

## 《國家安全 (立法條文) 條例草案》

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## NATIONAL SECURITY (LEGISLATIVE PROVISIONS) BILL

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# 本條例草案

## 旨在

依據《中華人民共和國香港特別行政區基本法》第二十三條所委予的責任，修訂《刑事罪行條例》、《官方機密條例》及《社團條例》，以及為相關、附帶及相應修訂訂定條文。

由立法會制定。

### 第 1 部

#### 導言

#### 1. 簡稱

本條例可引稱為《國家安全(立法條文)條例》。

#### 2. 生效日期

本條例自保安局局長以憲報公告指定的日期起實施。

### 第 2 部

#### 對《刑事罪行條例》的修訂

#### 3. 修訂第 I 部標題

《刑事罪行條例》(第 200 章) 第 I 部的標題現予廢除，代以“叛國、顛覆及分裂國家”。

# 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. 取代條文

第2條現予廢除，代以——

## “2. 叛國

- (1) 任何中國公民——
  - (a) 懷有——
    - (i) 推翻中央人民政府；
    - (ii) 恐嚇中央人民政府；或
    - (iii) 脅逼中央人民政府改變其政策或措施，  
的意圖而加入與中華人民共和國交戰的外來武裝部隊或作為其中一分子；
  - (b) 鼓動外來武裝部隊以武力入侵中華人民共和國；或
  - (c) 懷有損害中華人民共和國在戰爭中的形勢的意圖，藉着作出任何作為而協助在該場戰爭中與中華人民共和國交戰的公敵，

即屬叛國。

- (2) 任何中國公民叛國，即屬犯罪，一經循公訴程序定罪，可處終身監禁。
- (3) 第(1)及(2)款亦就任何屬香港永久性居民的中國公民在香港境外作出的第(1)款提述的任何作為而適用於他。
- (4) 就本條而言——
  - (a) “外來武裝部隊”指——
    - (i) 屬於某外國的武裝部隊；
    - (ii) 受某外國的政府指示或控制的武裝部隊；或
    - (iii) 並非以中華人民共和國為基地亦不屬於中華人民共和國的武裝部隊；
  - (b) “與中華人民共和國交戰的公敵”指——
    - (i) 與中華人民共和國交戰的某外國的政府；或
    - (ii) 與中華人民共和國交戰的外來武裝部隊；
  - (c) 當——
    - (i) 武裝部隊之間發生公開武裝衝突；或
    - (ii) 已作出公開宣戰，  
戰爭狀態即告存在，而“交戰”須據此解釋。
- (5) 隱匿叛國此項普通法罪行現予取消。
- (6) 收受代價而不檢控叛國此項普通法罪行現予取消。

## 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Section 2 is repealed and the following substituted—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. 顛覆**

(1) 任何人藉使用嚴重危害中華人民共和國的穩定的武力或嚴重犯罪手段，或藉進行戰爭——

- (a) 廢止《中華人民共和國憲法》所確立的中華人民共和國根本制度；
- (b) 推翻中央人民政府；或
- (c) 恐嚇中央人民政府，

即屬顛覆。

(2) 任何人顛覆，即屬犯罪，一經循公訴程序定罪，可處終身監禁。

(3) 第(1)及(2)款亦就任何香港永久性居民在香港境外作出的第(1)款提述的任何作為而適用於他。

(4) 就本條而言——

- (a) “進行戰爭”一詞須參照第2(4)(c)條中“交戰”一詞的涵義而解釋；
- (b) “嚴重犯罪手段”指符合以下說明的任何作為——
  - (i) 危害任何人(作出該作為的人除外)的生命；
  - (ii) 導致任何人(作出該作為的人除外)受嚴重損傷；
  - (iii) 嚴重危害公眾人士或某部分公眾人士的健康或安全；
  - (iv) 導致對財產的嚴重破壞；或
  - (v) 嚴重干擾電子系統或基要服務、設施或系統(不論屬於公眾或私人)或中斷其運作，

而且——

- (vi) 是在香港作出並屬香港法律所訂罪行的；或
- (vii) (A) 是在香港境外任何地方作出；
- (B) 屬該地方的法律所訂罪行；及
- (C) 假使在香港作出便會屬香港法律所訂罪行的。

**2B. 分裂國家**

(1) 任何人藉——

**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) 使用嚴重危害中華人民共和國領土完整的武力或嚴重犯罪手段；或
- (b) 進行戰爭，
- 而將中華人民共和國的某部分自中華人民共和國的主權分離出去，即屬分裂國家。
- (2) 任何人分裂國家，即屬犯罪，一經循公訴程序定罪，可處終身監禁。
- (3) 第(1)及(2)款亦就任何香港永久性居民在香港境外作出的第(1)款提述的任何作為而適用於他。
- (4) 就本條而言——
- (a) “進行戰爭”一詞須參照第2(4)(c)條中“交戰”一詞的涵義而解釋；
- (b) “嚴重犯罪手段”的涵義與該詞在第2A(4)(b)條中的涵義相同。

## 2C. 第 159A 及 159G 條適用於串謀或企圖 在香港境外作出若干作為

- (1) 如任何人在香港與任何其他人士(不論該其他人士在香港或其他地方)達成作出某項行為的協議，而該項協議如按照他們的意圖得以落實，該項行為必會構成或涉及(由協議的一方或多於一方)在香港境外作出的假使在香港作出便會屬第2A(顛覆)或2B(分裂國家)條所訂罪行的作為，則——
- (a) 第159A條就該項協議而適用於該人，猶如該作為是該條所指的罪行；及
- (b) 第159B至159E條據此而具有效力。
- (2) 如任何人在香港作出某項作為(“前者”)，而前者已超乎只屬在香港境外作出的假使在香港作出便會屬第2A(顛覆)或2B(分裂國家)條所訂罪行的作為(“後者”)的預備作為，而他是懷有作出後者的意圖而作出前者的，則——
- (a) 第159G條就前者而適用於該人，猶如後者是該條所適用的罪行；及
- (b) 第159H至159K條據此而具有效力。

- (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. 煽惑叛國、顛覆或分裂國家只構成  
第 9A 條所訂罪行**

