For discussion on
6 March 2024

Legislative Council
Panel on Security, Panel on Administration of Justice and Legal Services and Subcommittee to Study Matters Relating to Basic Law Article 23 Legislation
Joint Meeting

Safeguarding National Security : Public Consultation on Basic Law Article 23 Legislation

Purpose

The Government launched the public consultation on Basic Law Article 23 legislation on 30 January 2024, inviting members of the public to express their views. The consultation period ended on 28 February 2024. This paper aims to brief Members on the results of the public consultation and set out the way forward for taking forward the Basic Law Article 23 legislation (i.e. the Safeguarding National Security Bill).

Background

2. The Hong Kong Special Administrative Region ("HKSAR") has the constitutional duty to safeguard national security. Article 23 of the Basic Law clearly stipulates that the HKSAR shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets, to prohibit foreign political organisations or bodies from conducting political activities in the HKSAR, and to prohibit political organisations or bodies of the HKSAR from establishing ties with foreign political organisations or bodies. Article 3 of the Decision of the National People's Congress on Establishing and Improving the Legal System and Enforcement Mechanisms for the Hong Kong Special Administrative Region to Safeguard National Security ("5.28 Decision") requires the HKSAR to complete, as early as possible, legislation for safeguarding national security as stipulated in the Basic Law. Article 4 of the 5.28 Decision requires that the HKSAR must

establish and improve the institutions and enforcement mechanisms for safeguarding national security, strengthen the enforcement forces for safeguarding national security, and step up enforcement to safeguard national security. Article 7 of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region ("HKNSL") not only requires the HKSAR to complete, as early as possible, legislation for safeguarding national security as stipulated in the Basic Law, but also requires the HKSAR to refine the relevant laws on safeguarding national security.

3. The HKSAR has a constitutional duty, as well as a genuine practical need, to legislate for Article 23 of the Basic Law. The HKSAR has gone through the intolerable painful experience of having our national security seriously threatened, especially the Hong Kong version of "colour revolution" in 2019. The HKSAR Government must complete the legislative exercise as early as possible to plug the national security loopholes.

Public Consultation and Recommendations in the Consultation Document

4. The Government published a consultation document entitled "Safeguarding National Security: Basic Law Article 23 Legislation" (the Consultation Document) (in **Annex 1**) on 30 January 2024 to conduct a public consultation from that day onwards until 28 February 2024. The Consultation Document consists of nine chapters covering the following:

(i) the constitutional duty of the HKSAR to safeguard national security, the national security risks faced by the HKSAR and the necessity for legislation, relevant legislative principles and considerations, and the methodology for studies (Chapters 1 and 2);

(ii) recommendations in respect of offences (Chapter 3 to 7), covering the five major types of acts and activities endangering national security set out below, and recommending to introduce certain new offences to effectively prevent, suppress and impose punishment for

various types of acts and activities endangering national security, including:

- Treason and related acts (Chapter 3);
- Insurrection, incitement to mutiny and disaffection, and acts with seditious intention (Chapter 4);
- Theft of state secrets and espionage (Chapter 5);
- Sabotage endangering national security and related activities (Chapter 6); and
- External interference and organisations engaging in activities endangering national security (Chapter 7);

(iii) recommendation on providing for proportionate extra-territorial effect regarding some of the above offences (Chapter 8); and

(iv) other matters relating to improving the legal system and enforcement mechanisms for safeguarding national security, including shortcomings and deficiencies as revealed from experience gained from handling national security cases, and invitation of public views in this regard (Chapter 9).

5. A total of 12 specific recommendations as put forth in Chapters 1 to 9 of the Consultation Document are listed in Annex 1 of the Consultation Document to facilitate members of the public to give their views. Members of the public were also welcomed to give other views on this legislative exercise.

Work during the public consultation period with extensive coverage

6. Since the commencement of the public consultation, the HKSAR Government had held nearly 30 consultation sessions to meet with representatives from various sectors to provide detailed briefings on the proposals in the Consultation Document. About 3 000 people participated in the consultation sessions, including representatives from such sectors as local and international businesses, legal, financial, education, media and other professions. Representatives of national organisations, district personalities, political parties and relevant

organisations as well as Consuls-General also attended the sessions. A vast majority of the participants indicated their support for the legislation.

7. In addition, in order to facilitate the public to understand the need for legislation, the legislative prinicples and the recommendations set out in the Consultation Document, and encourage them to express their views and enable them to obtain correct information, apart from producing various publicity items (e.g. leaflets, thematic webpage, infographics and Announcements in the Public Interest) so that the public can better visualise the content of the Consultation Document, the Secretary for Justice and the Secretary for Security also attended a series of media interviews by TV stations, radio stations, newspapers and online media during the consultation period to explain in greater depth areas of public concerns.

8. At the same time, organisations and bodies from various sectors and professions have expressed their support for the HKSAR Government's legislative exercise through public statements, etc. As at 28 February, there are 519 such statements, some of which were also directly submitted to the HKSAR Government as responses to the Consultation Document.

9. During the public consultation period (up to February 28), the HKSAR Government received a total of 13 489 submissions, which are mainly submitted by email, post and fax. Among them, 13 297 (98.58%) show support and make positive comments; 95 (0.70%) purely contain questions or opinions therein that cannot reflect the authors' stance; and 97 (0.72%) oppose the legislative proposals. The results show that the legislative proposals have gained majority support from the public and stakeholders, including the community at large. Comments received cover different aspects of the legislative proposals, and some offered views on safeguarding national security other than what is covered in the proposals of the Consultation Document. These would serve as valuable reference in the process of drafting the bill.

10. In addition, the Legislative Council (LegCo) has established the Subcommittee to Study Matters Relating to Basic Law Article 23 Legislation, which held its first meeting on 27 February 2024. During

the meeting, some Members also put forward specific recommendations with regard to this legislative exercise. The HKSAR Government will take them into account when drafting the Bill.

Analysis

11. An analysis of the submissions received is as follows:

(i) A vast majority of the submissions were from individuals, whereas about 4% were submitted in the capacity of organisations, including: industry associations, chambers of commerce, trade unions, clansmen associations/fraternity associations, political parties, district organisations (e.g. rural committees, district committees, residents' associations, associations for community affairs/people's livelihood), etc. The vast majority of them (13 069, accounting for 96.89% of the total) clearly expressed support for the legislative proposals. Among these 13 069 supportive submissions, most (over 90%) were general views in support of legislation as early as possible without specific recommendations, and part of these submissions (around 40%) were co-ordinated by different organisations, district organisations, and rural committees.

(ii) Out of the 97 submissions opposing the proposals (0.72% of the total), a substantial part of them are either not signed or without a decipherable signature (36 and 13 submissions respectively, accounting for 50.52% of the total number of submissions opposing the proposals). Furthermore, 9 are from external anti-China organisations (including Hong Kong Watch, Amnesty International, Front Line Defenders, The HK Rule of Law Monitor, The Rights Practice, Hong Kong Centre for Human Rights, Assembly of Citizens' Representatives Hong Kong, The Committee for Freedom in Hong Kong Foundation, and Hong Kong Democracy Council), 3 from persons with names identical to absconders (HUI Chi-fung, CHEUNG Kwan-yang and LAU Cho-dik) and 1 from a person prosecuted against offence endangering national security and waiting for trial, accounting for 27% of

48 opposing submissions from identifiable persons. In considering the comments objecting to the proposals, the background set out above should be taken into account.

(iii) Part of the respondents with different views on the legislative proposals have also provided views or suggestions in respect of the legislative proposals (a total of 1 371 submissions, representing 10.16% of the total number of submissions received).

12. We have grouped the above comments and suggestions received into different areas. A summary of the major comments and suggestions, together with the HKSAR Government's responses, is at **Annex 2**. Generally speaking,

(i) The vast majority of respondents supported completing the Basic Law Article 23 legislation as early as possible, while only an extremely small number of respondents explicitly opposed to the legislation;

(ii) As regards the legislative approach (i.e. enacting a completely new Safeguarding National Security Ordinance), there was no objection received during the consultation;

(iii) As far as the proposed offences are concerned, an extremely small number of respondents were concerned about whether or not individual existing/proposed new offences should be included, while most of the views/suggestions focused on the scope of individual offences, their target of application, penalties, defences, etc. The offences on which more comments and suggestions were received include the offence of "unlawful drilling", offence of "seditious intention", offences relating to "state secrets", offences relating to "espionage", offence of "external interference", etc. We will take into account the suggestions and adopt those that are appropriate in our Bill, including –

(a) to consider that for the commission of certain offences endangering national security, if collusion with external

forces is involved, higher penalties should be applicable;

(b) to consider to introduce a defence relating to "public interest" for offences relating to "state secrets";

(c) to consider, as regards protection of state secrets, modelling on section 22 of the Official Secrets Ordinance, to introduce provisions similar to that on "Safeguarding of Information";

(d) to consider, for the offence of "espionage", the act of approaching, inspecting, passing over or under, entering or accessing a prohibited place, or being in the neighbourhood of a prohibited place, should cover causing an unmanned tool (e.g. drone) to perform the above act.

(iv) Most of the respondents supported stipulating proportionate extra-territorial effect for certain offences.

(v) As regards improving the legal system and enforcement mechanisms for safeguarding national security, some respondents made very good suggestions on the issues covered in Chapter 9 of the Consultation Document, whereas some made other recommendations relating to improving the legal system and enforcement mechanisms for safeguarding national security. The HKSAR Government will consider them thoroughly and adopt those that are appropriate in our Bill, including –

(a) to consider to stipulate measures that can address, combat, deter and prevent acts of abscondment, and to procure the return of absconded persons to the HKSAR to face law enforcement and judicial proceedings;

(b) to consider to improve criminal procedure for cases in connection with offences endangering national security;

(c) to consider to tighten the threshold for early release of

prisoners;

(d) to examine the provision of appropriate measures to protect persons handling cases or work involving national security.

Way Forward

13. By making reference to the views received during the public consultation, the HKSAR Government will strive to finalise the Safeguarding National Security Bill soonest for introduction to the LegCo for scrutiny. The HKSAR Government will proactively facilitate the work of the LegCo to complete the legislative work as early as possible, in order to cope with the constant national security risks and threats, and safeguard public safety, allowing Hong Kong to focus entirely on economic development and maintain prosperity and stability.

Advice Sought

14. Members are invited to note the outcomes of the public consultation and comment on the legislative proposals.

Security Bureau
Department of Justice
March 2024

Annex 1

Hong Kong Special Administrative Region
of the People's Republic of China

Safeguarding National Security: Basic Law Article 23 Legislation

Public Consultation Document

1. 2024

Safeguarding National Security :

Basic Law Article 23 Legislation

Public Consultation Document

Security Bureau
The Government of the Hong Kong Special Administrative Region

January 2024

We welcome your views

1. This consultation paper is issued by the Security Bureau ("SB"). Members of the public are welcome to provide comments on the legislative proposals for local legislation for safeguarding national security set out in this paper, with the Summary of Recommendations at **Annex 1**. Please send your comments to us on or before 28 February 2024 by one of the following means –

By Post:	Security Bureau, 10/F, East Wing, Central Government Offices, 2 Tim Mei Avenue, Tamar, Hong Kong
By e-mail:	BL_23@sb.gov.hk
By fax:	2868 5074

2. Electronic copy of this consultation paper is available on the website of SB(website: https://www.sb.gov.hk/eng/bl23/consultation.html). All relevant laws of Hong Kong are available for viewing and downloading on the Hong Kong e-Legislation website maintained by the Department of Justice (website: https://www.elegislation.gov.hk/). Submissions received will be treated as public information and the content of the submissions may be reproduced and published in whole or in part for the purposes of this consultation exercise and related purposes without seeking the permission of or providing acknowledgement to the respondents.

3. All personal data collected in the submissions will be used for the purposes of this consultation exercise and any directly related purposes. Unless specific requests for confidentiality are made, the SB may quote the identity or organisation name of respondents for the purposes of this consultation exercise and related purposes. If you do not wish to disclose your identity or name, please state so when making a submission.

4. For access to or correction of personal data contained in your submission, please contact the SB in writing through the above contact means.

CONTENTS

Chapter 1: Constitutional Duty to Safeguard National Security

This chapter explains the concept of the holistic view of national security, the meaning of "national security", the constitutional duty of the Hong Kong Special Administrative Region ("HKSAR") to safeguard national security, and the relevant provisions of the Constitution, Article 23 of the Basic Law, the 5.28 Decision and the HKNSL.

National security

1.1 A state is a political community comprising the fundamental elements of its people, territory, sovereignty and regime. When any of these elements are threatened, it indicates that national security is in a certain dangerous state.

1.2 National security is a matter of top priority for any state. It is the fundamental prerequisite for the survival and development of a state. Only with national security and social stability can reforms and developments advance continuously. As a matter of fact, with people's security as the goal, national security safeguards the fundamental interests of each citizen, and is essential for the prosperity and stability of society as well as for its people to live and work in peace and contentment.

1.3 Although the understanding and expression of the concept of national security vary among countries, with the evolution of the times and society as well as economic and technological developments under an increasingly complex global situation, the trend is that the concept of national security nowadays is no longer limited to traditional security fields such as homeland security, sovereignty security and military security, but also cover other non-traditional security fields. This development is common for countries throughout the world. Besides, threats to national security keep changing as the circumstances vary. To ensure that the national security laws are adequately and reasonably flexible to effectively deal with various threats that will emerge in the future, it is noted that many common law jurisdictions have not defined "national security" in their national security laws and have adopted a broad interpretation in applying the concept of national security. Taking the United Kingdom ("UK") as an example: it has all along been its government's stance not to define "national security" in legislation to maintain flexibility in dealing with any new and emerging national security threats. As regards the UK National Security Act 2023 which has been passed recently, although the relevant committee of the UK Parliament

considered it necessary to define "safety or interests of the United Kingdom" which appears repeatedly in the Act, the UK Government maintained its long-standing position by rejecting the recommendation and stated that limiting this term by specifying certain conduct or including an explicit threshold would risk creating loopholes for hostile actors to exploit. According to the UK Government, "safety or interests of the United Kingdom" cover at least national security, national defence, the economic well-being of the UK and sensitive aspects of international relations.

Holistic view of national security

1.4 On 15 April 2014, President Xi Jinping introduced at the first general meeting of the National Security Commission the holistic view of national security. The term "holistic" therein emphasises the necessity to understand and respond to security risks which are dynamic, diverse and often interrelated from a broad, macro and holistic perspective. This comprehensive concept already encompasses 20 major, traditional and non-traditional, security fields, including political security, military security, homeland security, economic security, financial security, cultural security, public security, science and technology security, cyber security, food security, ecological security, resource security, nuclear security, overseas interests security, and a number of emerging fields like outer space security, deep sea security, polar security, biosecurity, artificial intelligence security and data security.

1.5 Article 2 of the National Security Law of the People's Republic of China defined "national security". The same set of national security standards should apply throughout the country[1], and the national security standards of our country should also apply to the HKSAR, which is an inalienable part of the People's Republic of China[2]. Therefore, the HKSAR shall discharge its responsibility of safeguarding national security in accordance with the holistic view of national security. The definition of national security in the HKSAR's local legislation should be consistent with that in the laws of our

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[1] Keynote speech at the Webinar in Commemoration of the 30th Anniversary of the Promulgation of the Basic Law: National Security Legislation: Current Status and Prospects (Mr Zhang Yong, Vice-Chairperson of the HKSAR Basic Law Committee under the Standing Committee of the National People's Congress, 8 June 2020).

