation Right

8.1 If the local laws of the HKSAR are inconsistent with the National Security Law, the provisions of the National Security Law will prevail.

8.2 The NPCSC has the ultimate authority to interpret the National Security Law.

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