煽惑他人犯第 2 (叛國)、2A (顛覆) 或 2B (分裂國家) 條只構成第 9A 條 (煽動叛亂) 所訂罪行。”。

**5. 修訂第 II 部標題**

第 II 部的標題現予修訂，廢除“反英皇”而代以“危害國家的安全”。

**6. 加入條文**

現加入——

**“9A. 煽動叛亂**

(1) 在不抵觸第 9D 條的條文下，任何人——

- (a) 煽惑他人犯第 2 (叛國)、2A (顛覆) 或 2B (分裂國家) 條所訂罪行；  
或
- (b) 煽惑他人在香港或其他地方進行會嚴重危害中華人民共和國的穩定的公眾暴亂，

即屬煽動叛亂。

(2) 任何人——

- (a) 藉作出第 (1)(a) 款提述的作為而煽動叛亂，即屬犯罪，一經循公訴程序定罪，可處終身監禁；
- (b) 藉作出第 (1)(b) 款提述的作為而煽動叛亂，即屬犯罪，一經循公訴程序定罪，可處罰款及監禁 7 年。

**9B. 煽惑煽動叛亂並非罪行**

煽惑他人犯第 9A 條 (煽動叛亂) 所訂罪行並非罪行。

**9C. 處理煽動性刊物**

(1) 在本條中，“煽動性刊物”指相當可能導致犯第 2 (叛國)、2A (顛覆) 或 2B (分裂國家) 條所訂罪行的刊物。

**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. Seditious**

(1) A person commits seditious 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 seditious 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 seditious 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 seditious 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) 在不抵觸第 9D 條的條文下，任何人懷有藉着任何煽動性刊物而煽惑他人犯第 2 (叛國)、2A (顛覆) 或 2B (分裂國家) 條所訂罪行的意圖，而——

- (a) 發表、售賣、要約售賣、分發或展示該煽動性刊物；
- (b) 印製或複製該煽動性刊物；或
- (c) 輸入或輸出該煽動性刊物，

即屬犯罪，一經循公訴程序定罪，可處罰款 \$500,000 及監禁 7 年。

#### 9D. 若干作為並非煽惑

(1) 為施行第 9A 條，任何人不得僅因他作出訂明作為，而被視為煽惑他人——

- (a) 犯第 2 (叛國)、2A (顛覆) 或 2B (分裂國家) 條所訂罪行；或
- (b) 進行會嚴重危害中華人民共和國的穩定的公眾暴亂。

(2) 為施行第 9C 條，任何人不得僅因他懷有只作出訂明作為的意圖而作出第 9C(2)(a)、(b) 或 (c) 條所提述的任何作為 (“後者”)，而被視為懷有煽惑他人犯第 2 (叛國)、2A (顛覆) 或 2B (分裂國家) 條所訂罪行的意圖而作出後者。

(3) 在本條中，“訂明作為”指——

- (a) 顯示中央人民政府或香港特別行政區政府在其任何措施上被誤導或犯錯誤；
- (b) 以矯正中華人民共和國或香港特別行政區的——
  - (i) 管治或憲制；
  - (ii) 法律；或
  - (iii) 司法，
 中的錯誤或缺失為出發點，指出該等錯誤或缺失；
- (c) 慫恿中華人民共和國或香港特別行政區的公眾人士嘗試以合法手段，促致改變中華人民共和國或香港特別行政區 (視屬何情況而定) 的法律所規定的任何事宜；或

- (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) 以消除任何在或傾向在中華人民共和國或香港特別行政區人口中不同組別之間製造怨恨或敵意的任何事宜為出發點，指出該事宜。”。

## 7. 加入第 IIA 部

現加入——

### “第 IIA 部

關於第 I 及 II 部所訂的若干罪行的執行條文

#### 18A. 第 I 及 II 部及本部的執行等須符合《基本法》

第 I 及 II 部及本部的條文須以符合《基本法》第三十九條的方式而解釋、適用及執行。

#### 18B. 調查權力

- (1) 如職級在總警司級或以上的警務人員合理地相信——
- 有人已犯或正犯第 2 (叛國)、2A (顛覆)、2B (分裂國家)、9A (煽動叛亂) 或 9C (處理煽動性刊物) 條所訂罪行；
  - 在任何處所、地方或運輸工具中，有任何相當可能屬或相當可能包含對該罪行的調查具有重大價值的證據的物品；及
  - 若然不即時採取行動，該等證據將會喪失，因而會導致對該罪行的調查造成嚴重損害，

他可指示任何警務人員就該處所、地方或運輸工具行使第 (2) 款所賦予的權力。

(2) 根據按第 (1) 款就某處所、地方或運輸工具發出的指示行事的警務人員——

- 可進入該處所或地方，如有必要，並可為該目的破開該處所或地方的任何門戶或窗戶；

- (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—

- an offence under section 2 (treason), 2A (subversion), 2B (secession), 9A (sedition) or 9C (handling seditious publication) has been committed or is being committed;
- 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
- 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—

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

- (b) 可截停並登上該運輸工具；
  - (c) 可搜查該處所、地方或運輸工具，或對任何在其內發現的人進行搜身；
  - (d) 可檢取、扣押或移走在該處所、地方或運輸工具內發現並且他覺得屬或包含第 2 (叛國)、2A (顛覆)、2B (分裂國家)、9A (煽動叛亂) 或 9C (處理煽動性刊物) 條所訂罪行的證據的任何物品；
  - (e) 可在他行使 (c) 或 (d) 段所賦予的權力所需的時間內，扣留該運輸工具；及
  - (f) 可用武力移走妨礙他行使本款所賦予的任何權力的人或物品。
- (3) 如遇到要求，警務人員須在行使第 (2) 款所賦予的任何權力之前，出示其警察委任證。
- (4) 根據第 (2)(c) 款對某人進行搜身，只可由性別與該人相同的警務人員進行。
- (5) 為免生疑問，現宣布《釋義及通則條例》(第 1 章) 第 83 條及該條例第 XII 部其他條文適用於第 (2) 款及該款所賦予的任何權力。
- (6) 就本條而言——
- (a) “運輸工具”指任何車輛、纜車、電車、鐵路列車、船隻或飛機；
  - (b) “處所”包括任何構築物。