[2] The definition of the term "national security" in the Law on Safeguarding National Security as amended by the Macao Special Administrative Region in 2023 is the same as the definition in Article 2 of the National Security Law of the People's Republic of China.

country, **i.e. to adopt the same definition in the National Security Law of the People's Republic of China, with provision as follows:**

> ***"National security refers to the status in which the State's political regime, sovereignty, unity and territorial integrity, the welfare of the people, sustainable economic and social development, and other major interests of the State are relatively free from danger and internal or external threats, and the capability to maintain a sustained status of security."***

The specific measures to be taken to safeguard national security will depend on the actual situation in the HKSAR.

Constitutional duty of the HKSAR to safeguard national security

1.6 The Constitution of the People's Republic of China ("the Constitution") and the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China ("the Basic Law") together form the constitutional basis of the HKSAR. The Constitution clearly stipulates the duty to safeguard national security, including the obligation to safeguard national unity and the solidarity of all the country's ethnic groups, the obligation to keep state secrets, the obligation to safeguard the security, honour and interests of the country, as well as the obligation to defend the country and resist aggression[3]. Article 1 and Article 12 of the Basic Law stipulate that the HKSAR is an inalienable part of the People's Republic of China and a local administrative region of the People's Republic of China, which shall enjoy a high degree of autonomy and come directly under the Central People's Government ("CPG"). It goes without saying that the HKSAR has the constitutional duty to safeguard national security.

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[3] The relevant provisions of the Constitution are set out below:

Article 52 Citizens of the People's Republic of China shall have the obligation to safeguard national unity and the solidarity of all the country's ethnic groups.

Article 53 Citizens of the People's Republic of China must abide by the Constitution and the law, keep state secrets, protect public property, observe discipline in the workplace, observe public order, and respect social morality.

Article 54 Citizens of the People's Republic of China shall have the obligation to safeguard the security, honor and interests of the motherland; they must not behave in any way that endangers the motherland's security, honor or interests.

Article 55 It is the sacred duty of every citizen of the People's Republic of China to defend the motherland and resist aggression.…

1.7 Article 23 of the Basic Law clearly stipulates that the HKSAR shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the CPG, or theft of state secrets, to prohibit foreign political organisations or bodies from conducting political activities in the HKSAR, and to prohibit political organisations or bodies of the HKSAR from establishing ties with foreign political organisations or bodies.

1.8 However, since its return to the Motherland, the HKSAR has not been able to enact legislation in accordance with Article 23 of the Basic Law, and has not made the most of the existing law. Such plain deficiencies in the work on safeguarding national security resulted in the social chaos which took place in the past, ultimately causing the Hong Kong version of "colour revolution" in 2019 which posed national security threats to the extent that made it difficult for the HKSAR to handle on its own. To safeguard national security, sovereignty and development interests, uphold and improve the "one country, two systems" regime, safeguard the long-term prosperity and stability of Hong Kong and safeguard the legitimate rights and interests of Hong Kong residents, the National People's Congress ("NPC") adopted the Decision of the National People's Congress on Establishing and Improving the Legal System and Enforcement Mechanisms for the Hong Kong Special Administrative Region to Safeguard National Security on 28 May 2020 ("the 5.28 Decision").

1.9 The 5.28 Decision states the basic principles in respect of safeguarding national security in the HKSAR and enunciates national policies and positions, namely: to fully, faithfully and resolutely implement the principle of "one country, two systems", under which the people of Hong Kong administer Hong Kong with a high degree of autonomy; to remain committed to law-based governance in Hong Kong; to uphold the constitutional order of the HKSAR established by the Constitution and the Basic Law; takes necessary measures to establish and improve the legal system and enforcement mechanisms for the HKSAR to safeguard national security, as well as to prevent, suppress and impose punishment in accordance with the law for any act and activity endangering national security; resolutely opposes interference in the HKSAR's affairs by any foreign or external forces in any form, and takes necessary countermeasures to prevent, stop and punish in accordance with the law activities of secession, subversion, infiltration and sabotage carried out by foreign or external forces in Hong Kong. At the same time, the 5.28 Decision states

the overarching responsibility of the Central Authorities and the constitutional duty of the HKSAR, and provided for the establishment and improvement of systems and mechanisms on different levels and in different aspects, including: the HKSAR shall complete, as early as possible, legislation for safeguarding national security as stipulated in the Basic Law; the executive authorities, legislature and judiciary of the HKSAR shall effectively prevent, suppress and impose punishment for any act or activity endangering national security; the HKSAR must establish and improve the relevant institutions and enforcement mechanisms for safeguarding national security; strengthen the enforcement forces for safeguarding national security, and step up enforcement to safeguard national security; relevant organs responsible for safeguarding national security of the CPG will set up agencies in the HKSAR to fulfil relevant duties; the Chief Executive must regularly submit report to the CPG on the performance of the duties of the HKSAR in safeguarding national security and to promote national security education, etc.

1.10 The 5.28 Decision also entrusts the Standing Committee of the National People's Congress ("NPCSC") to formulate relevant laws on establishing and improving the legal system and enforcement mechanisms for safeguarding national security in the HKSAR. The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region ("HKNSL") was adopted by the NPCSC on 30 June 2020 and promulgated for implementation by the HKSAR Government on the same day. As reiterated in Article 3 of the HKNSL, it is the duty of the HKSAR under the Constitution to safeguard national security and the HKSAR shall perform the duty accordingly. It is obligatory for all institutions empowered by the law in the HKSAR to regard national security as the most important factor in exercising their powers.

1.11 Although the Central Authorities have enacted the HKNSL on a national level, the HKSAR must still perform its constitutional duty to enact local legislation under Article 23 of the Basic Law. Both Article 3 of the 5.28 Decision and Article 7 of the HKNSL require the HKSAR to complete, as early as possible, legislation for safeguarding national security as stipulated in the Basic Law and refine relevant laws.

1.12 In fact, even though the enactment and implementation of the HKNSL has enabled the HKSAR to "move from chaos to stability", the national security

threats posed by external forces and local terrorism remain. Among the seven types of acts which legislation should be enacted to prohibit as prescribed in Article 23 of the Basic Law, two (i.e. secession and subversion against the CPG) are directly covered by the HKNSL. The existing local legislation (e.g. the Crimes Ordinance (Cap. 200), Official Secrets Ordinance (Cap. 521) and Societies Ordinance (Cap. 151)) only covers part of the relevant acts and there are areas requiring improvement. Therefore, the HKSAR has the constitutional duty as well as a practical need to enact local legislation to safeguard national security.

1.13 It is noteworthy that while Article 23 of the Basic Law requires the HKSAR to enact laws on its own to prohibit seven types of acts and activities endangering national security, its fundamental purpose is to require the HKSAR to enact laws on its own to safeguard national sovereignty, security and development interests. Both the 5.28 Decision and HKNSL clearly stipulate that it is the constitutional duty of the HKSAR to safeguard national security, as well as effectively prevent, suppress and impose punishment for any act or activity endangering national security. Article 7 of the HKNSL further clearly requires the HKSAR to refine relevant laws for safeguarding national security. According to the holistic view of national security, the scope of national security risks covers a wide spectrum, including new types of risks emerging from non-traditional security fields which will keep on evolving and changing with the circumstance and situation. It is the duty of the HKSAR to enhance the legal system for safeguarding national security steadily and continuously as a constant effort to effectively prevent, suppress and impose punishment for act and activity endangering national security, including new types of risks emerging from non-traditional security fields. Therefore, in this legislative exercise, apart from comprehensively addressing past, present and foreseeable criminal acts and activities which endanger national security, consideration should also be given to the need for legislation on aspects such as enforcement powers, procedural matters and the mechanisms for safeguarding national security (including to ensure they are convergent, compatible and complementary with the HKNSL) to ensure that the HKSAR can fully discharge its responsibility for safeguarding national security.

Chapter 2: Addressing national security risks and improving the regime for safeguarding national security

This chapter analyses and explains the national security risks faced by the HKSAR in recent years, the need to improve the regime for safeguarding national security, the principles and considerations, the research methodology and the legislative approach of this legislative exercise.

2.1 Every state will enact laws on safeguarding national security. This is an inherent right of every sovereign state, and also an international practice. The authorisation by the Central Authorities for the HKSAR to enact laws on its own for safeguarding national security has embodied the principle of "one country, two systems", and our country's trust in the HKSAR.

2.2 Enactment of legislation to safeguard national security is the basic governance strategy of countries around the world. Western countries such as the United States ("US"), UK, Canada, Australia and New Zealand have all already enacted laws for safeguarding national security and established relevant decision-making and executive bodies. In terms of the number of specific national security-related legislation, the US, for instance, has at least 21 pieces; the UK has at least 14 pieces; Australia has at least 4 pieces; Canada has at least 9 pieces; and New Zealand has at least 2 pieces; an example among Asian countries is Singapore, which also has at least 6 pieces (the laws concerned are listed in **Annex 2**).

2.3 Given the importance of safeguarding national security, many countries have put in place comprehensive and effective laws and taken necessary measures to safeguard national security in accordance with their own needs and in the light of the national security risks they are facing. For example:

(a) The **offence of treason** is provided for, with a maximum penalty of life imprisonment in general, in countries such as the UK, Australia and Canada. In the US, the maximum penalty for this offence is **death penalty**, and persons convicted of the offence of treason or offence of rebellion or insurrection shall be incapable of holding any public office in the US for life;

(b) The **offence of sabotage** under the National Security Act 2023 of the UK provides that the maximum penalty for a person who engages in a conduct that **results in damage to any asset in anywhere** for a purpose

that he or she knows or ought reasonably to know, is prejudicial to the safety or interests of the UK, where the foreign power condition is met, is **life imprisonment**;

(c) The **offence of espionage** under the Criminal Code Act 1995 of Australia provides that the maximum penalty for a person who communicates or makes available to a foreign principal information or article that has a security classification or concerns Australia's national security with an intention to (or recklessness as to whether he or she will) prejudice Australia's national security or advantage the national security of a foreign country is **life imprisonment or imprisonment for 25 years respectively (depending on the intention concerned)**; and

(d) The Internal Security Act 1960 of Singapore creates executive powers for the President to authorise **detention without charge** for a period of up to **two years** (which can be further extended) on the grounds of preventing a person from acting in any manner prejudicial to the national security of Singapore or the maintenance of public order or essential services. This also rules out bail completely and the relevant decisions taken under the Act are generally not subject to judicial review.

2.4 These countries also review the relevant situation from time to time and enact effective laws to deal with national security risks that may emerge. For example :

(a) the Foreign Interference (Countermeasures) Act 2021 of Singapore;

(b) the National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018 of Australia; and

(c) the National Security and Investment Act 2021 and the National Security Act 2023 of the UK.

(d) Recently, Canada is conducting a public consultation on how to amend relevant laws such as the Criminal Code, the Security of Information Act, the Canada Evidence Act and the Canadian Security Intelligence Service Act to cope with the risk of external interference and to strengthen law enforcement capabilities.

National security risks – necessity for legislation

2.5 Since its return to the Motherland, because the HKSAR has not been able to enact legislation on Article 23 of the Basic Law, nor has it made full use of existing law, there are deficiencies in the law and enforcement mechanisms for safeguarding national security, resulting in potential risks to national security. With the aggregate development of our country, many western countries regard China as a major competitor and even adopt a completely hostile attitude. The HKSAR's unique environment and lifestyles under the principle of "one country, two systems" make it particularly easy for external forces to exploit with malicious infiltration and sabotage. Such national security risks should not be neglected.

2.6 In recent years, there have been drastic developments in the national security risks of the HKSAR, with occurrence of the illegal "Occupy Central" movement in 2014, the Mong Kok riot in 2016, the establishment of the Hong Kong National Party which advocated "Hong Kong independence" in 2016, as well as such other acts and activities that seriously undermined the rule of law and public order, and even endangered national security, thereby intensifying national security risks. The repeated episodes of social chaos which took place over the past two decades or so reached an all time high since 2019, with anti-China, destabilising elements in the territory colluding with external elements to instigate the "black-clad violence" that lasted for more than ten months in the HKSAR. During the period, they vigorously advocated acts of secession, including "Hong Kong independence", "self-determination" and "nation-building", with the objective of fomenting a Hong Kong version of "colour revolution", seizing the governance power of the HKSAR, and ultimately overthrowing the fundamental system of the People's Republic of China and subverting the State power. The details of the national security risks faced by the HKSAR in recent years are as follows:

(a) **Territory-wide large-scale riots:** The forces plotting to endanger the security of our country and the HKSAR organised frequent large-scale demonstrations and processions in various districts to radicalize the public, instigated "mutual destruction" and territory-wide obstruction, occupied the airport, highways and tunnels to paralyse traffic, and incited large-scale riots. The months-long riots had severely endangered the overall public safety of the HKSAR, and were

of a magnitude far above usual offences such as riots and criminal damage, constituting acts of insurrection endangering national security.

(b) **Extensive damage to public infrastructure:** During the Hong Kong version of "colour revolution" in 2019, rioters stormed different government buildings and the Legislative Council Complex. They wantonly and extensively vandalised many MTR stations and transport facilities such as traffic lights, railings and switch boxes. To prevent further destruction by rioters, the Police set up and enhanced protection facilities for some essential buildings such as the Central Government Offices, the Police Headquarters and the courts. The acts of large-scale and serious vandalism of public infrastructure had reached the level where national security was endangered.

(c) **Incitement of public hatred against the fundamental system of the State, the Central Authorities and the bodies of power of the HKSAR:** Individuals who planned or participated in the riots incited the public through speeches, writing or publications carrying serious smearing allegations, tearing copies of the Basic Law, spread rumours to scandalise the fundamental system of the State, the Central Authorities and the bodies of power of the HKSAR (especially the HKSAR Government's law enforcement officers), and provoked hatred against the fundamental system of the State, the Central Authorities and the bodies of power of the HKSAR. They also glorified violence with distorted legal viewpoints, and gradually and subtly weakened the public's concept of the rule of law and their law-abiding awareness. These deliberate acts of incitement provided soil for the Hong Kong version of "colour revolution" to germinate, and eventually led to the proliferation of violent acts, and a long period of unrest and instability in society. Some of these acts involved using computers to engage in acts and activities endangering national security, such as "doxxing" on police officers and their family members and disclosing a large amount of their personal data on the Internet, as well as harassing and intimidating them.

(d) **Promoting messages endangering national security:** The forces seeking to endanger the security of our country and the HKSAR have continued to make use of so-called artistic creations released through

media like publications, music, films, arts and culture, and online games, etc. as a disguise to disseminate messages that promote resistance against the Central Authorities and the HKSAR Government, advocating "Hong Kong independence" or subvert the State power using a "soft resistance" approach. Given the popular use of the Internet and social messaging applications, such messages can be covertly disseminated in a fast and extensive manner.

(e) **Risk of theft of state secrets:** In order to safeguard national security and ensure the smooth operation of the government, information involving state secrets must be kept confidential or else it will pose serious risks to national security. With the development of cyber networks, there have been increasing risks of theft of state secrets through cyber networks (for example, there have been reports that the US has conducted worldwide covert surveillance through the Prism programme over a long period of time[4], and that the US has hacked hundreds of computers on the Mainland and in the HKSAR[5]). In the face of increasingly sophisticated cyber threats, it is necessary for the HKSAR Government to prevent the theft or unlawful disclosure of state secrets through effective laws.

(f) **Increasing threat of foreign espionage and intelligence operations:** The Hong Kong version of "colour revolution" in 2019 clearly demonstrated that there were local organisations and individuals that were willing to act as agents of external political or intelligence organisations and engaged in acts and activities endangering national security, especially acts of espionage. These acts of espionage cover not only theft of state secrets, but also other infiltration and sabotage activities. The intelligence organisations of some Western countries have also published reports one after another, stating that they should be vigilant about the "threat" posed by China and take measures to address the issue (for example, the Central Intelligence Agency of the US and the Secret Intelligence Service of the UK have stated publicly

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[4] According to a report by The Guardian titled "NSA Prism program taps in to user data of Apple, Google and others" on 7 June 2013.