#### 18C. 需獲律政司司長同意

對第 I 或 II 部任何條文所訂的罪行的檢控須由律政司司長提起，或在獲得律政司司長書面同意的情況下提起，否則不得提起。

#### 18D. 若干罪行須由陪審團審訊

為免生疑問，被控犯第 2 (叛國)、2A (顛覆)、2B (分裂國家) 或 9A(2)(a) (因煽惑叛國、顛覆或分裂國家而屬煽動叛亂) 條所訂罪行的被控人須於原訟法庭受審。

- (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. 被控犯第 9A(2)(b) 或 9C 條所訂罪行 可選擇由陪審團審訊

(1) 為第 9A(2)(b) (因煽惑公眾暴亂而屬煽動叛亂) 或 9C (處理煽動性刊物) 條所訂罪行而會在裁判官席前受審的被告人，可於聆訊展開前通知該裁判官，選擇在原訟法庭受審。

(2) 凡——

- (a) 被告人在裁判官席前被控以第 9A(2)(b) (因煽惑公眾暴亂而屬煽動叛亂) 或 9C (處理煽動性刊物) 條所訂罪行；而
- (b) 已有申請根據《裁判官條例》(第 227 章) 第 88 條提出，要求作出命令將有關案件移交區域法院，

被告人可於該命令作出前通知該裁判官，選擇在原訟法庭受審。

(3) 為第 9A(2)(b) (因煽惑公眾暴亂而屬煽動叛亂) 或 9C (處理煽動性刊物) 條所訂罪行而會在區域法院受審的被告人，可於聆訊展開前通知法官，選擇在原訟法庭受審。

(4) 就第 (1) 及 (3) 款而言，凡證據因應被告人對控罪或控罪中的任何一項表示不認罪而獲收取或聽取，聆訊即告展開。”。

## 第 3 部

### 對《官方機密條例》的修訂

#### 8. 釋義

(1) 《官方機密條例》(第 521 章) 第 12(1) 條現予修訂——

(a) 在“公務人員”的定義中，廢除 (a)、(b) 及 (c) 段而代以——

- “(a) 任何擔任《退休金利益條例(設定職位)令》(第 99 章，附屬法例) 附表 1 第 2 欄指明的職位的人；
- (b) 任何擔任香港特別行政區政府轄下受薪職位的人，不論該職位屬永久或臨時性質；”；

### 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) 加入——

““國家安全”(national security)指保衛中華人民共和國的領土完整及獨立自主；”。

(2) 第12(2)(a)條現予修訂，廢除“英皇香港政府、第(1)款所述的任何部門、部隊或團體”而代以“香港特別行政區政府”。

## 9. 加入條文

現加入——

### “12A. 第 III 部的執行等須符合《基本法》

本部的條文須以符合《基本法》第三十九條的方式而解釋、適用及執行。”。

## 10. 加入條文

現加入——

### “16A. 關於中央管理的香港事務的資料

(1) 屬或曾經屬公務人員或政府承辦商的人如在沒有合法權限的情況下，作出一項具損害性的披露，而所披露的是——

(a) 關乎與香港特別行政區有關並且根據《基本法》是由中央管理的事務；及

(b) 憑藉他作為公務人員或政府承辦商的身分而由或曾經由他管有，的資料、文件或其他物品，他即屬犯罪。

(2) 就第(1)款而言，如——

(a) 披露危害國家安全；或

(b) 有關的資料、文件或物品的性質屬若被未經授權而披露便相當可能會危害國家安全者，

披露即屬具損害性。

(3) 被控犯本條所訂罪行的人如證明在指稱的罪行發生時，他既不知道亦無合理理由相信——

(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) 有關的資料、文件或物品屬第(1)(a)款所述者；或  
 (b) 披露會屬第(2)款所指的具損害性，  
 即可以此作為免責辯護。”。

#### 11. 因未經授權的披露或違法取覽所得的資料或在機密情況下託付的資料

##### (1) 第18(2)條現予修訂——

- (a) 在(b)段中，廢除末處的“或”；  
 (b) 在(c)段中，廢除句號而代以“；或”；  
 (c) 加入——

“(d) 它藉着(不論被該有關人士或另一人)違法取覽而被取得，

而就(a)及(b)段而言，“公務人員或政府承辦商”在有關資料、文件或物品是在某前任公務人員或前任政府承辦商仍是公務人員或政府承辦商期間落入他的管有的情況下，包括該前任公務人員或前任政府承辦商。”。

##### (2) 第18條現予修訂，加入——

“(5A) 就第(2)款而言，如有以下情況，有關的人即屬違法取覽資料、文件或物品——

- (a) 有關的資料、文件或物品(視屬何情況而定)憑藉該人就該資料、文件或物品(視屬何情況而定)所犯的下列罪行，而落入他的管有或維持由他管有——
- (i) 《電訊條例》(第106章)第27A條(藉電訊而在未獲授權下取用電腦資料)所訂罪行；
  - (ii) 《刑事罪行條例》(第200章)第161條(有犯罪或不誠實意圖而取用電腦)所訂罪行；或
  - (iii) 《盜竊罪條例》(第210章)第9(盜竊罪)、10(搶劫罪)或11(入屋犯法罪)條所訂罪行；或
- (b) 有關的資料、文件或物品(視屬何情況而定)以一項利益作為交換而落入他的管有或維持由他管有，而提供或接受該項利益屬《防止賄賂條例》(第201章)第4條(賄賂)所訂罪行。”。

- (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) 第 18(6)(a) 條現予修訂，廢除“或防務或國際關係”而代以“、防務、國際關係或與香港特別行政區有關而根據《基本法》是由中央管理的事務”。

(4) 第 18(6) 條現予修訂，廢除“至 16”而代以“至 16A”。

## 12. 加入條文

現加入——

### “24A. 選擇由陪審團審訊

(1) 為第 13、14、15、16、16A、17、18、19 或 20 條所訂罪行而會在裁判官席前受審的被告人，可於聆訊展開前通知該裁判官，選擇在原訟法庭受審。

(2) 凡——

(a) 被告人在裁判官席前被控以第 13、14、15、16、16A、17、18、19 或 20 條所訂罪行；而

(b) 已有申請根據《裁判官條例》(第 227 章) 第 88 條提出，要求作出命令將有關案件移交區域法院，

被告人可於該命令作出前通知該裁判官，選擇在原訟法庭受審。

(3) 為第 13、14、15、16、16A、17、18、19 或 20 條所訂罪行而會在區域法院受審的被告人，可於聆訊展開前通知法官，選擇在原訟法庭受審。

(4) 就第 (1) 及 (3) 款而言，凡證據因應被告人對控罪或控罪中的任何一項表示不認罪而獲收取或聽取，聆訊即告展開。”。

## 第 4 部

### 對《社團條例》的修訂

## 13. 釋義

(1) 《社團條例》(第 151 章) 第 2(1) 條現予修訂，加入——

(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—

““受取締組織”(proscribed organization)指根據第8A條被取締的組織；”。

(2) 第2(2)條現予修訂，在“本”之前加入“除在與根據第8A條取締組織有關連的情況下，”。

#### 14. 加入條文

現加入——

##### “2A. 執行等須符合《基本法》

本條例的條文須以符合《基本法》第三十九條的方式而解釋、適用及執行。”。

#### 15. 加入條文

現加入——

##### “8A. 取締危害國家安全的組織

(1) 保安局局長如合理地相信為國家安全利益的目的，取締本條適用的任何本地組織是必要的，並合理地相信取締該本地組織與該目的是相稱的，則可藉命令取締該本地組織。

(2) 凡任何本地組織——

- (a) 的宗旨或其中一項宗旨是進行叛國、顛覆、分裂國家或煽動叛亂或犯諜報活動罪；
- (b) 已作出或正企圖作出叛國、顛覆、分裂國家或煽動叛亂，或已犯或正企圖犯諜報活動罪；或
- (c) 從屬於某內地組織，而該內地組織已遭中央基於保障中華人民共和國安全的理由，根據中華人民共和國法律禁止(該項禁止已藉明文禁令正式宣布)運作，

本條適用於該本地組織。

““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) 凡有證明書——
- (a) 由中央人民政府或代表中央人民政府發出；及
  - (b) 述明某內地組織已遭中央基於保障中華人民共和國安全的理由，根據中華人民共和國法律禁止運作，而該項禁止已藉明文禁令正式宣布，
- 該證明書即為該項禁止的確證。
- (4) 一份宣稱是第(3)款所提述的證明書的文件——
- (a) 須在任何法律程序中獲接受為證據，而無需進一步證明；及
  - (b) 除在有相反證明的情況外，須當作是上述證明書。
- (5) 就本條而言——
- (a) “叛國”指屬《刑事罪行條例》(第200章)第2條所訂罪行的作為；
  - (b) “顛覆”指屬《刑事罪行條例》(第200章)第2A條所訂罪行的作為；
  - (c) “分裂國家”指屬《刑事罪行條例》(第200章)第2B條所訂罪行的作為；
  - (d) “煽動叛亂”指屬《刑事罪行條例》(第200章)第9A條所訂罪行的作為；
  - (e) “諜報活動罪”指《官方機密條例》(第521章)第3條所訂罪行；
  - (f) “本地組織”指——
    - (i) 任何已根據或須根據本條例註冊的社團，或獲豁免而無需根據本條例註冊的社團；或
    - (ii) 附表所列的任何團體；
  - (g) “內地組織”指——
    - (i) 在中華人民共和國任何部分(台灣、香港及澳門除外)組成或成立的團體；或
    - (ii) 總部或主要業務地點設於中華人民共和國任何部分(台灣、香港及澳門除外)的團體；
  - (h) 如以下條件符合，一個本地組織(“前者”)即屬從屬於一個內地組織(“後者”)——
    - (i) 前者為其運作直接或間接尋求或接受後者的可觀的財政上的資助、任何種類的可觀的財政上的補助或可觀的財政上的支援或數額可觀的貸款；

- (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) 前者直接或間接受後者指示或控制；或
- (iii) 前者的政策或前者的任何政策是直接或間接由後者釐定。

### 8B. 取締的程序規定

(1) 保安局局長在根據第 8A 條取締某組織前，必須向該組織給予機會，讓它就何以它不應被取締而——

- (a) 陳詞；或
- (b) 作出書面申述，

視乎它認為何者合適而定。

(2) 如保安局局長合理地相信向有關組織給予機會陳詞或作出書面申述，在該個案的情況下並非切實可行，則第 (1) 款不適用。

(3) 保安局局長在根據第 8A(1) 條作出命令後，必須在切實可行範圍內盡快——

- (a) 將該命令的文本一份送達有關組織；
- (b) (如該組織佔用或使用任何建築物或處所) 在以下地方以顯眼方式張貼一份該命令的文本——
  - (i) 保安局局長覺得屬該組織佔用或使用作為集會地點的建築物或處所；及
  - (ii) 該建築物或處所所在的警區中最近的警署；
- (c) 在憲報刊登該命令；及
- (d) 在每日於香港行銷的兩份中文報章及每日於香港行銷的一份英文報章上刊登該命令。

(4) 即使已經有或可能有任何上訴根據第 8D 條針對某項取締而提出，根據第 8A(1) 條作出的命令——

- (a) 如——
  - (i) 於同日根據第 (3)(c) 及 (d) 款刊登，則於該日生效；
  - (ii) 於不同日子根據第 (3)(c) 及 (d) 款刊登，則於其中的最後一日生效；或
- (b) 於其內指明的較後日期 (如有的話) 生效。

- (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. 禁止參加受取締組織的活動**

(1) 任何人——

- (a) 身為受取締組織的幹事或以受取締組織幹事身分行事，或自稱是或聲稱是受取締組織的幹事；
- (b) 管理受取締組織或協助管理受取締組織；
- (c) 身為受取締組織的成員或以受取締組織成員身分行事；
- (d) 參與受取締組織的集會；或
- (e) 向受取締組織支付金錢或給予其他形式的援助，