[5] According to a report by Business Insider titled "Snowden Showed Evidence Of US Hacking China To Hong Kong Newspaper" on 13 June 2013 and a report by South China Morning Post titled "Edward Snowden: US government has been hacking Hong Kong and China for years" on the same day.

that they would actively increase the resources targeting China[6]). It is apparent that our country and the HKSAR are unavoidably subject to acts and activities endangering national security conducted by the agents or spies of external forces (including external political organisations or intelligence agencies) in the HKSAR. Considering that acts of espionage are generally conducted in a covert manner which are hard to detect, effective laws with deterrent effect should be enacted to prevent and suppress such acts.

(g) **Barbaric and gross interference from foreign governments and politicians in China's internal affairs:** Currently, there are unstable factors in the global situation coupled with increasingly complex geopolitics and rising unilateralism. Sovereign equality and non-interference in internal affairs are basic norms of international relations and fundamental principles of international law, which are also entrenched under the Charter of the United Nations[7]. However, some external forces have continuously interfered with China's affairs (including the affairs of the HKSAR), undermining national sovereignty and political independence, and endangering national security. For example, acts of interference listed in the "Fact Sheet: US Interference in Hong Kong Affairs and Support for Anti-China, Destabilising Forces"[8] and the "Fact Sheet on the National Endowment for Democracy"[9] released earlier by the Ministry of Foreign Affairs are relevant instances. In recent years, some foreign

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[6] The Central Intelligence Agency of the US has indicated that it was setting up a "China Mission Centre" to "address the global challenge posed by China" as it so claimed while the Chief of the Secret Intelligence Service (also known as MI6) of the UK has publicly mentioned that MI6 would recruit clandestine agents from countries and organisations all over the world to deepen its understanding of China. In July 2022, the heads of MI5 of the UK and the Federal Bureau of Investigation of the US made a joint address, stating that the most "game-changing" challenge both countries faced came from the Communist Party of China, and that both countries needed to take actions to respond to such challenge.

[7] It is also clearly stated in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, unanimously passed by the General Assembly of the United Nations in 1970, that the elements of sovereign equality (especially national political independence) are inviolable.

[8] On 24 September 2021, the Ministry of Foreign Affairs released the "Fact Sheet: US Interference in Hong Kong Affairs and Support for Anti-China, Destabilising Forces", listing US acts of interference in Hong Kong affairs and support for anti-China, destabilising forces between early 2019 and August 2021.

[9] On 7 May 2022, the Ministry of Foreign Affairs released the "Fact Sheet on the National Endowment for Democracy", listing US acts such as the instigation of revolutions, subversion of target State power, interference in other countries' political procedures, undermining of target countries' stability and advancement of ideological infiltration around the world (including in Hong Kong) through such an organisation.

politicians even threatened to impose so-called "sanctions" on officials, judicial officers, prosecutors and law enforcement officers who deal with national security matters or cases in the HKSAR, in an attempt to blatantly and directly infringe upon the rule of law, judicial independence and officers concerned in the HKSAR, grossly interfered in the affairs of the HKSAR and China's internal affairs, and deter officers concerned from discharging their duties of safeguarding national security in accordance with the law.

(h) **Grooming of agents by external forces:** External forces have groomed agents through long-term infiltration in the HKSAR on all fronts. With significant influence and mobilisation capability, they have been, through their agents, instructing local organisations or individuals to engage in activities endangering national security, improperly influencing the implementation of policies by the HKSAR Government, or collecting intelligence or engaging in other activities endangering national security. Under guises such as so-called "fighting for rights" and "monitoring of human rights", some external forces have carried out such projects in the HKSAR for a long time and subsidised local organisations to launch various kinds of so-called resistance activities, offering support to the Hong Kong version of "colour revolution". While it is necessary for the HKSAR Government to take into account normal political activities and regular exchanges with overseas organisations, prevention of external forces from unlawfully interfering in the affairs of the State or that of the HKSAR through their agents is also essential.

(i) **Organisations endangering national security:** The existing Societies Ordinance is not applicable to the organisations listed in the Schedule of that Ordinance. If these organisations actually engage in activities endangering national security in the HKSAR (such as engaging in activities endangering national security under the banner of "humanitarian support" or "assistance funds"), or if they are established outside the HKSAR or have moved their operations outside the HKSAR, the Societies Ordinance will not be able to enforce effective regulation on them. This shortcoming in effect facilitates the internal and external cultivation of anti-China,

destabilising forces by these organisations, thereby endangering national security[10].

2.7 Although social order has been restored since the implementation of the HKNSL, some criminals still have not given up and are waiting for an opportunity to launch violent attacks or carry out terrorist activities. These activities have also tended to go underground and become increasingly clandestine, while some lawbreakers have absconded overseas, wantonly colluded with external forces and continued to engage in acts and activities endangering national security, or even conspired to form a so-called "Hong Kong Parliament", drafted a so-called "Hong Kong Constitution" and continued to advocate "Hong Kong independence" and subversion of the State power.

2.8 Having regard to the above circumstances, the HKNSL and other laws in force in the HKSAR are inadequate in fully addressing acts and activities endangering national security which may emerge as cited above. Therefore, we must enact effective laws timely and as soon as practicable for better prevention.

Strengthen enforcement forces for safeguarding national security and ensure impartial and timely handling of cases concerning offence endangering national security

2.9 When handling cases concerning offence endangering national security, law enforcement authorities of the HKSAR may take measures that law enforcement authorities are allowed to apply under the laws in force in the HKSAR in investigating serious crimes, and may also take the seven types of measures prescribed under Article 43 of the HKNSL. In this regard, the Chief Executive, in conjunction with the Committee for Safeguarding National Security of the Hong Kong Special Administrative Region ("the Committee"), has exercised the power given under Article 43 of the HKNSL to make the Implementation Rules for Article 43 of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong

[10] For details, see Chapter 7 of this Consultation Document.

Special Administrative Region ("Implementation Rules")[11]. The Implementation Rules include detailed provisions regarding the powers and procedures for carrying out the measures by relevant officers, as well as the relevant offences and penalties for the effective implementation of the measures, so as to improve the enforcement mechanisms for the HKSAR to safeguard national security and to effectively prevent, suppress and impose punishment for offences endangering national security.

2.10 With the implementation of the HKNSL and the Implementation Rules, law enforcement authorities have taken law enforcement actions against offences endangering national security, and carried out preventive investigations to prevent and suppress offences endangering national security taking into account the need for safeguarding national security. The courts have also conducted trials on a number of cases concerning offence endangering national security.

2.11 To enhance the effectiveness of law enforcement in safeguarding national security, it is necessary to review the practical experience to ensure that the law enforcement agencies have the necessary enforcement powers to take law enforcement actions against cases concerning offence endangering national security.

2.12 In addition, Article 41(1) of the HKNSL provides that the HKNSL and the laws of the HKSAR shall apply to procedural matters, including those related to criminal investigation, prosecution, trial, and execution of penalty, in respect of cases concerning offence endangering national security over which the HKSAR exercises jurisdiction. Article 42(1) of the HKNSL stipulates that when applying the laws in force in the HKSAR concerning matters such as the detention and time limit for trial, the law enforcement and judicial authorities of the HKSAR shall ensure that cases concerning offence endangering national security are handled in a fair and timely manner so as to effectively prevent, suppress and impose punishment for such offence. While procedural matters have already been provided for by the HKNSL and the local laws of the HKSAR, we should examine which provisions under the local legislation need improvement in order to meet the

[11] The Chief Executive, in conjunction with the Committee, has exercised the power given under Article 43 of the HKNSL to make the 2023 Implementation Rules for Amending the Implementation Rules for Article 43 of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region to amend Schedule 3 of the Implementation Rules.

relevant requirements of the HKNSL, in particular, to ensure that cases concerning offence endangering national security are handled in a fair and timely manner, and that the provisions under the local legislation are convergent with the relevant requirements of the HKNSL.

2.13 Apart from improving offences, enforcement powers and procedural matters, it is also important to provide adequate protection to personnel responsible for safeguarding national security, so as to ensure the HKSAR's capability for safeguarding national security. During the Hong Kong version of "colour revolution", some lawbreakers have unlawfully disclosed the personal information of public officers, judicial officers and law enforcement officers, as well as that of their family members, and have, among other things, intimidated, molested and threatened these officers. We must conduct a review in this regard to ensure that the safety of those responsible for handling cases concerning national security or other duties in safeguarding national security, as well as their family members, is duly protected, thereby buttressing and strengthening the enforcement forces for safeguarding national security.

Improving the regime for safeguarding national security

2.14 The National People's Congress adopted the Basic Law in 1990. Under Article 23 of the Basic Law, the HKSAR is authorised and required to enact laws on its own to prohibit acts endangering national security. As it is well known, the Basic Law is a constitutional instrument that provides for various matters of principle to be specifically implemented through local legislation. Article 23 of the Basic Law carries in-principle and general provisions for seven types of acts endangering national security, but this by no means implies that there are only seven types of acts endangering national security, or that the HKSAR may prevent, suppress and impose punishment for only these seven types of acts through legislation. The fundamental purpose of Article 23 of the Basic Law is to require the HKSAR to enact laws on its own to safeguard national sovereignty, security and development interests. Therefore, enactment of laws to safeguard national security by the HKSAR should move with the times, with a view to properly addressing the traditional and non-traditional national security risks that our country is facing or may face in the future.

2.15 On the other hand, subsequent to the futile attempt to enact local laws to implement Article 23 of the Basic Law in 2003, social chaos as well as acts and activities endangering national security have emerged over the years. Through the following measures, the Central Authorities have further affirmed the HKSAR's constitutional duty to safeguard national security and laid down the overall institutional arrangement for safeguarding national security in the HKSAR:

(a) the National People's Congress adopted the 5.28 Decision on 28 May 2020. The 5.28 Decision entrusts the NPCSC to formulate relevant laws on establishing and improving the legal system and enforcement mechanisms for the HKSAR to safeguard national security, to effectively prevent, suppress and impose punishment for acts and activities endangering national security;

(b) the HKNSL was then formulated by the NPCSC under the relevant mandate on 30 June 2020, and promulgated for implementation by the HKSAR on the same day; and

(c) the NPCSC adopted the interpretation of Article 14 and Article 47 of the HKNSL on 30 December 2022.

2.16 The 5.28 Decision and the HKNSL have made clear provisions for the HKSAR's constitutional duty and institutional set-up for safeguarding national security. They form the master plan for establishing a comprehensive regime for safeguarding national security in the HKSAR. Relevant organs of the Central Authorities and the HKSAR have implemented the requirements of the 5.28 Decision and the HKNSL by setting up the relevant institutions and discharging their duties in a timely manner. The law enforcement and prosecution authorities of the HKSAR Government and the Judiciary of the HKSAR have commenced investigation, prosecution and adjudication of cases concerning offence endangering national security. Nevertheless, it is still at the early stage of establishing the regime for safeguarding national security in the HKSAR. There are still matters which have yet to be institutionalised or specifically implemented.

2.17 On 30 December 2022, in response to questions raised by the media concerning the interpretation by the NPCSC of Article 14 and Article 47 of the HKNSL, a responsible official of the Legislative Affairs Commission of the NPCSC indicated that Article 7 of the HKNSL should be implemented

seriously and faithfully, i.e. the HKSAR should amend and improve the relevant local legislation in a timely manner, and resolve legal issues encountered in the implementation of the HKNSL by making full use of local legislation.

2.18 The four types of offences provided for under Chapter III of the HKNSL, namely the offences of secession, subversion, terrorist activities and collusion with a foreign country or with external elements to endanger national security, are directed at the most prominent acts and activities endangering national security in the Hong Kong version of "colour revolution" in 2019. Among these offences, the offences of secession and subversion have already specifically dealt with two types of acts endangering national security under Article 23 of the Basic Law. However, the four categories of offences under the HKNSL cannot fully cope with the national security risks faced by the HKSAR in recent years as mentioned above. Therefore, although it is not necessary for the HKSAR to enact separate local legislation on the offences of secession and subversion, the HKSAR has the constitutional duty to enact laws to prohibit those acts and activities endangering national security apart from the four types of offences provided for under the HKNSL.

Legislative principles and considerations

2.19 In taking forward legislation for safeguarding national security, it must be based on the following principles:

(a) To safeguard national sovereignty, security and development interests is the top priority of the principle of "one country, two systems";

(b) Human rights are to be respected and protected. The rights and freedoms, including the freedom of speech, of the press, of publication, the freedoms of association, of assembly, of procession and of demonstration, enjoyed under the Basic Law and the provisions of the International Covenant on Civil and Political Rights ("ICCPR") and the International Covenant on Economic, Social and Cultural Rights ("ICESCR") as applied to the HKSAR, should be protected in accordance with the law; and

(c) For acts and activities endangering national security, the principle of the rule of law should be adhered to in the active prevention and punishment in accordance with the law.

2.20 In the light of the statutory requirement to improve the regime for safeguarding national security, in enacting legislation for safeguarding national security, due consideration should be given to the full implementation of the constitutional duties and obligations of the HKSAR as stipulated under the 5.28 Decision and the HKNSL, so as to realise the principle of joint development of a legal system in the HKSAR for safeguarding national security under the 5.28 Decision, the HKNSL and Hong Kong's local legislation. In this connection, the following factors should be considered in formulating the current legislative proposals:

(a) Safeguarding national sovereignty, unity and territorial integrity; ensuring the full and faithful implementation of the principle of "one country, two systems" under which the people of Hong Kong administer Hong Kong with a high degree of autonomy;

(b) Implementing the requirements of the 5.28 Decision and the HKNSL, including improving the regime for safeguarding national security;

(c) Strengthening the enforcement forces for safeguarding national security, and stepping up law enforcement to safeguard national security, including providing protection for officers engaging in work for safeguarding national security;

(d) Preventing acts in the nature of treason or insurrection to protect the territory of our country from invasion and protect the public from violent attacks and coercions that endanger national security;

(e) Fully protecting public infrastructure from malicious damage or impairment;

(f) Safeguarding the lives, properties and other legitimate rights and interests of the HKSAR residents and other people in the HKSAR, with the continued maintenance of normal life and protection of the properties and investments within the HKSAR by law;

(g) Curbing the noxious phenomenon of inciting hatred against the fundamental system of the State, the Central Authorities and the executive authorities, legislature and judiciary of the HKSAR;

(h) Protecting the secrets relating to the State or the HKSAR from theft or unlawful disclosure;

(i) Curbing the acts of espionage including theft of state secrets, and other infiltration and sabotage activities, and collusion with external forces with intent to endanger national security;

(j) Preventing undue interference by the external forces with the affairs of the our country and the HKSAR, including using improper means to influence the Government's formulation or implementation of policies or measures, the performance of the duties of the Legislative Council and the courts, as well as interference with the elections in the HKSAR; and

(k) Effectively preventing and suppressing the operation in the HKSAR of organisations that engage in activities endangering national security.

2.21 Chapter III of the Basic Law sets out a number of rights and duties enjoyed by HKSAR residents and other persons in the HKSAR. Article 4 of the HKNSL also expressly provides that human rights shall be respected and protected in safeguarding national security in the HKSAR. The rights and freedoms, including the freedoms of speech, of the press, of publication, of association, of assembly, of procession and of demonstration, which the residents of the HKSAR enjoy under the Basic Law and the provisions of the ICCPR and the ICESCR as applied to Hong Kong, shall be protected in accordance with the law. Therefore, in safeguarding national security, citizens continue to enjoy the rights and freedoms guaranteed by the Basic Law in accordance with the law.

2.22 Nevertheless, according to the ICCPR and the ICESCR, the above rights and freedoms which are not absolute may be subject to restrictions as prescribed by law if it is necessary in the interests of national security, public safety, public order (*ordre public*) or the rights and freedoms of others, etc. Article 2 of the HKNSL also states that Article 1 (i.e. the HKSAR is an

inalienable part of China) and Article 12 (i.e. the HKSAR is a local administrative region which shall enjoy a high degree of autonomy and come directly under the Central People's Government) of the Basic Law on the legal status of the HKSAR are the fundamental provisions in the Basic Law, and that no institution, organisation or individual in the HKSAR shall contravene Articles 1 and 12 of the Basic Law in exercising their rights and freedoms. In fact, safeguarding national security is fundamentally consistent with the respect and protection of human rights: the efforts to effectively prevent, suppress and impose punishment for illegal acts endangering national security are, ultimately, for better protecting the fundamental rights and freedoms (including personal safety) of HKSAR residents and other persons in the HKSAR and ensuring the properties and investments in the HKSAR are protected by law.

2.23 Article 5 of the HKNSL clearly stipulates that the principle of the rule of law shall be adhered to in preventing, suppressing and imposing punishment for offences endangering national security, including the principles of conviction and punishment in accordance with the law, presumption of innocence, prohibition of double jeopardy, and protection of the right to defend oneself and other rights in judicial proceedings that a criminal suspect, defendant and other parties in judicial proceedings are entitled to under the law.

2.24 The HKSAR Government will give comprehensive and prudent consideration to the provisions of the Basic Law, including provisions relating to the protection of individual rights and freedoms, when preparing the local legislative proposals for safeguarding national security. Legislation for safeguarding national security only targets an extremely small minority of organisations and individuals endangering national security. That being said, the legislative proposals will also take into account the concerns of Hong Kong people, and the community of foreigners who live, carry on businesses or invest in Hong Kong, on the HKSAR Government's efforts to strengthen the safeguarding of national security, as well as the need to maintain Hong Kong's unique advantages and positions, and to facilitate legitimate international exchanges to continue smoothly in Hong Kong.

Methodology for studies on the enactment of legislation

2.25 Studies on the enactment of legislation involve the review of past research materials, the content of the HKNSL and other related legislation on safeguarding national security, the relevant implementation experience and court verdicts, relevant laws of our country and other countries and their implementation experience of such laws, and the actual circumstances in the HKSAR in recent years, with a view to drawing up effective and pragmatic proposals. As mentioned in paragraphs 2.2 to 2.4 above, major common law jurisdictions, including Western countries like the US, UK, Canada, Australia and New Zealand, as well as Singapore, have already enacted laws on safeguarding national security. These countries will also review the relevant situation from time to time and improve their laws on safeguarding national security on all fronts, so as to deal with the national security risks at present and possibly arising in the future.

2.26 Apart from effectively addressing past and present national security risks and threats, the legislative proposals should also be sufficiently forward-looking to address possible risks in the future. Besides, the legislative proposals must be practicable in terms of implementation and capable of safeguarding national security effectively.

2.27 As national security risks and threats are complex in nature and evolve over time, it is difficult to anticipate the national security risks that the HKSAR may face in the future. In order to address national security risks that may arise in the future whenever necessary in a timely manner, the HKSAR Government has to keep in view the situation and, depending on the need, propose enacting other legislation to address relevant risks endangering national security.

Legislative approach

2.28 Upon consideration, it is considered that we should **introduce a new Safeguarding National Security Ordinance** ("the proposed Ordinance") to comprehensively address the national security risks at present and may possibly arise in the future in the HKSAR, and to fully implement the constitutional duty and obligation as stipulated under the 5.28 Decision and the HKNSL. This can let the public have a clearer picture of the scope and contents of the legislation, and the HKSAR's local laws for safeguarding

national security can be better consolidated. The proposed Ordinance will include the offences newly added or improved under the current legislative proposals, new or improved enforcement powers, as well as supplementary provisions built upon the HKNSL for procedural matters in relation to cases concerning national security. A number of mechanisms and safeguards for safeguarding national security will be established, and certain existing legislation will be amended, so as to improve the HKSAR's regime for safeguarding national security as a whole. Considering that the HKNSL has already stipulated offences for providing for the two types of acts of secession and subversion, we recommend that the HKSAR does not need to legislate again on the crimes relating to secession and subversion.

2.29 The HKSAR Government's preliminary proposals for local legislation to safeguard national security are set out in Chapters 3 to 9, with the Summary of Recommendations at **Annex 1**. Relevant laws of foreign countries which this consultation document has cited or made reference to are at **Annex 2**.

Chapter 3: Treason and related acts

This Chapter examines the following "treason" and related offences under the existing Crimes Ordinance, the relevant laws in foreign countries, and the recommended directions for improving the relevant offences. The relevant offences include:

- the offence of "treason";
- the offence of "misprision of treason" under the common law;
- "Treasonable offences"; and
- the offence of "unlawful drilling".

Existing laws on treason and related acts

3.1 Under the existing laws, offences relating to treason are mainly set out in Parts I and II of the Crimes Ordinance (Cap. 200) and are provided under the common law, including[12]:

(a) the offence of "treason" [13]

[12] The relevant references under the existing Crimes Ordinance include references to "Her Majesty", "United Kingdom", "Governor" etc. which are not consistent with the current constitutional status of the HKSAR. Such references should be adapted and amended as necessary in accordance with the principles set out in the Decision of the Standing Committee of the National People's Congress on Treatment of the Laws Previously in Force in Hong Kong in Accordance with Article 160 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and section 2A of and Schedule 8 to the Interpretation and General Clauses Ordinance (Cap. 1). Pending the completion of the adaptations and amendments, the existing provisions shall be construed in accordance with the relevant principles under the aforesaid decision and the Interpretation and General Clauses Ordinance.

[13] The offence of "treason" under section 2 of the Crimes Ordinance (which carries a maximum penalty of life imprisonment) covers the following acts of "treason" –

(a) killing, wounding or causing bodily harm to Her Majesty, or imprisoning or restraining Her;
(b) forming an intention to do any such act as is mentioned in paragraph (1) and manifesting such intention by an overt act;
(c) levying war against Her Majesty, (i) with the intent to depose Her Majesty from the style, honour and royal name of the Crown of the United Kingdom or of any other of Her Majesty's dominions; or (ii) in order by force or constraint to compel Her Majesty to change Her measures or counsels, or in order to put any force or constraint upon, or to intimidate or overawe, Parliament or the legislature of any British territory;
(d) instigating any foreigner with force to invade the United Kingdom or any British territory;
(e) assisting by any means whatever any public enemy at war with Her Majesty; or
(f) conspiring with any other person to do anything mentioned in paragraph (1) or (3).

(b) **the offence of "misprision of treason" under the common law** [14]

(c) **"Treasonable offences"** [15]

(d) **the offence of "unlawful drilling"** [16]

Improving the existing laws

3.2 We recommend improving the existing offences relating to treason, as well as incorporating these offences into the proposed Ordinance.

(A) Offence of "treason"

3.3 At present, the offence of "treason" (「叛逆」罪) under section 2 of the Crimes Ordinance, which regards "killing or wounding Her Majesty" etc. as an act of treason, is outdated and requires legislative amendment. On the other hand, under the common law, the meaning of "levying war" in the context of the offence of "treason" is not limited to "war" in the strict sense, but includes referring to a violence or riot initiated by a considerable number of persons for some general public purpose. Therefore, the offence of "treason" in fact covers acts that do not necessarily amount to war but involve the use of force or threat to use of force with the intention of

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[14] This offence is committed when a person knows that another person has committed the offence of "treason" but fails to disclose this to the proper authority within a reasonable time. It is now a common law offence with no statutory penalty. Section 101I(1) of the Criminal Procedure Ordinance (Cap. 221) provides that where a person is convicted of an offence which is an indictable offence and for which no penalty is provided by any Ordinance other than section 101I(1), he shall be liable to imprisonment for 7 years and a fine.

[15] The "treasonable offences" under section 3 of the Crimes Ordinance (which carries a maximum penalty of life imprisonment) applies to any person who forms an intention to effect the following purposes and manifests such intention by an overt act or by publishing any printing or writing –

(a) to depose Her Majesty from the style, honour and royal name of the Crown of the United Kingdom or of any other of Her Majesty's dominions;
(b) to levy war against Her Majesty within the United Kingdom or any British territory in order by force or constraint to compel Her Majesty to change Her measures or counsels, or in order to put any force or constraint upon, or to intimidate or overawe, Parliament or the legislature of any British territory; or
(c) to instigate any foreigner with force to invade the United Kingdom or any British territory.

[16] The offence of "unlawful drilling" under section 18 of the Crimes Ordinance provides that any person who without the permission of the Governor or the Commissioner of Police, trains or drills any other person in the use of arms or the practice of military exercises or evolutions; or is present at any meeting of persons, held without the permission of the Governor or the Commissioner of Police for the purpose of the above training, drilling or the practice of military exercises or evolutions, shall be guilty of an offence (which carries a maximum penalty of seven years' imprisonment), and any person who at any aforementioned meeting is trained or drilled in the use of arms or the practice of military exercises or evolutions; or is present at any such meeting for the purpose of being so trained or drilled, shall be guilty of an offence (which carries a maximum penalty of two years' imprisonment).

endangering national sovereignty, unity or territorial integrity. On the basis of the existing offence of "treason" (「叛逆」罪), we recommend renaming the offence from「叛逆」罪 to「叛國」罪 (with the English name remaining the same), targeting the following acts:

(a) joining an external armed force that is at war with China;

(b) with intent to prejudice the situation of China in a war, assisting an enemy at war with China in a war;

(c) levying war against China;

(d) instigating a foreign country to invade China with force; or;

(e) with intent to endanger the sovereignty, unity or territorial integrity of China, using force or threatening to use force.

3.4 It is a universally accepted principle that a country should protect its citizens and ensure that they live in a stable, peaceful and orderly society; and therefore, its citizens owe a duty of allegiance to their country and are obliged not to engage in acts that threaten national security. Therefore, we recommend that the scope of application of the offence of "treason" shall cover: (i) Chinese citizens who have committed the offence of "treason" within the HKSAR; and (ii) HKSAR residents (including permanent and non-permanent residents) who are Chinese citizens and have committed the offence of "treason" outside the HKSAR.

(B) Offence of "misprision of treason" under the common law

3.5 Under the common law, the offence of "misprision of treason" is committed when a person knows that another person has committed the offence of "treason" but fails to disclose this to the proper authority within a reasonable time. "Misprision of treason" may endanger national security. In addition, law enforcement agencies may not be able to detect and suppress relevant acts of treason at once, as lawbreakers endangering national security may plan and promote acts of treason through covert means, the Internet or other electronic media. Article 6(1) of the HKNSL stipulates that it is the common responsibility of all the people of China, including the people of Hong Kong, to safeguard the sovereignty, unity and territorial integrity of the People's Republic of China. Requiring Chinese citizens to reveal acts of treason which they know of is consistent with the HKNSL and the common law principles. We recommend that the offence of "misprision of treason" should be codified to facilitate a clearer understanding of the

elements of the offence. The offence of "misprision of treason" is also found in the legislation of other countries, such as:

(a) Section 2382 of Chapter 115 of Title 18 of the United States Code;

(b) Section 80.1(2)(b) of the Criminal Code of Australia;

(c) Section 76(b) of the Crimes Act 1961 of New Zealand;

(d) Section 50(1)(b) of the Criminal Code of Canada; and

(e) Section 121D of the Penal Code 1871 of Singapore.

As regards penalties, the maximum penalties for similar offences in Australia, Canada, Singapore, New Zealand and the US are life imprisonment, 14 years' imprisonment, 10 years' imprisonment and 7 years' imprisonment respectively (the penalties in New Zealand and the US are the same).

3.6 We recommend that the offence of **"misprision of treason"** be codified, covering the following circumstances:

> ***If a person knows that another person has committed, is committing or is about to commit the offence of "treason", the person must disclose the commission of offence to a police officer as soon as reasonably practicable, unless the commission of offence has been in the public domain, otherwise the person commits an offence.***

3.7 If the offence of "misprision of treason" is codified, we recommend including an exception to exclude plans or acts which are already well-known to the public (for example, a member of the public does not need to report to the Police a person's plan to commit the offence of "treason" if such plan has already been widely reported in the media; however, a member of the public knowing of the circumstances concerning the commission of the offence still has the responsibility of reporting them to the Police if the circumstances are not well-known to the public). In the event that the particulars relating to the commission of the offence are protected by legal professional privilege, non-disclosure on the part of the lawyer concerned does not constitute an offence. As for the scope of application of the offence, based on the close relationship between the offence of "treason"

and the offence of "misprision of treason", we recommend that the offence should only apply to Chinese citizens.

(C) "Treasonable offences"

3.8 Section 3 of the existing Crimes Ordinance sets out the "treasonable offences". If any person intended to commit treason and publicly manifested such an intention, even if the person has not committed the act of treason, it is a must to effectively prevent others from following such acts, which may pose serious risks to national security. The concept of "treasonable offences" is not unfamiliar in common law jurisdictions. For example, Canada has similar offences (with a maximum penalty of life imprisonment)[17].

3.9 We recommend that this offence should continue to be retained and be amended in accordance with the provisions of the above-mentioned offence of "treason", targeting the following acts:

> ***If a person intends to commit the offence of "treason", and publicly manifests such intention.***

As for the scope of application of the offence, based on the close relationship between the offence of "treason" and the "treasonable offences", we recommend that the offences should only apply to Chinese citizens.

(D) Offence of "unlawful drilling"

3.10 The offence of "unlawful drilling" under section 18 of the existing Crimes Ordinance prohibits the following acts:

(a) provision of drilling (including the use of arms or the practice of military exercises or evolutions) without permission;

(b) presence at a meeting, held without permission, for the purpose of providing drilling;

(c) acceptance of drilling at the aforementioned meeting; or

(d) presence at any such meeting for the purpose of being so drilled.

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[17] Section 46(2)(d)-(e) of the Criminal Code of Canada. Section 3 of the Treason Felony Act 1848 of the UK also contains a similar offence, with a maximum penalty of life imprisonment.

3.11 In Australia, the legislation stipulates an offence in relation to military-style training involving foreign government principal or foreign political organisation[18]. In this regard, we recommend that the offence of "unlawful drilling" should be improved to specifically target persons who endanger national security by receiving or participating in training in the use of arms or the practice of military exercises or evolutions involving external forces, or providing the same in collaboration with external forces. The offence will target the following acts:

> ***Without the permission of the Secretary for Security or the Commissioner of Police -***
>
> ***(a) providing specified drilling (including training or drilling in the use of arms, practice of military exercises, or practice of evolutions) to any other person;***
>
> ***(b) receiving specified drilling;***
>
> ***(c) receiving or participating in specified drilling planned or otherwise led by external forces; or***
>
> ***(d) providing specified drilling in collaboration with external forces.***

3.12 If the relevant offence is to be introduced, in order not to affect drills for legitimate purposes, we recommend that exceptions should be stipulated, including exceptions for the need to perform functions and duties by persons in their capacity as public officers; non-Chinese citizens with foreign nationality to serve in an armed force of or perform military service in a government of that foreign country; or participate in drills in which the People's Republic of China is participating or which are conducted under the law of the HKSAR.

Concluding remarks

3.13 The acts of treason and unlawful drilling covered in this Chapter generally involve the use or threat of serious violence targeting national sovereignty, unity or territorial integrity, or involve related preparatory acts. Such acts are capable of posing a very serious threat to national security and must be prohibited. If the above offences are to be introduced, we will give due consideration to the importance of protecting individual rights and

[18] Section 83.3 of the Criminal Code of Australia.

freedoms, and to clearly define the elements of the offences to ensure that they precisely target acts endangering national security (including the provision of exceptions for certain offences, such as the offence of "misprision of treason" and the offence of "unlawful drilling").