即屬犯罪，一經定罪，可處第 6 級罰款及監禁 3 年。

(2) 被控犯第 (1) 款所訂罪行的人如證明在指稱的罪行發生時，他既不知道亦沒有理由相信有關組織已根據第 8A 條被取締，即可以此作為免責辯護。

(3) 在不損害第 (2) 款的原則下——

- (a) 就身為受取締組織的幹事或以受取締組織幹事身分行事而被控犯第 (1) 款所訂罪行的人如證明他已採取所有合理步驟，以終止該幹事身分；
- (b) 就身為受取締組織的成員或以受取締組織成員身分行事而被控犯第 (1) 款所訂罪行的人如證明他已採取所有合理步驟，以終止該成員身分，

即可以此作為免責辯護。

**8D. 上訴反對取締**

(1) 凡有組織根據第 8A 條被取締，任何因該項取締而感到受屈的該組織的幹事或成員可在該項取締生效後 30 天內，針對該項取締向原訟法庭提出上訴。

(2) 根據第 (1) 款提出上訴及作出任何附帶作為不得就第 8C 條而言視為以幹事或成員身分行事。

(3) 凡有人根據第 (1) 款針對某項取締提出上訴，原訟法庭——

- (a) 如信納以下事項，須推翻該項取締——
  - (i) 保安局局長沒有在該項取締中正確地應用法律；
  - (ii) 有關證據不足以證明有關組織符合第 8A(2)(a)、(b) 或 (c) 條；
- 或

**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) 有關證據不足以令到相信——

- (A) 為國家安全利益的目的，該項取締是必要的；及
- (B) 該項取締與該目的是相稱的，屬有理可據的合理信念；或

(b) 如不信納以上事項，須駁回該宗上訴。

(4) 根據第(3)款被推翻的取締，須當作從來沒有作出。

(5) 如在任何於原訟法庭進行的法律程序的過程中，原訟法庭應律政司司長的申請而信納將會在該法律程序的過程中提出的證據或作出的陳述若被發表，便可能會損害國家安全，原訟法庭可命令所有公眾人士或任何部分的公眾人士在聆訊的任何部分中不得在場，以避免該等發表。

(6) 在聆訊上訴時，原訟法庭可接納根據第8E條訂立的規則所規定的證據。

#### 8E. 終審法院首席法官可為上訴訂立規則

(1) 終審法院首席法官可訂立規則，就以下事宜作出規定——

- (a) 第8D條所指的上訴的提出、聆訊和撤回；
- (b) 關於該等上訴的訟費；
- (c) 關乎該等上訴的聆訊的實務和程序；
- (d) 證據的可接納與否；及
- (e) 該等上訴的聆訊所附帶的或引起的其他事宜。

(2) 在根據本條訂立規則時，終審法院首席法官尤須顧及——

- (a) 確使屬上訴標的之取締獲妥善覆核的需要；及
- (b) 確使資料不致在損害國家安全的情況下被披露的需要。

(3) 根據本條訂立的規則可訂定條文——

- (a) 令法律程序可在上訴人沒有獲提供有關的取締的理由的全部細節的情況下進行；
- (b) 令原訟法庭可在任何人(包括上訴人或他委任的任何法律代表)缺席的情況下進行法律程序；及

(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) 令原訟法庭可向上訴人提供一份在他缺席時獲取的證據的撮要。
- (4) 凡根據本條訂立的規則令原訟法庭可在上訴人或他委任的任何法律代表缺席的情況下進行法律程序，該等規則須就以下事宜訂定條文——
- (a) 委任一名法律執業者為上訴人的利益而行使的權力；及
- (b) 該法律執業者的職能及責任。”。

## 第 5 部

## 其他修訂

## 16. 相關、附帶及相應修訂

附表指明的成文法則按附表所列方式修訂。

## 附表

[第 16 條]

## 相關、附帶及相應修訂

## 《釋義及通則條例》

## 1. 詞語和詞句的釋義

《釋義及通則條例》(第 1 章) 第 3 條現予修訂，加入——

““中央人民政府”(Central People's Government) 指中華人民共和國中央人民政府；”。

## 《公司條例》

## 2. 加入條文

《公司條例》(第 32 章) 現予修訂，在第 291A 條之後加入——

“291AAA. 處長須將受取締公司的名稱  
自登記冊中剔除

- (1) 凡某公司根據《社團條例》(第 151 章) 第 8A 條被取締，處長須——
- (a) 將該公司的名稱自登記冊中剔除；及
- (b) 在憲報刊登有關該項除名的公告，  
而當憲報刊登該公告時，該公司即告解散。

- (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) 如處長信納針對該項取締採取法律行動的權利尚未用盡，他可押後根據第(1)款採取行動。”。

#### 《退休金條例》

3. 經定罪後退休金、酬金或津貼可予取消、暫停支付或扣減

《退休金條例》(第89章)第15(1)(a)(iii)條現予修訂，廢除“條所訂的叛逆罪”而代以“(叛國)、2A(顛覆)、2B(分裂國家)或9A(2)(a)(因煽惑叛國、顛覆或分裂國家而屬煽動叛亂)條所訂罪行”。

#### 《郵政署條例》

4. 禁寄物品

《郵政署條例》(第98章)第32(1)(h)條現予廢除。

#### 《退休金利益條例》

5. 經定罪後退休金利益可予取消、暫停支付或扣減

《退休金利益條例》(第99章)第29(1)(c)條現予修訂，廢除“條所訂的叛逆”而代以“(叛國)、2A(顛覆)、2B(分裂國家)或9A(2)(a)(因煽惑叛國、顛覆或分裂國家而屬煽動叛亂)條所訂罪行”。

#### 《社團條例》

6. 修訂詳題

《社團條例》(第151章)的詳題現予修訂，在“作”之後加入“、取締某些組織”。

7. 釋義

第2(1)條現予修訂，在“幹事”的定義中，在末處的分號之前加入“，而“幹事”就第8A條所指的本地組織而言，亦須以相同方式解釋”。

8. 將社團從名單上刪除

第14A條現予修訂，加入——

“(4) 凡任何社團或分支機構成為受取締組織，社團事務主任須在該項取締生效後，在切實可行範圍內盡快將該社團或分支機構從根據第11條備存的名單上刪除，但如該項取締其後根據第8D(3)條被推翻，則社團事務主任須在切實可行範圍內盡快將該社團或該分支機構重新列入該名單內。”。