Chapter 4: Insurrection, incitement to mutiny and disaffection, and acts with seditious intention

This Chapter examines the offence of "incitement to mutiny", the offence of "incitement to disaffection" and the offences relating to "seditious intention" under the existing Crimes Ordinance, the relevant laws in foreign countries, and the recommended directions for improving these relevant offences, mainly including:

- To improve the above-mentioned offences and incorporate them into the proposed Ordinance, with a view to further consolidating the laws on safeguarding national security;
- To amend the scope of the targeted person under the offence of "incitement to disaffection" and to improve the definition of "seditious intention" in the light of the current situation in the HKSAR;
- To introduce a new offence of "insurrection" to deal with acts of serious civil disturbance within China.

Existing laws on insurrection, incitement to mutiny and disaffection, and acts with seditious intention

4.1 Under Article 23 of the Basic Law, "sedition" ("煽動叛亂") is one of the acts required to be prohibited by the enactment of laws . Articles 21 and 23 of the HKNSL respectively prohibit a person from inciting, assisting in, abetting or providing pecuniary or other financial assistance or propertyfor the commission by other persons of the offences under Article 20 (i.e. secession) and Article 22 (i.e. subversion), while Article 27 prohibits the advocacy of terrorism and incitement of the commission of a terrorist activity. Besides, Part II of the existing Crimes Ordinance, titled "Other Offences Against the Crown", also covers some of the offences relating to an act of "sedition" under Article 23 of the Basic Law which include, among others:

(a) **the offence of "incitement to mutiny"[19]**

[19] The offence of "incitement to mutiny" under section 6 of the Crimes Ordinance (which carries a maximum penalty of life imprisonment) refers to knowingly attempting to seduce any member of the Chinese People's Liberation Army from his duty and allegiance to the People's Republic of China, or knowingly attempting to incite any member of the Chinese People's Liberation Army to commit an act of mutiny or any traitorous or mutinous act, or to make or endeavour to make a mutinous assembly.

(b) **the offence of "incitement to disaffection"[20]**

(c) **offences[21] relating to "seditious intention[22]"**

4.2 There is no offence known as "insurrection" ("叛亂") under existing laws. The large-scale violence that occurred during the "black-clad violence" in 2019 did endanger the public safety of the HKSAR as a whole and posed threats to national security, but dealing with them by the offence of "riot"[23]

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[20] The offence of "incitement to disaffection" under section 7(1) of the Crimes Ordinance (which carries a maximum penalty of two years' imprisonment) refers to any person who knowingly attempts to seduce any member of the Government Flying Service, any police officer or any member of the Auxiliary Police Force from his duty or allegiance to Her Majesty. The provisions concerned include references to "Her Majesty" etc. which are not consistent with the current constitutional status of the HKSAR. Such references should be adapted and amended as necessary in accordance with the principles set out in the Decision of the Standing Committee of the National People's Congress on Treatment of the Laws Previously in Force in Hong Kong in Accordance with Article 160 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and in section 2A of and Schedule 8 to the Interpretation and General Clauses Ordinance (Cap. 1). Pending the completion of the adaptations and amendments, the existing provisions shall be construed in accordance with the relevant principles under the aforesaid decision and the Interpretation and General Clauses Ordinance.

[21] Section 10 of the Crimes Ordinance provides for offences relating to "seditious intention", including:

(a) doing or attempting to do, or making any preparation to do, or conspiring with any person to do, any act with a seditious intention;
(b) uttering words having a seditious intention;
(c) printing, publishing, selling, offering for sale, distributing, displaying or reproducing any publication having a seditious intention ("seditious publication");
(d) importing any seditious publication; and
(e) without lawful excuse having possession of any seditious publication.

The offences referred to in paragraphs (a) to (d) carry a maximum penalty of imprisonment for two years (on first conviction) or three years (on subsequent conviction); and the offence referred to in paragraph (e) carries a maximum penalty of imprisonment for one year (on first conviction) or two years (on subsequent conviction).

[22] "Seditious intention" under section 9(1) of the Crimes Ordinance means an intention:

(a) to bring into hatred or contempt or to excite disaffection against the person of Her Majesty, or Her Heirs or Successors, or against the Government of Hong Kong, or the government of any other part of Her Majesty's dominions or of any territory under Her Majesty's protection as by law established;
(b) to excite Her Majesty's subjects or inhabitants of Hong Kong to attempt to procure the alteration, otherwise than by lawful means, of any other matter in Hong Kong as by law established;
(c) to bring into hatred or contempt or to excite disaffection against the administration of justice in Hong Kong;
(d) to raise discontent or disaffection amongst Her Majesty's subjects or inhabitants of Hong Kong;
(e) to promote feelings of ill-will and enmity between different classes of the population of Hong Kong;
(f) to incite persons to violence; or
(g) to counsel disobedience to law or to any lawful order.

Besides, section 9(2) of the Crimes Ordinance also stipulates that an act, speech or publication is not seditious by reason only that it intends:

(a) to show that Her Majesty has been misled or mistaken in any of Her measures;
(b) to point out errors or defects in the government or constitution of Hong Kong as by law established or in legislation or in the administration of justice with a view to the remedying of such errors or defects;
(c) to persuade Her Majesty's subjects or inhabitants of Hong Kong to attempt to procure by lawful means the alteration of any matter in Hong Kong as by law established; or
(d) to point out, with a view to their removal, any matters which are producing or have a tendency to produce feelings of ill-will and enmity between different classes of the population of Hong Kong.

[23] Section 19 of the Public Order Ordinance – Riot

under the Public Order Ordinance (Cap. 245) fails to adequately reflect, both in terms of criminality or the level of penalty, the nature of such violence in endangering national security.

Improving the existing laws

4.3 We recommend incorporating the offences relating to "incitement to mutiny", "incitement to disaffection" and "seditious intention" under existing Part II of the Crimes Ordinance into the proposed Ordinance, and improving the offences.

(A) Offence of "incitement to mutiny"

4.4 As the existing Crimes Ordinance has already stipulated the offence of "incitement to mutiny" which targets acts of inciting members of the Chinese People's Liberation Army, we recommend that the relevant provisions should be improved by covering members of the armed forces of the People's Republic of China[24], and to clearly define "mutiny", targeting the following acts:

> ***Knowingly inciting a member of a Chinese armed force –***
>
> ***(a) to abandon the duties and to abandon the allegiance to China; or***
>
> ***(b) to participate in a mutiny.***

(B) Offence of "incitement to disaffection"

4.5 The existing Crimes Ordinance has already stipulated the offence of "incitement to disaffection" which targets acts of inciting police officers,

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(1) When any person taking part in an assembly which is an unlawful assembly by virtue of section 18(1) commits a breach of the peace, the assembly is a riot and the persons assembled are riotously assembled.

(2) Any person who takes part in a riot shall be guilty of the offence of riot and shall be liable—
(a) on conviction on indictment, to imprisonment for 10 years; and
(b) on summary conviction, to a fine at level 2 and to imprisonment for 5 years.

[24] According to Article 93 of the Constitution, "the Central Military Commission of the People's Republic of China shall lead the country's armed forces." According to Article 22 of the Law of the People's Republic of China on National Defence, "the armed forces of the People's Republic of China are composed of the Chinese People's Liberation Army, the Chinese People's Armed Police Force, and the Militia."

members of the Government Flying Service and members of the Auxiliary Police Force from their duties or allegiance. However, it does not cover public officers who are responsible for the formulation and implementation of policies, the maintenance of public order, the management of public finance, the upholding of due administration of justice, and those public officers with statutory powers of investigation against government departments, etc., as well as members of the offices of the CPG in the HKSAR [25], except for the Hong Kong Garrison. There is a close relationship between these personnel and the performance of duties and functions in accordance with the law by the body of power of the HKSAR. If they are incited to disaffection, this will likely lead to circumstances endangering national security. We recommend, on the basis of the existing offence of "incitement to disaffection", targeting the following acts:

Knowingly –

(a) inciting a public officer to abandon upholding the Basic Law or allegiance to the HKSAR; or

(b) inciting a member of the offices of the CPG in the HKSAR (other than the Hong Kong Garrison) to abandon the duties or allegiance to the People's Republic of China.

4.6 In addition, the offence of "incitement to disaffection" under the existing Crimes Ordinance includes an offence of **assisting such persons to desert or absent himself or herself without leave**. Given the special nature of members of the armed forces of the People's Republic of China (in particular, they are responsible for defence work and have the easiest access to firearms and military intelligence), the relevant personnel would pose the greatest national security risks by their abandonment of duties or absence without leave. We recommend that a specific offence should be introduced, targeting the following acts:

(a) knowing that a member of a Chinese armed force is about to abandon the duties or absent himself without leave, assisting the member in so doing; or

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[25] Including the Liaison Office of the Central People's Government in the HKSAR, the Office for Safeguarding National Security of the Central People's Government in the HKSAR, and the Office of the Commissioner of the Ministry of Foreign Affairs of the People's Republic of China in the HKSAR.

(b) knowing that a member of a Chinese armed force has abandoned the duties or has absented himself without leave, concealing the member, or assisting the member in concealing himself or escaping from lawful custody.

4.7 The existing provisions of the offence of "incitement to disaffection" also cover an offence of possession of a document of an inciting nature with intent to commit the aforementioned offence. We recommend improving the offence concerned, targeting the following acts:

> ***A person with intent to commit the offence of "incitement to mutiny" or the offence of "incitement to disaffection" possessing a document or article of the following nature:***
>
> ***a document or article, if distributed to a relevant officer (namely a member of a Chinese armed force, a public officer or a member of a CPG office in Hong Kong), would constitute the offence of "incitement to mutiny" or the offence of "incitement to disaffection".***

(C) Offences relating to "seditious intention"

4.8 To improve the definition of "seditious intention" and the offences relating to it, the main recommendations include the following:

(a) According to the Constitution, the socialist system led by the Communist Party of China is the fundamental system of the People's Republic of China. The Constitution has also provided for the state institutions. The Constitution expressly prohibits any organisation or individual from damaging the socialist system. Article 22 of the HKNSL also prohibits subversion of the State power, which includes acts of organising, planning, committing or participating in acts by force or threat of force or other unlawful means to overthrow or undermine the basic system of the People's Republic of China established by the Constitution, as well as to overthrow the body of central power of the People's Republic of China, with a view to subverting the State power. Article 23 on the other hand prohibits acts of inciting or abetting subversion of the State power, among other things. In the light of past experiences, we also recommend that the

incitement of hatred against the fundamental system of the State, such state organs as provided for in the Constitution, the offices of the CPG in the HKSAR[26], and the constitutional order of the HKSAR, be incorporated into the offences relating to "seditious intention". "Seditious intention" can cover the following intentions:

(i) the intention to bring a Chinese citizen, Hong Kong permanent resident or a person in the HKSAR into hatred or contempt against, or to induce his disaffection against, the following system or institution - the fundamental system of the State established by the Constitution; a State institution under the Constitution; or a CPG office in Hong Kong;

(ii) the intention to bring a Chinese citizen, Hong Kong permanent resident or a person in the HKSAR into hatred or contempt against, or to induce his disaffection against, the constitutional order, executive, legislative or judicial authority of the HKSAR;

(iii) the intention to incite any person to attempt to procure the alteration, otherwise than by lawful means, of any matter established in accordance with the law in the HKSAR;

(iv) the intention to induce hatred or enmity amongst residents of the HKSAR or amongst residents of different regions of China;

(v) the intention to incite any other person to do a violent act in the HKSAR;

(vi) the intention to incite any other person to do an act that does not comply with the law of the HKSAR or that does not obey an order issued under the law of the HKSAR.

At the same time, making reference to section 9(2) of the Crimes Ordinance, stipulating that ***an act, word or publication does not***

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[26] Namely the Liaison Office of the Central People's Government in the HKSAR, the Office for Safeguarding National Security of the Central People's Government in the HKSAR, the Office of the Commissioner of the Ministry of Foreign Affairs of the People's Republic of China in the HKSAR, and the Hong Kong Garrison of the Chinese People's Liberation Army.

have seditious intention by reason only that it has any of the following intention –

(i) the intention to give an opinion on the abovementioned system or constitutional order, with a view to improving the system or constitutional order;

(ii) the intention to point out an issue on a matter in respect of the abovementioned institution or authority with a view to giving an opinion on the improvement of the matter;

(iii) the intention to persuade any person to attempt to procure the alteration, by lawful means, of any matter established in accordance with the law in the HKSAR;

(iv) the intention to point out that hatred or enmity amongst residents of the HKSAR or amongst residents of different regions of China is produced or that there is a tendency for such hatred or enmity to be produced, with a view to removing the hatred or enmity.

(b) Having taken into account the seriousness of offences endangering national security, as well as the harm and damage done to the HKSAR caused by the relevant acts in the past few years, we recommend raising the penalties for the offence of "seditious intention" and the related offence of "possession of seditious publication" (the existing penalty for the former is imprisonment for two years on the first conviction or three years on a subsequent conviction, and that for the latter is imprisonment for one year on the first conviction or two years on a subsequent conviction).

(c) Past experience demonstrates that any acts of inciting hatred against the Central Authorities or the HKSAR Government do not necessarily at the same time incite others to use violence or incite others to disrupt public order. Nevertheless, the cumulative effect of leaving such acts of incitement unchecked is that any large-scale riots once commenced will spiral out of control. We must clarify and improve the elements of the relevant offences based on past practical experience.

Recommending introducing new offence : offence of "insurrection"

4.9 On the whole, concepts such as "instigating any foreign country to invade the People's Republic of China or any of its territory with force" and "an enemy at war with the People's Republic of China" in the context of the proposed offence of "treason" only relate to acts of treason that involve armed conflicts between the State and "foreign enemies". There are doubts as to whether, constitutionally or legally, it is appropriate to apply these concepts to deal with a serious civil disturbance or even an armed conflict within China[27]. Besides, the abovementioned acts are more serious, in terms of nature and degree, than general acts of "riots". Therefore, we recommend introducing an offence of "insurrection", targeting the following acts:

> ***(a) joining or being a part of an armed force that is in an armed conflict with the armed forces of the People's Republic of China[28];***
>
> ***(b) with intent to prejudice the situation of the armed forces of the People's Republic of China in an armed conflict, assisting an armed force that is in an armed conflict with the armed forces of the People's Republic of China;***
>
> ***(c) with intent to endanger the sovereignty, unity or territorial integrity of the People's Republic of China or the public safety of the HKSAR as a whole (or being reckless as to whether the above would be endangered), doing a violent act in the HKSAR.***

4.10 In fact, many countries have enacted laws that deal with similar issues in varying details. For instance:

(a) in the US, the offence of "rebellion or insurrection" was introduced to target acts of civil disturbance. According to section 2383 (rebellion or insurrection) in Chapter 115, Title 18 of the United States Code,

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[27] Including the mainland of China, the HKSAR, the Macao Special Administrative Region and the Taiwan region.

[28] According to Article 93 of the Constitution, "[t]he Central Military Commission of the People's Republic of China shall lead the country's armed forces." According to Article 22 of the Law of the People's Republic of China on National Defence, "the armed forces of the People's Republic of China are composed of the Chinese People's Liberation Army, the Chinese People's Armed Police Force and the Militia."

whoever incites, sets on foot, assists, or engages in any rebellion or insurrection against the authority of the US or the laws thereof, or gives aid or comfort thereto, is liable to be imprisoned for not more than ten years; and shall be incapable of holding any office under the US;

(b) similar offences in Australia (section 80.1AC (Treachery) of the Criminal Code), Canada (section 46(2)(a) (Treason) of the Criminal Code) and Singapore (section 121B (Offences against authority) of the Penal Code 1871) carry a maximum penalty of life imprisonment.

Concluding remarks

4.11 What had happened in the past few years proved that acts of sedition, particularly those acts, speeches, words or publications which incited hatred against the body of power and inciting the public to disobey the law, could seriously endanger national security. Although such speeches and acts with a seditious intention would not always directly incite the use of violence or incite others to disrupt public order, they unceasingly influenced the public and provoked their hatred towards the Central Authorities and the body of power of the HKSAR, resulting in the weakening of the public's concept of the rule of law and their law-abiding awareness, and ultimately causing large-scale riots which led to a long period of unrest and instability in society. Effective laws in safeguarding national security must be those that are able to nip the problems in the bud. In order to effectively prevent and suppress acts and activities that endanger national security, it is necessary for us to retain and improve as appropriate the existing offences relating to "seditious intention".

4.12 It is worth noting that the current section 9(2) of the Crimes Ordinance (see footnote 22) lists out circumstances that do not constitute seditious intention. We recommend that the provision be retained in the proposed Ordinance after suitable amendments (see paragraph 4.8 above). Therefore, the current and improved offences relating to "seditious intention" will not affect legitimate expression of opinions (such as making reasonable and genuine criticism of government policies based on objective facts, or pointing out issues, offering views for improvement, etc.). An appropriate balance between safeguarding national security and protecting individual rights and freedoms has been struck under the current and improved offences

relating to “seditious intention”, which complies with the standards stipulated under the ICCPR and ICESCR.

Chapter 5: Theft of state secrets and espionage

This Chapter examines the provisions of the existing Official Secrets Ordinance on the offences relating to "protection of state secrets" and "espionage", the relevant laws in foreign countries, and we recommend directions for improving the relevant offences, including mainly:

(a) Regarding the "protection of state secrets", recommendations include:

- to define "state secrets";
- to introduce offences pertaining to the protection of state secrets (including "unlawful acquisition of state secrets", "unlawful possession of state secrets" and "unlawful disclosure of state secrets");
- to consolidate the offences relating to "state secrets" involving public officers and government contractors under the existing Official Secrets Ordinance, and to improve the scope of coverage by defining "public officer";
- to prohibit public officers from doing the following acts with intent to endanger national security:
  - unlawful disclosure of information etc. which appears to be confidential; and
  - unlawful possession of state secrets when leaving the HKSAR.

(b) Theft or unlawful disclosure of state secrets is usually closely related to acts of espionage. In respect of "espionage", we recommend improving the existing provisions on "spying" under the Official Secrets Ordinance and introduce a new offence:

- to update the provisions on the offence of "spying" and the interpretation of the related terms ("prohibited place" and "enemy");
- in addition to the acts of espionage currently covered, to further prohibit collusion with external forces to carry out specified acts endangering national security for a purpose prejudicial to national security, so that the offence can cover acts of espionage that are now commonplace; and
- to cover modern-day modes of espionage activities by way of participating in, supporting or receiving advantages from external intelligence organisations.

Existing laws relating to protection of state secrets and counter-espionage

5.1 The offence of "collusion with a foreign country or with external elements to endanger national security" as provided under **Article 29 of the HKNSL** covers, among other things, the prohibition of stealing, spying, obtaining

with payment, or unlawfully providing state secrets or intelligence concerning national security for a foreign country or an institution, organisation or individual outside the mainland, Hong Kong, and Macao of the People's Republic of China.

5.2 The offences under the **Official Secrets Ordinance** are divided into two broad categories, namely offences relating to "espionage" and those relating to "unlawful disclosure of protected information"[29]:

(1) **Offences relating to "espionage"** and related definitions[30] are mainly set out in Part II of the Official Secrets Ordinance, including:

(a) **the offence of "spying"[31]**

(b) **the offence of "harbouring spies"[32]**

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[29] The provisions concerned include references to "United Kingdom" etc. which are not consistent with the current constitutional status of the HKSAR. Such references should be adapted and amended as necessary in accordance with the principles set out in the Decision of the Standing Committee of the National People's Congress on Treatment of the Laws Previously in Force in Hong Kong in Accordance with Article 160 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and section 2A of and Schedule 8 to the Interpretation and General Clauses Ordinance (Cap. 1). Pending the completion of the adaptations and amendments, the existing provisions shall be construed in accordance with the relevant principles under the aforesaid Decision and the Interpretation and General Clauses Ordinance.

[30] The definition of "prohibited place" under section 2(1) of the Official Secrets Ordinance mainly includes any work of defence, arsenal, naval or air force establishment; station, factory, dockyard, mine, minefield, camp, vessel or aircraft belonging to or occupied by or on behalf of Her Majesty; any telegraph, telephone, wireless or signal station or office so belonging or occupied; and any place belonging to or occupied by or on behalf of Her Majesty and used for the purpose of building, repairing, making or storing any munitions, vessel, aircraft, arms or materials or instruments for use in time of war, etc. The term "enemy" is not defined under the Official Secrets Ordinance.

[31] The offence of "spying" (which carries a maximum penalty of 14 years' imprisonment) under section 3 of the Official Secrets Ordinance covers, among other things, the prohibition of, for a purpose prejudicial to the safety or interests of the UK or Hong Kong, approaching, inspecting, passing over or entering, or being in the neighbourhood of, a prohibited place; making a sketch, plan, model or note that is useful to an enemy; as well as obtaining, collecting, recording or publishing any secret official code word or password, or any sketch, plan, model or note etc., that is useful to an enemy. Section 4 of the Official Secrets Ordinance also stipulates the offence of "harbouring spies". Apart from these two offences, other offences relating to espionage under the Official Secrets Ordinance include: committing acts such as making of any false statement, forging of official documents or unauthorised use of uniforms for the purpose of gaining admission or assisting to gain admission to a prohibited place, or for any other purpose prejudicial to the safety or interests of the UK or Hong Kong (section 5); and acts such as unauthorised use of official documents (section 6).

[32] Section 4 of the Official Secrets Ordinance covers, among other things, the prohibition of knowingly harbouring a person who has committed or is about to commit the offence of "spying" (the maximum penalty for conviction on indictment is imprisonment for two years, and for summary conviction a fine at level four and imprisonment for three months).

(c) **the offence of "unlawful disclosure of information resulting from spying"[33]**

(2) **Offences relating to "unlawful disclosure of protected information"** are set out in Part III of the Official Secrets Ordinance, which primarily concerns the prohibition of unlawful disclosure of information relating to security or intelligence, defence information and information related to international relations etc. under various circumstances, including, among others:

(a) **unlawful disclosure of "security and intelligence information"[34]**

(b) **unlawful disclosure of "defence information" and "information related to international relations"[35]**

(c) **unlawful disclosure of "information related to commission of offences and criminal investigations"[36]**

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[33] Section 19 of the Official Secrets Ordinance stipulates that a person commits an offence if, without lawful authority, he discloses any information, document or other article that he knows, or has reasonable cause to believe, to have come into his possession as a result of a contravention of the offence of "spying" (the maximum penalty for conviction on indictment is a fine of $500,000 and imprisonment for two years, and for summary conviction a fine at level five and imprisonment for six months).

[34] Section 13 of the Official Secrets Ordinance prohibits any member of the security and intelligence services, or any person notified that he is subject to that provision, from disclosing, without lawful authority, any information, document, etc. relating to security or intelligence that is or has been in his possession by virtue of his position as such. Section 14 of the Official Secrets Ordinance prohibits any public servant or government contractor from making, without lawful authority, a damaging disclosure of any information, document, etc. relating to security or intelligence that is or has been in his possession by virtue of his position as such.

[35] Sections 15 and 16 of the Official Secrets Ordinance respectively prohibit any public servant or government contractor from making, without lawful authority, a damaging disclosure of any information, document, etc. relating to defence or international relations that is or has been in his possession by virtue of his position as such.

[36] Section 17 of the Official Secrets Ordinance prohibits any public servant or government contractor from disclosing, without lawful authority, any information, document, etc. that is or has been in his possession by virtue of his position as such, and such disclosure will actually or would be likely to result in the commission of an offence, facilitate an escape from legal custody, impede the prevention or detection of offences, or impede the apprehension or prosecution of suspected offenders.

(d) **unlawful disclosure of "information resulting from unauthorized disclosures or information entrusted in confidence"**[37]

(e) **unlawful disclosure of "information entrusted in confidence to territories, states or international organizations"**[38]

Improving the existing laws

(A) Offences relating to "protection of state secrets"

(A)(I) Definition of "state secrets"

5.3 The HKSAR has the duty to protect state secrets from theft or unlawful disclosure. However, the term "state secrets" is not used in the existing Official Secrets Ordinance, and only a few specified types of confidential information are protected by the Official Secrets Ordinance, e.g. "defence information" and "information related to international relations" etc., which is not broad enough to cover information which amounts to state secrets. Hence, it is necessary to improve the relevant provisions to effectively protect state secrets.

5.4 In fact, it is impossible that only defence information, information related to international relations, or information concerning other traditional security fields amount to state secrets. In the light of the common practice of various countries, sensitive information concerning other important fields of national security, or even information not concerning any specific fields, may also be regarded as "state secrets" as long as improper disclosure of

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[37] Section 18 of the Official Secrets Ordinance provides that any person who comes into possession of any information, document, etc. protected by sections 13 to 17 of the Ordinance as a result of it having been unlawfully disclosed or entrusted in confidence to him by a public servant or government contractor commits an offence if he knows or has reasonable cause to believe that such information is protected against disclosure by any of sections 13 to 17 of the Ordinance, and where the disclosure in the case of information protected by sections 13 to 16 where the disclosure is damaging, but still discloses such information without lawful authority.

[38] Section 20 of the Official Secrets Ordinance prohibits a person from making, without lawful authority, a damaging disclosure of information, document, etc. relating to security or intelligence, defence or international relations, which has been communicated in confidence by the Government of the UK or Hong Kong to a territory or state or an international organisation, and has come into a person's possession as a result of it having been disclosed without the authority of that territory, State or organisation.

such information is likely to prejudice national security or interests. For example:

(a) In the offence of "obtaining or disclosing protected information" under section 1 of the National Security Act 2023 of the UK, "protected information" is defined as "any information, document or other article where, for the purpose of protecting the safety or interests of the United Kingdom, access to the information, document or other article is restricted in any way, or it is reasonable to expect that access to the information, document or other article would be restricted in any way". The Government Security Classifications Policy of the UK Government also classifies information as "secrets" where the leakage of them is likely to cause serious damage to the safety and prosperity of the UK due to the impact on the commercial, economic and financial interests of the UK;

(b) The offence of "communicating safeguarded information" under section 16 of the Security of Information Act of Canada prohibits the communication to a foreign entity or to a terrorist group of information that the Government is taking measures to safeguard, where the person intends to (or is reckless as to whether such act of communication will) increase the capacity of a foreign entity or a terrorist group to harm Canadian interests. Section 19 of the Act also prohibits "economic espionage", under which any person who, at the direction or for the benefit of a foreign economic entity, fraudulently communicates a trade secret to another person or organisation to the detriment of Canada's economic interests, commits an offence;

(c) The Executive Order 13526 on Classified National Security Information issued by the President of the US also provides that scientific, technological or economic matters relating to national security may be classified at the confidential level if the unauthorised disclosure of such matters may cause damage to national security.

5.5 The term "state secrets" ("國家秘密") is repeatedly mentioned in the provisions of the HKNSL[39]. Article 23 of the Basic Law adopts the expression "state secrets" (the English term being the same but using the

[39] Articles 29, 41, 46, 47 and 63 of the HKNSL all contain references to "state secrets" ("國家秘密").

Chinese term "國家機密"): the theft of state secrets is one of the acts that the HKSAR shall enact laws to prohibit as required by Article 23 of the Basic Law. According to Article 10 of the Law of the People's Republic of China on Guarding State Secrets, state secrets shall fall into three classifications: "top secret" ("絕密"), "secret" ("機密") and "confidential" ("秘密"). Among them, "top secret" information refers to vital State secrets, the divulgence of which would cause extremely serious harm to State security and national interests; "secret" information refers to important State secrets, the divulgence of which would cause serious harm to State security and national interests; and "confidential" information refers to ordinary State secrets, the divulgence of which would cause harm to State security and national interests. In other words, even the divulgence of state secrets at the lowest classification of "confidential" will endanger national security.

5.6 Taking into account the above background, the HKSAR must enact laws on its own to prohibit the theft of "state secrets" of all levels of classification. In view of this, the expression of "state secrets" ("國家秘密") (except for references directly quoting Article 23 of the Basic Law) will be adopted consistently in this Chapter.

5.7 The HKSAR Government is of the view that it is necessary to clearly define "state secrets" so that public officers, government contractors and the general public can understand what secret matters constitute "state secrets". Protecting state secrets is particularly important to protecting national security and core interests, and is a matter within the purview of the Central Authorities. All types of state secrets should be protected in every place within one country. Otherwise, it will create a legal vacuum in which the HKSAR cannot protect state secrets in certain fields, posing risk to national security. For example, the Law of the People's Republic of China on Guarding State Secrets also defines state secrets to cover secret matters concerning fields such as economic and social development technological development or scientific technology, the disclosure of which is likely to jeopardize State security and national interests in fields such as politics, the economy, national defence and foreign affairs (e.g. secret matters concerning the development in aerospace technology, deep-sea exploration, etc. of our country). However, the existing Official Secrets Ordinance does not protect these types of state secrets.

5.8 Therefore, in defining what "state secrets" are, reference should be made to the scope of "state secrets" under relevant national laws. Taking into account the relevant national laws and the actual circumstances of the HKSAR, we recommend that "state secrets" cover the following matters :

If any of the following secrets, the disclosure of which without lawful authority would likely endanger national security, the secret amounts to a state secret:

(a) secrets concerning major policy decisions on affairs of our country or the HKSAR;

(b) secrets concerning the construction of national defence or armed forces;

(c) secrets concerning diplomatic or foreign affair activities of our country, or secrets concerning external affairs of the HKSAR, or secrets that our country or the HKSAR is under an external obligation to preserve secrecy;

(d) secrets concerning the economic and social development of our country or the HKSAR;

(e) secrets concerning the technological development or scientific technology of our country or the HKSAR;

(f) secrets concerning activities for safeguarding national security or the security of the HKSAR, or for the investigation of offences; or

(g) secrets concerning the relationship between the Central Authorities and the HKSAR.

5.9 It should be emphasised that the purpose of protecting state secrets is to safeguard national security. Therefore, the information described in items (a) to (g) above **will only constitute a "state secret" if the condition that "disclosure of the information without lawful authority would likely endanger national security" is met.**

(A)(II) Improving the definition of "public servants"

5.10 Certain offences and certain heavier penalties under the Official Secrets Ordinance and those described in paragraph 5.12 below only apply to persons who are or were public servants or government contractors. The definition of "public servant" under the existing Official Secrets Ordinance,

which includes "any person who holds an office of emolument under the Crown in right of the Government of Hong Kong, whether such office is permanent or temporary" and "any person employed in the civil service of the Crown in right of the United Kingdom, including Her Majesty's Diplomatic Service and Her Majesty's Overseas Civil Service", needs to be amended as appropriate to suit present situation. We recommend replacing the term "public servant" with "public officer" in the proposed Ordinance, and suitably adjusting the scope of the definition to cover officers who are more likely to obtain or possess state secrets. We recommend that "public officers" cover the following personnel –

(a) a person holding an office of emolument under the Government, whether such office be permanent or temporary;

(b) any of the following person -

(i) a principal official of the Government;

(ii) the Monetary Authority and its personnel;

(iii) the Chairperson of the Public Service Commission;

(iv) a staff of the Independent Commission Against Corruption;

(v) a judicial officer or a staff of the Judiciary;

(c) a member of the Executive Council;

(d) a member of the Legislative Council;

(e) a member of a District Council; or

(f) a member of the Election Committee.