(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. 容許非法社團或受取締組織在處所內集會的人

第 21(1) 條現予修訂，廢除“或非法社團”而代以“、受取締組織、非法社團成員或受取締組織”。

10. 煽惑他人成為非法社團或受取締組織成員等的罰則

第 22(1) 條現予修訂，在所有“社團”之後加入“或受取締組織”。

11. 為非法社團或受取締組織牟取社團費或會費或援助的罰則

第 23(1) 條現予修訂，廢除“的目的而向他人牟取或企圖為非法社團的目的而向他人牟取社團”而代以“或受取締組織的目的，或企圖為非法社團或受取締組織的目的，而向他人牟取社團費或會”。

12. 修訂附表

附表現予修訂——

- (a) 廢除“[第 2 條]”而代以“[第 2 及 8A(5)(f) 條]”；
- (b) 在標題中，在“本”之前加入“除在與取締組織有關連的情況下”。

《刑事罪行條例》

13. 廢除條文

《刑事罪行條例》(第 200 章) 第 3、4、5、9、10、11、14、15、16 及 17 條現予廢除。

14. 證據

第 12 條現予修訂，廢除“10”而代以“9A 或 9C”。

15. 搜查令

第 13 條現予修訂，廢除兩度出現的“10”而代以“9A 或 9C”。

《刑事訴訟程序條例》

16. 關於常規與程序的規則及命令

《刑事訴訟程序條例》(第 221 章) 第 9(3) 條現予修訂，廢除“逆罪或隱匿叛逆”而代以“國”。

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. 在特別情況下可拒絕被控人保釋

第 9G(10)(b) 條現予修訂，廢除“條所訂的叛逆罪”而代以“、2A、2B 或 9A(2)(a) 條所訂罪行”。

## 18. 在移交的法律程序中文件的送達

第 10A 條現予修訂，加入——

“(7) 本條就依據第 13C(1) 條進行的法律程序而適用，猶如——

(a) 在第 (1) 款中，在“條提起”之前的所有字句由下文取代——

“(1) 凡依據第 13C(1) 條有任何法律程序移交法院審訊而律政司司長已依據第 14(1)(a)”；

(b) 在第 (2) 款中，兩度出現的“區域法院法官”均由“裁判官”取代；及

(c) 在第 (4) 款中，“區域法院法官或法官應在區域法院或”由“裁判官應向他作出的申請或法官應在”取代。”。

## 19. 加入條文

在緊接第 14 條之前加入——

**“13C. 關於《刑事罪行條例》第 18E 條及  
《官方機密條例》第 24A 條  
的法律程序**

(1) 凡被控人根據《刑事罪行條例》(第 200 章) 第 18E(1) 或 (2) 條或《官方機密條例》(第 521 章) 第 24A(1) 或 (2) 條選擇在原訟法庭受審——

(a) 有關案件須在猶如他是根據《裁判官條例》(第 227 章) 第 80C(4) 條被交付審訊的情況下進行；

(b) 第 10 條不適用於該案件；及

(c) 被控人如被裁定犯該罪行，須由主審法官判刑，但主審法官判處的刑罰，不得重於假使被控人被裁判官裁定犯該罪行該裁判官便可判處的刑罰。

(2) 凡被控人根據《刑事罪行條例》(第 200 章) 第 18E(3) 條或《官方機密條例》(第 521 章) 第 24A(3) 條選擇在原訟法庭受審——

(a) 有關案件須在猶如已有命令根據《區域法院條例》(第 336 章) 第 77A(4) 條作出將有關法律程序移交原訟法庭的情況下進行；及

(b) 被控人如被裁定犯該罪行，須由主審法官判刑，但主審法官判處的刑罰，不得重於假使被控人被區域法院裁定犯該罪行區域法院法官便可判處的刑罰。”。

## 20. 罪行的審訊

(1) 第 14A(1)(a) 條現予廢除。

(2) 第 14A(2)(a) 條現予廢除。

## 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. 罪行的審訊

第 51(2) 條現予修訂，廢除“叛逆罪”而代以“《刑事罪行條例》(第 200 章) 第 2、2A、2B 或 9A(2)(a) 條所訂罪行”。

## 22. 法律程序的移交

第 65F 條現予修訂，加入——

“(4A) 如有關被控人反對移交，法官須拒絕根據第 (1) 款提出的將就《刑事罪行條例》(第 200 章) 第 9A(2)(b) 或 9C 條或《官方機密條例》(第 521 章) 第 13、14、15、16、16A、17、18、19 或 20 條所訂罪行進行的法律程序移交的申請。”。

## 23. 隱瞞罪行的罰則

第 91(4) 條現予修訂，廢除“(叛逆罪除外)”。

## 24. 已婚婦女遭丈夫脅迫的推定的廢除

第 100 條現予修訂，廢除“叛逆罪或謀殺罪”而代以“謀殺罪或《刑事罪行條例》(第 200 章) 第 2、2A、2B 或 9A(2)(a) 條所訂罪行”。

## 《刑事案件法律援助規則》

## 25. 極刑案件的法律援助

《刑事案件法律援助規則》(第 221 章，附屬法例) 第 13(1) 條現予修訂，廢除所有“叛逆或使用暴力的海盜行為”而代以“使用暴力的海盜行為或《刑事罪行條例》(第 200 章) 第 2(叛國)、2A(顛覆)、2B(分裂國家) 或 9A(2)(a)(因煽惑叛國、顛覆或分裂國家而屬煽動叛亂) 條所訂罪行”。

## 《裁判官條例》

## 26. 修訂附表 2

- (1) 《裁判官條例》(第 227 章) 附表 2 第 I 部第 4 及 5 項現予廢除。
- (2) 附表 2 第 III 部第 4 及 5 項現予廢除。

## 《教育條例》

## 27. 取消校董註冊的理由

《教育條例》(第 279 章) 第 31(1)(a) 條現予修訂，廢除在“如該”之後的所有字句而代以——

- (i) 在任何社團或分支機構中擔任《社團條例》(第 151 章) 第 2 條所界定的幹事，而——
  - (A) 該社團或分支機構的註冊或註冊豁免已根據該條例第 5D 條取消；或

## 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) 該社團或分支機構的運作或繼續運作已被保安局局長根據該條例第 8 條禁止；或
- (ii) 在任何組織中擔任該條例第 2 條所界定的幹事，而該組織已根據該條例第 8A 條被取締；”。

### 《退休金利益(司法人員)條例》

28. 經定罪後退休金利益可予取消、暫停支付或扣減

《退休金利益(司法人員)條例》(第 401 章)第 31(1)(c) 條現予修訂，廢除“條所訂的叛逆”而代以“（叛國）、2A（顛覆）、2B（分裂國家）或 9A(2)(a)（因煽惑叛國、顛覆或分裂國家而屬煽動叛亂）條所訂罪行”。

### 《有組織及嚴重罪行條例》

29. 搜查的權限

《有組織及嚴重罪行條例》(第 455 章)第 5 條現予修訂，加入——

“(9) 第(8)款並不就屬以下條文所訂罪行的有組織罪行或指明的罪行而適用——

- (a) 《社團條例》(第 151 章)第 8C 條（參加受取締組織的活動）；
- (b) 《刑事罪行條例》(第 200 章)第 2（叛國）、2A（顛覆）、2B（分裂國家）、9A（煽動叛亂）或 9C（處理煽動性刊物）條；或
- (c) 《官方機密條例》(第 521 章)第 13、14、15、16、16A、17、18、19 或 20 條，

據此，根據本條進行的關於該等有組織罪行或指明的罪行的進入、搜查、搜身或檢取，均受《釋義及通則條例》(第 1 章)第 83 條及該條例第 XII 部其他條文規限。”。

30. 與“有組織罪行”及“指明的罪行”的定義有關的罪行

- (1) 附表 1 現予修訂，在第 9 段中——

- (a) 在——
- |         |              |
|---------|--------------|
| “第 19 條 | 對非法社團職員等的懲罰” |
| 之前加入——  |              |
| “第 8C 條 | 參加受取締組織的活動”； |

- (b) 在第二次及第三次出現的“非法社團”之後加入“或受取締組織”。

- (2) 附表 1 現予修訂，在第 11 段中，在——
- “第 24 條 蓄意威脅他人”
- 之前加入——

- |        |         |
|--------|---------|
| “第 2 條 | 叛國      |
| 第 2A 條 | 顛覆      |
| 第 2B 條 | 分裂國家    |
| 第 9A 條 | 煽動叛亂    |
| 第 9C 條 | 處理煽動性刊物 |
| 第 18 條 | 非法操練”。  |

- (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”. |

## 《監管釋囚規例》

## 31. 指明罪行

《監管釋囚規例》(第 475 章, 附屬法例) 附表 1 現予修訂, 在第 3 項中, 在與“第 21(1)、(2) 條”及“第 22(1)、(2) 條”相對之處, 在“非法社團”之後加入“或受取締組織”, 以及在與“第 23(1)、(2) 條”相對之處, 廢除“牟取社團”而代以“或受取締組織牟取社團費或會”。

## 《官方機密條例》

## 32. 釋義

《官方機密條例》(第 521 章) 第 12(1) 條現予修訂, 在“國際關係”的定義的 (b) 段中, 廢除在“關乎”之後的所有字句而代以“香港特別行政區與中華人民共和國以外任何地方的關係的事宜。”。

## 33. 因未經授權的披露或違法取覽所得的資料或在機密情況下託付的資料

- (1) 第 18(3) 條現予修訂, 廢除“16”而代以“16A”。
- (2) 第 18(4) 條現予修訂, 廢除“或 16”而代以“、 16 或 16A”。

## 34. 在機密情況下託付予地區、國家或國際組織的資料

第 20(4) 條現予修訂, 廢除“或 16”而代以“、 16 或 16A”。

## 其他條例

## 35. 提述叛國之處包括顛覆等

以下條文現予修訂, 廢除所有“叛逆罪”而代以“《刑事罪行條例》(第 200 章) 第 2 (叛國)、2A (顛覆)、2B (分裂國家) 或 9A(2)(a) (因煽惑叛國、顛覆或分裂國家而屬煽動叛亂) 條所訂罪行”——

- (a) 《香港藝術發展局條例》(第 472 章) 第 3(6)(m) 條;
- (b) 《立法會條例》(第 542 章) 第 39(1)(c) 及 40(1)(b)(iii)(C) 條;
- (c) 《區議會條例》(第 547 章) 第 14(1)(c)、19(1)(c)、21(1)(c) 及 24(1)(c) 條; 及
- (d) 《行政長官選舉條例》(第 569 章) 第 14(g) 條。

## 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).

## 摘要說明

依據《基本法》第二十三條委予香港特別行政區的責任，本條例草案為下列事項訂定條文——

- (a) 叛國罪、顛覆罪、分裂國家罪及煽動叛亂罪；
- (b) 禁止未經授權披露某些官方資料；及
- (c) 為保障國家安全而取締若干組織。

### 對《刑事罪行條例》(第 200 章) 的修訂

2. 條例草案建議廢除該條例第 I 部的條文(草案第 4 條及附表第 13 段)。
3. 新的第 2 條關乎叛國罪。根據該條，只有中國公民才可能犯叛國罪，而屬香港永久性居民的中國公民可因其在香港境外作出的叛國作為而犯該罪。該條亦建議廢除隱匿叛國及收受代價而不檢控叛國兩項普通法罪行。
4. 新的第 2A 及 2B 條分別就顛覆罪及分裂國家罪訂定條文。如在香港犯該兩項罪行，觸犯者無論屬任何國籍均屬犯法。由香港永久性居民在香港境外作出的作為亦受該兩條規管。新的第 2C 條禁止任何人在香港申謀或企圖在香港境外作出任何假使在香港作出便會構成顛覆罪或分裂國家罪的作為。
5. 新的第 2D 條訂明，煽惑他人犯叛國罪、顛覆罪或分裂國家罪只構成新的第 9A 條所訂的罪行。有關的普通法罪行並不適用。
6. 條例草案建議廢除該條例的第 II 部(第 6、7、8、12、13 及 18 條除外)(附表第 13 段)。
7. 新的第 9A 條為煽動叛亂罪訂定條文。根據該條，煽動叛亂罪針對兩項作為，而該兩項作為會招致不同的刑罰。煽惑他人犯叛國罪、顛覆罪或分裂國家罪構成煽動叛亂罪，新的第 9B 條列明煽惑他人煽動叛亂並不構成罪行。
8. 新的第 9C 條將若干與處理煽動性刊物有關的作為列為刑事罪行。