(A)(III) Offences relating to "unlawful disclosure"

5.11 Apart from the above recommendations for improvements, there are still other shortcomings in the existing Official Secrets Ordinance with regard to the protection of state secrets:

(a) Offences under the existing Official Secrets Ordinance focus on the prohibition of "unlawful disclosure" of protected information, and do not directly target the act of theft of state secrets itself (such as spying of state secrets or obtaining state secrets with payment). The offence of "collusion with a foreign country or with external elements to

endanger national security" as provided under Article 29 of the HKNSL covers only acts of stealing, spying, obtaining with payment, or unlawfully providing state secrets concerning national security for a foreign country or external forces. The act of theft of state secrets itself, irrespective of whether foreign countries or external forces are involved, has yet to be criminalised.

(b) Offences relating to "unlawful disclosure of protected information" in Part III of the Official Secrets Ordinance (sections 13 to 20) target specific types of information (e.g. "defence information", "information related to international relations", etc.), which cannot fully cover all information that constitutes state secrets, such as those state secrets concerning other fields such as major policy decisions and the economy of our country and the HKSAR.

(c) Apart from those who have committed theft or unlawful disclosure of state secrets, it is also necessary to deal with the other criminal elements involved, e.g. intermediaries who are responsible for passing state secrets from the people who steal them to the people who disclose them and are thus in possession of state secrets. In fact, given the complex and covert nature of espionage activities and acts of theft of state secrets, it may not be possible to identify who have obtained state secrets without authorisation or unlawfully disclosed state secrets in every case. In addition, effective measures must be taken to prevent the unlawful disclosure of state secrets before such disclosure occurs.

(d) The existing Official Secrets Ordinance does not prohibit public servants or government contractors from publishing or disclosing confidential information alleged to have been obtained by virtue of their position, with a view to endangering national security (e.g. publishing so-called "inside information" to mislead the public and induce the hatred of HKSAR residents against the HKSAR Government). As such, there is a need to stipulate specific provisions for the prohibition of the above acts.

5.12 In view of the above shortcomings, we recommend consolidating and improving the offence of "unlawful disclosure" and related offences for more comprehensive protection of state secrets:

(1) **Unlawful acquisition of state secrets:** we recommend prohibiting any person from acquiring information, document or other article that is or contains state secrets unlawfully in order to ensure that acts of "theft" of state secrets in any form (irrespective of whether foreign countries or external forces are involved or not) are effectively prohibited. The offence can target the following acts:

(a) knowing that any information, document or other article is or contains a state secret; or

(b) having reasonable ground to believe any information, document or other article is or contains a state secret, and with intent to endanger national security,

and without lawful authority, acquiring the information, document or article.

(2) **Unlawful possession of state secrets:** we recommend prohibiting any person from possessing information, document or other article that is or contains state secrets unlawfully. The introduction of this new offence can help prevent the risk of eventual unlawful disclosure of stolen state secrets. The offence can target the following acts:

(a) knowing that any information, document or other article is or contains a state secret; or

(b) having reasonable ground to believe any information, document or other article is or contains a state secret, and with intent to endanger national security,

and without lawful authority, possessing the information, document or article.

(3) **Unlawful disclosure of state secrets:** We recommend prohibiting any person from disclosing, without lawful authority, information, document or other article that is or contains state secrets, so as to fully protect state secrets from unlawful disclosure. We are of the view that the offence should cover acts of unlawful disclosure of state secrets by any person (and not limited to public officers or government contractors). In addition, since public officers or government contractors have easier access to state secrets and they should have

clear understanding of the sensitivity of such information, it should be an aggravating factor that warrants a more severe penalty if they disclose state secrets unlawfully. In this connection, if "a person who is or was a public officer or government contractor" makes a disclosure of state secrets (in particular "defence information" and "information related to international relations" as specified in the existing Official Secrets Ordinance) that are or were in his or her possession by virtue of his or her position as such, the maximum penalty should be higher than that for ordinary people. In general, however, the person can only be convicted if the prosecution can prove that the person knows the disclosed information, document or other article is or contains state secrets, or that the person has reasonable ground to believe the disclosed information, document or other article is or contains state secrets and has the intent to endanger national security. The offence can target the following acts:

> ***(a) knowing that any information, document or other article is or contains a state secret; or***
>
> ***(b) having reasonable ground to believe any information, document or other article is or contains a state secret, and with intent to endanger national security,***
>
> ***and without lawful authority, disclosing the information, document or article.***

(4) **Unlawful disclosure of information that appears to be confidential matter:** Disclosure by any public officer or government contractor of confidential information (if such information were true) in his or her possession by virtue of his or her position as such may endanger national security. We recommend that the information covered by this offence should not be limited to state secrets but should cover any confidential information the disclosure, without lawful authority, of which would prejudice the interests of the Central Authorities or the HKSAR Government. The offence can target the following acts:

> ***(a) A person who is a public officer or government contractor, with intent to endanger national security, and without lawful authority –***
>
> ***(i) discloses any information, document or other***

article; and

(ii) in making the disclosure, represents or holds out that the relevant information, document or article is (or was) acquired or possessed by the person by virtue of the person's capacity as a public officer or government contractor; and

(b) ***the relevant information, document or article would be (or likely to be) a confidential matter if it were true, regardless of whether the relevant information, document or article is true or not.***

A similar offence can be found in foreign legislation[40], to which reference can be made in determining penalties.

(5) **Unlawful possession of state secrets when leaving the HKSAR:** Public officers who have access to relatively large amount of extremely sensitive state secrets when performing their daily duties may pose serious national security risks should they defect and abscond. We recommend clearly stipulating an offence targeting the following acts:

> ***Any public officer possessing, with intent to endanger national security (or being reckless as to whether national security would be endangered) and without lawful authority, any document, information or other article that he or she knows to be a state secret, when leaving the HKSAR, and the document, information or article is acquired or possessed by virtue of his or her capacity as a public officer.***

(B) Offences relating to acts of "espionage"

5.13 Theft or unlawful disclosure of state secrets is usually closely related to acts of espionage. In fact, espionage activities are also prohibited under the existing Official Secrets Ordinance, by providing for the offence of "spying". On the other hand, present-day espionage activities are not

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[40] Section 13(1) (purported communication) of the Security of Information Act of Canada: the maximum penalty of this offence is imprisonment for 5 years.

limited to acts of stealing secrets and "tipping off" enemies. Intelligence organisations of certain countries are accustomed to organising acts of subversion, infiltration and sabotage in other countries[41]. It was a typical act of modern-day espionage that external forces instigated their agents in Hong Kong to disseminate false or misleading information during the Hong Kong version of the "colour revolution" in order to incite hatred against the Government.

5.14 In recent years, many countries have improved their laws on offences relating to acts of "espionage" to deal with the current complex international landscape and modern-day acts of espionage, for example :

(a) Australia passed the National Security Legislation Amendment (Espionage and Foreign Interference) Act and the Foreign Influence Transparency Scheme Act in 2018. The former significantly increases the penalties for engaging in espionage and divulging state secrets. Even higher penalties will be applicable if a person colludes with foreign forces to commit some of the relevant offences. The Act also introduces the offence of supporting foreign intelligence agency and the offence of funding or being funded by foreign intelligence agency.

(b) The National Security Act 2023 recently passed in the UK includes an array of new offences with very wide coverage, including reform of laws relating to "espionage" and an offence relating to obtaining or disclosing "protected information", introduction of a new offence aimed at the protection of trade secrets as well as new offences targeted at acts of assisting a foreign intelligence service and obtaining material benefits from a foreign intelligence service. In addition, the Act applies the "foreign power condition" to all criminal offences, so that if the criminal act involves a foreign power, the court must treat that fact as an aggravating factor that warrants a more severe penalty in sentencing.

5.15 In enacting local legislation to safeguard national security, we may make reference to the laws related to espionage in other countries, and improve

[41] A former US National Security Advisor clearly mentioned in an interview that he had assisted in the planning of coups d'état in foreign countries. This is another example of wanton interference and subversion by the country concerned in other countries.

the relevant laws to address the modern-day espionage risks. Reference can also be made to the Counterespionage Law of the People's Republic of China ("the Counterespionage Law") which was revised and adopted by the NPCSC on 26 April 2023 and came into effect on 1 July 2023. Article 4 of the Counterespionage Law defines what constitutes "espionage", which includes participating in an espionage organisation or accepting assignments from an espionage organisation or its agents, in addition to typical espionage acts such as stealing, spying, obtaining with payment, or unlawfully providing state secrets or intelligence.

(B)(I) Offence of "espionage"

5.16 Most of the provisions relating to espionage activities under the existing Official Secrets Ordinance are inherited from the legislation of the UK in the early 20th century (the Official Secrets Act 1911 and the Official Secrets Act 1920), which have become out of line with prevailing standards of technology, the complex and ever-changing landscape, and the diverse modes of espionage activities. We recommend amending the offence to cover a more diversified range of espionage activities, including:

(i) some of the terms used in the existing Official Secrets Ordinance are obsolete, such as "sketch, plan, model or note"/"secret official code word or password, any sketch, plan, model or note". We recommend replacing such terms with "information, document or other article" to cover more advanced modes of data storage (e.g. fingerprints, videos, etc.), with a view to dealing with modern-day espionage risks; and

(ii) other than the acts of espionage[42] prohibited under the existing Official Secrets Ordinance, we recommend introducing a new type of offence regarding collusion with "external forces" to publish false or misleading statements of fact to the public with intent to endanger national security (or being reckless as to whether national security would be endangered), in order to deal with the interference in HKSAR's affairs by external forces through such acts.

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[42] See footnote 31, i.e. (1) approaching, inspecting, passing over, entering, or being in the neighbourhood of a prohibited place; (2) making a sketch, plan, model, or note that is useful to an enemy; and (3) obtaining, collecting, recording, or publishing a secret official code word or password, or a sketch, plan, model or note etc. that is useful to an enemy.

(B)(II) Improving concepts relating to the offence of "espionage"

(i) "Prohibited place"

5.17 The offence of "espionage" involves the acts of approaching, inspecting, passing over or entering a "prohibited place" with intent to endanger national security. The definition of a "prohibited place" under the existing Official Secrets Ordinance places greater emphasis on the protection of military or national defence facilities, and may not adequately cover other critical facilities and premises which are prone to become targets of infiltration, sabotage or theft of state secrets by spies. We recommend to improving the definition of "prohibited place" within the offence of "espionage" to provide appropriate safeguards in the light of the modern-day espionage activities.

(ii) Replacing the concept of "enemy" with "external forces"

5.18 The provisions[43] of the offence of "spying" under the existing Official Secrets Ordinance contain references to "enemy".

5.19 We recommend replacing the term "enemy" with "external forces" as the expression of "enemy"[44] is too restrictive. "External forces" may cover any government of a foreign country, authority of a region or place of an external territory, external political organisation, etc. (including a government, authority or political organisation of a country etc. with which it is not in a state of war), as well as its associated entities and individuals. Making reference to relevant legislation of Australia and Singapore[45], if the above government, authority or organisation is able to exercise a substantial degree of control over an entity or an individual, then that entity or individual may be considered an "associated entity" or "associated individual" (including an entity or individual that is accustomed or under an

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[43] See section 3 of the Official Secrets Ordinance (as mentioned in footnote 31).

[44] The concept of "enemy" is too restricted under the current context of globalisation and amid the dynamics of multilateral interaction in international relations. Notwithstanding that a country is not in a state of war with another country, it is possible that their interests may not coincide on a particular issue or there may even be unfriendly acts. However, calling that other country "enemy" may cause offence to that country at the diplomatic level. The concept of "enemy" is also no longer used in the National Security Act 2023 that was recently passed in the UK.

[45] With reference to the definitions of "foreign principal", "foreign government-related individual" and "foreign public enterprise", etc., in the Foreign Influence Transparency Scheme Act 2018 of Australia and the Foreign Interference (Countermeasures) Act 2021 of Singapore.

obligation to act in accordance with the directions, instructions or wishes of that government, authority or organisation, or an entity or individual over whom that government, authority or organisation is in a position to exercise substantial control by virtue of other factors).

5.20 We recommend that the improved offence of "espionage" targets the following acts:

> ***(a) Doing the following act with intent to endanger national security –***
>
> ***(i) approaching, inspecting, passing over or under, entering or accessing a prohibited place, or being in the neighbourhood of a prohibited place (including doing such act by electronic or remote means);***
>
> ***(ii) obtaining (including by intercepting communication), collecting, recording, producing or possessing, or communicating to any other person, any information, document or other article that is, or is intended to be, for a purpose useful to an external force.***
>
> ***(b) Colluding with an external force to publish a statement of fact that is false or misleading to the public, and the person, with intent to engender national security or being reckless as to whether national security would be endangered, so publishes the statement; and knows that the statement is false or misleading.***

(B) (III) Recommending introducing a new offence relating to acts of "espionage": the offence of "participating in or supporting external intelligence organisations or receiving advantages from external intelligence organisations, etc."

5.21 Any participation in or support for, or receipt of advantages from, external intelligence organisations is extremely likely to endanger national security. Many countries have already enacted legislation to prohibit such acts, such as :

(a) Sections 92.7 to 92.11 of the Criminal Code of Australia; and

(b) Sections 3 and 17 of the National Security Act 2023 of the UK.

5.22 We recommend introducing a new offence, targeting the following acts:

> ***With intent to endanger national security (or being reckless as to whether national security would be endangered), knowingly doing the following act in relation to an external intelligence organisation[46] –***
>
> ***(a) becoming a member of the organisation;***
> ***(b) offering substantial support (including providing financial support or information and recruiting members for the organisation) to the organisation (or a person acting on behalf of the organisation); or***
> ***(c) receiving substantial advantage offered by the organisation (or a person acting on behalf of the organisation).***

The above proposed offences can prevent, suppress and impose punishment for acts of supporting external intelligence organisations by individuals who endanger national security, so as to better deal with espionage and related risks.

Concluding remarks

5.23 In conclusion, in order to safeguard national security and ensure the smooth operation of the Government, information concerning national security must be kept confidential. Appropriate laws must be enacted to prohibit the acquisition, possession or disclosure of such kind of information without lawful authority. In formulating the recommendations, due consideration must be given to the importance of protecting the right to freedom of speech and expression. Measures should also seek to protect only those types of information which must be kept confidential to safeguard national security, and the means of protection should be clearly prescribed, so as to strike a proper balance between the protection of state secrets and the protection of the right to freedom of speech and expression.

5.24 In addition, the enactment of appropriate laws to prohibit acts of espionage is very important in preventing external forces from endangering national

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[46] An external intelligence organisation means an organisation established by an external force and engaging in intelligence work, or subversion or sabotage of other countries or places.

security. In considering the recommendations, we will ensure that the modern-day diversified modes of espionage activities can be adequately dealt with, while giving due regard to the importance of protecting the rights and freedoms of individuals, particularly the right to freedom of speech and expression. The elements of the relevant offences and related concepts (e.g. "prohibited place", "external forces", etc.) will need to be clearly defined with sufficiently precise boundaries laid down to ensure that a proper balance is struck between the safeguarding of national security and the protection of the rights and freedoms of individuals.

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Chapter 6: Sabotage endangering national security and related activities

This Chapter examines relevant laws in foreign countries on sabotage activities endangering national security and on acts endangering national security done in relation to computer or electronic system. We recommend introducing new offences of such kinds in the proposed Ordinance for such acts and activities.