## 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. 新的第 9D 條實際上保留了現有的第 9(2) 條，以將若干作為排除於煽動叛亂罪及處理煽動性刊物罪的範圍之外。

10. 草案第 7 條加入一個新部分 (第 IIA 部)，以就與執行第 I 及 II 部條文有關的事宜訂定條文。

11. 現有的第 13 條授權裁判官批出搜查令。新的第 18B 條則賦權警務人員在無搜查令的情況下進行搜查。但只有在職級在總警司或以上的警務人員相信若不即時採取行動，便會喪失具有重大價值的證據的情況下，警方才可運用該權力。

12. 根據新的第 18D 條，因煽惑他人犯叛國罪、顛覆罪或分裂國家罪而被控以該等罪行及煽動叛亂罪的人，須由陪審團審訊。根據新的第 18E 條，如某人因煽惑其他人進行公眾暴亂或處理煽動性刊物而被控以煽動叛亂罪，而他將會在裁判官席前或在區域法院法官席前接受審訊，他便可選擇將案件移交高等法院原訟法庭，並由陪審團審訊。如被告人由陪審團審訊後被定罪，他被處以的刑罰不得重於假使他被裁判官或區域法院法官 (視何者屬適當而定) 定罪可被處的刑罰。

13. 條例草案建議廢除現有的第 4 及 11 條的效果，是撤銷就第 I 及 II 部罪行提出檢控的時間限制。但有關檢控須獲得律政司司長的同意方可提出 (新的第 18C 條)。

#### 對《官方機密條例》(第 521 章) 的修訂

14. 草案第 8 條加入“國家安全”的定義，以及修改“公務人員”的定義。

15. 新的第 16A 條 (草案第 10 條) 禁止公務人員及政府承辦商 (在該條例中界定) 就關乎與香港有關並根據《基本法》是由中央管理的事務的資料，作出具損害性的披露。披露如會危害國家安全，則屬具損害性。

16. 草案第 11 條修訂現有的第 18 條，以規定任何人在知道或有合理理由相信某項受保護資料乃藉着違法取覽而被取得，及在沒有合法權限的情況下，披露該項資料，即屬犯罪。“違法取覽”的定義只包括擅自入侵電腦、盜竊、搶劫、入屋犯法及賄賂。

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. 被控以關乎在沒有合法權限下作出披露的若干罪行的人，可選擇由陪審團審訊。有關安排與建議的在《刑事罪行條例》(第 200 章)中新的第 18E 條訂明的相類似，而該等安排已在本摘要說明第 12 段闡述。

#### 對《社團條例》(第 151 章)的修訂

18. 條例草案第 4 部對該條例作出修訂，以賦予保安局局長取締本地組織的權力。保安局局長如在新的第 8A(1) 條所訂明的情況下，合理地相信為國家安全(在該條例第 2(4) 條中界定)的目的，取締某本地組織是必要的，並合理地相信取締該組織與該理由是相稱的，才可行使取締本地組織的權力。其中一種取締本地組織的情況是該組織是從屬於某內地組織，而該內地組織已遭中央以保障中華人民共和國安全的理由依法取締。

19. 新的第 8B 條列明取締的程序規定。新的第 8C 條禁止參加受取締組織的活動。新的第 8D 條就向原訟法庭提出上訴反對取締的權利訂定條文。新的第 8E 條賦予終審法院首席法官就上訴訂立規則的權力。

#### 其他修訂

20. 條例草案於《刑事罪行條例》(第 200 章)(草案第 7 條中新的第 18A 條)、《官方機密條例》(第 521 章)(草案第 9 條中新的第 12A 條)及《社團條例》(第 151 章)(草案第 14 條中新的第 2A 條)中加入條文，以清晰訂明有關條文的解釋、適用及執行均須符合《基本法》第三十九條。《基本法》第三十九條訂明適用於香港的兩項國際人權公約須予實施。

21. 新加入的《刑事罪行條例》(第 200 章)第 18B 條(草案第 7 條)及現有的《有組織及嚴重罪行條例》(第 455 章)第 5 條所賦予警務人員的搜查權力，均受《釋義及通則條例》(第 1 章)第 XII 部(附表第 29 段)規限。因此，就新聞材料(在《釋義及通則條例》(第 1 章)第 82 條中界定)而言，該等搜查權力並不可在沒有法院手令的情況下行使。

22. 在現有的法律下，被控以或被裁定犯叛國罪的人須面對若干後果。條例草案建議修訂若干條例，令被控以或被裁定犯顛覆罪、分裂國家罪及煽動叛亂罪的人亦須面對同樣後果。該等修訂如下。

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) 公務員或司法人員的退休金可予取消、暫停支付或扣減(附表第3、5及28段)。
  - (b) 被定罪者會被取消擔任若干公職的資格(附表第35段)。
  - (c) 就對被控該等罪行的人提供法律援助的條文適用(附表第25段)。
23. 附表第2段訂定根據《社團條例》(第151章)取締的公司，將會自公司登記冊中被剔除。
24. 附表第4段廢除《郵政署條例》(第98章)中關於投寄煽動性刊物的罪行。新的《刑事罪行條例》(第200章)第9C條(草案第6條)將涵蓋有關的被禁行為。
25. 附表第6至12段對《社團條例》(第151章)作出附帶及相應的修訂。
26. 附表第16至24、26、29、30及31段對《刑事訴訟程序條例》(第221章)、《裁判官條例》(第227章)、《有組織及嚴重罪行條例》(第455章)及《監管釋囚規例》(第475章，附屬法例)作出相應修訂。該等修訂是鑑於建議加入新的罪行、取消普通法罪行，以及加入可選擇由陪審團審訊的權利而須作出的。

- (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.