Existing laws on sabotage and related activities

6.1 At present, destroying or damaging any property belonging to another person (including misuse of a computer)[47], and access to computer with criminal or dishonest intent[48] are already offences in the laws of the HKSAR, and are also offences in other countries. Nevertheless, many countries have enacted offences targeting sabotage activities that endanger national security (e.g. the UK, Australia and Canada) and acts and activities endangering national security carried out with the use of computers (e.g. the UK and the US), to reflect the seriousness of such acts and for greater deterrence. Therefore, there is a need to more fully prevent, suppress and impose punishment for such kinds of acts endangering national security in the laws of the HKSAR.

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[47] Section 59 under Part VIII (Criminal Damage to Property) of the existing Crimes Ordinance stipulates that to destroy or damage any property in relation to a computer includes the misuse of a computer. "Misuse of a computer" means —

(a) to cause a computer to function other than as it has been established to function by or on behalf of its owner, notwithstanding that the misuse may not impair the operation of the computer or a program held in the computer or the reliability of data held in the computer;
(b) to alter or erase any program or data held in a computer or in a computer storage medium;
(c) to add any program or data to the contents of a computer or of a computer storage medium,

and any act which contributes towards causing the misuse of a kind referred to in paragraph (a), (b) or (c) shall be regarded as causing it.

[48] Section 161 under Part XIII (Miscellaneous Offences) of the existing Crimes Ordinance stipulates the offence of "access to computer with criminal or dishonest intent":

Any person who obtains access to a computer —

(a) with intent to commit an offence;
(b) with a dishonest intent to deceive;
(c) with a view to dishonest gain for himself or another; or
(d) with a dishonest intent to cause loss to another,

whether on the same occasion as he obtains such access or on any future occasion, commits an offence and is liable on conviction upon indictment to imprisonment for 5 years.

Recommending introducing new offences

(A) Offence of "sabotage activities which endanger national security"

6.2 Acts of sabotage or impairment of public infrastructure will pose a high risk to national security. Flagrant examples of such acts include the extensive vandalism of and damage to transport facilities, MTR stations and other public facilities by rioters across large areas of Hong Kong during the Hong Kong version of "colour revolution" in 2019. The purpose of such acts was to paralyse the normal operation of society through paralysing the transport, railway systems and public services, thereby forcing the HKSAR Government to give in to and compromise with the rioters and the political forces behind them to achieve the ultimate goal of jeopardising the effective governance of the HKSAR Government or even subversion. Should critical telecommunications facilities be damaged, the ability of our country and the HKSAR to respond effectively to civil disturbance or armed conflicts will be undermined. Should critical electronic systems (e.g. the Central Clearing and Settlement System) come under cyber-attacks or intrusion by hackers, even the normal operation of the HKSAR will be paralysed or severely impeded (e.g. the stability of the financial market being seriously jeopardised), or state secrets will become prone to unlawful acquisition.

6.3 Many foreign countries have enacted legislation to deal with the above situations. For example –

(a) Australia has introduced the offence of sabotage through the National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018, which prohibits all forms of sabotage activities or acts of introducing vulnerability against public infrastructure, with intent to (or recklessness as to whether they will) prejudice national security[49]; and

(b) The UK has also introduced a similar type of offence in the National Security Act 2023, which prohibits any person from damaging any asset (whether located in the UK or not) for a purpose that they know

[49] See sections 82.3-82.9 of the Criminal Code of Australia.

or ought reasonably to know is prejudicial to the safety or interests of the UK with the involvement of a foreign power[50].

6.4 In light of the above, to deal with the situations described in paragraph 6.2 above, we recommend introducing an offence of "sabotage activities which endanger national security", targeting the following acts:

(a) With intent to endanger national security (or being reckless as to whether national security would be endangered), damaging or weakening public infrastructure.

(b) The public infrastructure to be protected may include facilities of the Central Authorities or the HKSAR Government, public transport facilities and any public facilities providing public services such as water supply, drainage, energy, fuel or communication.

(c) "weakening" may include acts causing the following effects (whenever caused) on the public infrastructure (including anything or software constituting the infrastructure) -

(i) making the infrastructure vulnerable to abuse or damage;

(ii) making the infrastructure vulnerable to be accessed or altered by persons who are not entitled to access or alter the infrastructure;

(iii) causing the infrastructure not to be able to function as it should, whether in whole or in part; or

(iv) causing the infrastructure not to operate in a way as set by its owner (or a representative of the owner).

Under the laws of foreign countries concerned, any person who commits a similar offence of sabotage will be liable to a penalty ranging from 20 years'

[50] See section 12 of the National Security Act 2023 of the UK.

imprisonment to life imprisonment[51], which can be used for reference in determining the penalties.

(B) Offence of "doing an act in relation to a computer or electronic system without lawful authority and endangering national security"

6.5 Generally speaking, the proposed offences discussed in this document do not essentially depend on which particular method or technology is actually used by the offender to carry out the criminal act. Therefore, the proposed offences should cover most of the acts and activities endangering national security carried out through computers. On the other hand, given the common use and rapid development of computer or electronic system technologies, with the current wide application of artificial intelligence in different areas of society being an example, the potential national security risks posed should not be overlooked, especially the risks arising from computers or electronic systems being hacked into or interfered with[52]. In order to address the national security risks posed by new technologies that may develop in the current cyber or digital world in the future, we recommend introducing an offence to combat acts endangering national security that are done in relation to a computer or electronic system.

6.6 Foreign countries have also enacted legislation that deals with the above situation. For example, the Computer Misuse Act 1990 of the UK prohibits any person from doing an unauthorised act in relation to a computer if the person intends to (or is reckless as to whether the act will) cause serious damage to national security, and the act will actually cause serious damage to national security (or create a significant risk of serious damage to national security)[53].

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[51] In Australia, the offence of sabotage (not involving a foreign principal) carries a maximum penalty of 20 years' imprisonment (section 82.5 of the Criminal Code of Australia), or 25 years' imprisonment if involving a foreign principal (section 82.3 of the Criminal Code of Australia). A similar offence in the UK involving a foreign power carries a maximum penalty of life imprisonment (section 12 of the National Security Act 2023 of the UK).

[52] On 16 November 2023, the Ministry of State Security published an article on "How to Address the National Security Challenges Posed by Artificial Intelligence", which mentioned five major risks that artificial intelligence may pose, including the risk of data theft, the risk of cyber attack, the risk to economic security, the risk of "data poisoning", and the risk to military security.

[53] The maximum penalty for this offence in the UK is life imprisonment (section 3ZA of the Computer Misuse Act 1990 of the UK).

6.7 We recommend introducing a new offence of doing an act in relation to a computer or electronic system without lawful authority and endangering national security, targeting the following acts:

> ***With intent to endanger national security and without lawful authority, and knowing that he or she has no lawful authority, doing an act in relation to a computer or electronic system thereby endangering (or likely endangering) national security.***

Concluding remarks

6.8 The offences covered by this Chapter involve serious acts of sabotage or weakening of public infrastructure, or acts done, without lawful authority, in relation to a computer or electronic system which endanger national security. These acts pose very serious threats to national security and must be prohibited. Building on existing offences (e.g. destroying or damaging other people's property and access to computer with criminal or dishonest intent), the above proposals are to introduce new offences targeting relevant acts endangering national security, to reflect the seriousness of such acts and to increase deterrence. The actual provisions will clearly define the elements of the relevant offences to ensure that acts endangering national security are precisely targeted and the provisions will not stifle technological innovation, but rather provide a safe environment for the development of the fields concerned.

Chapter 7: External interference and organisations engaging in activities endangering national security

This chapter examines the offence of "external interference" under the national security laws of foreign countries, which generally covers the prohibition of any person from collaborating with external forces to interfere with the affairs of a foreign state through improper means. Besides, this chapter also examines how to improve the provisions of the existing Societies Ordinance that relate to safeguarding national security or prohibiting political bodies from having a connection with external political organisations, with a view to prohibiting organisations that endanger national security from operating in the HKSAR.

7.1 Article 23 of the Basic Law requires the HKSAR to enact laws to prohibit foreign political organisations or bodies from conducting political activities in the HKSAR, and to prohibit political organisations or bodies of the HKSAR from establishing ties with foreign political organisations or bodies. Although under the existing laws, Articles 29 and 30 of the HKNSL are available to deal with criminal acts relating to collusion with external elements to endanger national security and of a relatively serious nature[54], and the existing Societies Ordinance has also provided for a mechanism for the prohibition of the operation of a society on the ground that it is a political body and has a connection with an external political organisation, or that it is necessary in the interests of national security (see paragraph 7.7 below),

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[54] Article 29 of the HKNSL: A person who steals, spies, obtains with payment or unlawfully provides State secrets or intelligence concerning national security for a foreign country or an institution, organisation or individual outside the mainland, Hong Kong, and Macao of the People's Republic of China shall be guilty of an offence; a person who requests a foreign country or an institution, organisation or individual outside the mainland, Hong Kong, and Macao of the People's Republic of China, or conspires with a foreign country or an institution, organisation or individual outside the mainland, Hong Kong, and Macao of the People's Republic of China, or directly or indirectly receives instructions, control, funding or other kinds of support from a foreign country or an institution, organisation or individual outside the mainland, Hong Kong, and Macao of the People's Republic of China, to commit any of the following acts shall be guilty of an offence:

(a) waging a war against the People's Republic of China, or using or threatening to use force to seriously undermine the sovereignty, unification and territorial integrity of the People's Republic of China;
(b) seriously disrupting the formulation and implementation of laws or policies by the Government of the HKSAR or by the Central People's Government, which is likely to cause serious consequences;
(c) rigging or undermining an election in the HKSAR, which is likely to cause serious consequences;
(d) imposing sanctions or blockade, or engaging in other hostile activities against the HKSAR or the People's Republic of China; or
(e) provoking by unlawful means hatred among Hong Kong residents towards the Central People's Government or the Government of the Region, which is likely to cause serious consequences.

Article 30 of the HKNSL: A person who conspires with or directly or indirectly receives instructions, control, funding or other kinds of support from a foreign country or an institution, organisation, or individual outside the mainland, Hong Kong and Macao of the People's Republic of China to commit the offences under Article 20 or 22 of this Law shall be liable to a more severe penalty in accordance with the provisions therein respectively.

it is still necessary to be more comprehensive in the prevention, suppression and imposition of punishment for other acts of external interference from the aspect of local laws of the HKSAR.

7.2 In recent years, external forces have been using the HKSAR as a bridgehead for anti-China activities, and have been assisting and instigating local organisations or individuals to cause social instability under different pretexts, and propagating anti-China ideology through a soft approach to demonise the Central People's Government and the HKSAR Government. Although the HKSAR has been able to effectively combat acts of "black-clad violence" and thwart the plot of the Hong Kong version of "colour revolution" in accordance with the law after the promulgation and implementation of the HKNSL, there are still risks posed by external forces which, through local organisations and individuals (especially some so-called "non-governmental bodies" which are actually established by external forces or have close ties with external forces), and local organisations and individuals (including "shadow organisations" formed outside the HKSAR), continue to engage in activities endangering national security against the HKSAR. These individuals or organisations collude with external forces in an attempt to continue to interfere in or influence the affairs of our country and the HKSAR. Therefore, it is still necessary to prevent, suppress and impose punishment for acts endangering national security. These acts include, in particular:

(a) persons who endanger national security by collaborating with external forces to interfere in the affairs of our country or the HKSAR through improper means; and

(b) local organisations (including "shadow organisations" formed outside the HKSAR) or external elements engaging in activities endangering national security through local organisations or individuals.

7.3 As a cosmopolitan city and an international financial centre, Hong Kong welcomes exchanges between local institutions, organisations and individuals and those from all parts of the world, as well as foreign institutions or organisations to set up offices and establish operations in Hong Kong. As the policies and measures of the HKSAR Government may affect the external institutions, organisations and individuals in the HKSAR, there may be a legitimate need for these institutions, organisations and individuals (including political organisations) to express their rational views on the policies and measures of the HKSAR Government, including

lobbying through local organisations or individuals, etc. Therefore, we do not recommend adopting an across-the-board approach to impose blanket prohibition on the above exchanges. However, such political activities must be conducted by lawful and proper means and must not pose any national security risks. The HKSAR Government has the responsibility to safeguard the sovereignty and political independence of our country. In this regard, the HKSAR Government must take adequate measures to effectively prevent external forces from interfering in the normal operation of the HKSAR, and to prevent external forces from unlawfully interfering in the affairs of our country or the HKSAR through agents or agent organisations, thus undermining the sovereignty and political independence of our country, which will in turn endanger national security.

7.4 In order to enhance the transparency of political activities conducted by foreign forces in their countries through their agents, many foreign governments have established registration systems concerning foreign influence and provided for the relevant regulatory penalties. For example, both the US and Australia have laws that establish a system which requires a local organisation or individual who establishes an "agent-foreign principal" relationship with a foreign organisation or individual and engages in political or other specified activities, to register. As for the UK, it has recently introduced a foreign influence registration scheme by virtue of its National Security Act 2023. Canada conducted a consultation on establishing a "foreign influence transparency registry" in 2023, which has received support in general. Singapore has considered introducing a registration system which was not implemented in the end. The HKSAR Government has earlier considered whether to establish a registration system to enhance the transparency of political activities or activities involving national security carried out by external organisations through organisations and individuals in the HKSAR, but after careful consideration, has decided not to introduce a registration system of a similar nature: we consider that the existing mechanism under the Societies Ordinance for the prohibition of the operation of a society on the ground that it is necessary in the interests of national security is familiar to the society, and there is also relevant experience in the operation of the mechanism (including the experience in the prohibition of operation of the Hong Kong National Party in accordance with the law in 2018). Therefore, it is more suitable for us to deal with the issue in a targeted manner by creating an offence of "external

interference" and improving the mechanisms for regulating and prohibiting the operation of organisations endangering national security.

Recommending introducing new offence : offence of "external interference"

7.5 Sovereign equality and non-interference are fundamental principles of international law. External interference by improper means have exceeded the acceptable limit in normal international practice (e.g. genuine criticisms against government policies, legitimate lobbying work, general policy research, normal exchanges with overseas organisations or day-to-day commercial activities), contravened the principle of non-interference under international law, undermined national sovereignty and political independence, and posed risks to national security. In this regard, in recent years, some countries have implemented laws that targeted at external interference, from which we can draw reference, with the following examples:

(a) Both the National Security Act 2023[55] of the UK and the National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018[56] of Australia introduced new offences to prohibit any person from collaborating with a foreign power to interfere with the affairs of their respective countries through certain specified improper conducts[57]. In terms of penalties, the maximum penalties are imprisonment of 20 years for Australia and 14 years for the UK;

(b) Singapore have introduced offences relating to "clandestine foreign interference by electronic communications activity" through enactment of the Foreign Interference (Countermeasures) Act 2021 (with maximum penalties of imprisonment of 7 years (for acts of

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[55] Sections 13 to 15 of the National Security Act 2023 of the UK.

[56] Relevant amendments have already been incorporated in sections 92.2 and 92.3 of the Criminal Code of Australia.

[57] Improper conducts under the offence of foreign interference of Australia include acts that are covert, involve deception, the making of threats to cause serious harm or the making of demands with menaces. Improper conducts under the offence of foreign interference of the UK include those that constitute an offence and those that involve coercion of any kind, (e.g. using or threatening to use violence against a person, damaging or threatening to damage a person's property, damaging or threatening to damage a person's reputation, causing or threatening to cause financial loss to a person or causing spiritual injury to, or placing undue spiritual pressure on a person) or it involves making a misrepresentation.

general interference) and 14 years (for acts of interference against a targeted person))[58]; and

(c) Recently, Canada is conducting a public consultation on how to amend relevant laws such as the Criminal Code, the Security of Information Act, the Canada Evidence Act and the Canadian Security Intelligence Service Act to cope with the risk of external interference and to strengthen law enforcement capabilities.

7.6 As such, we recommend introducing a new offence of "external interference", targeting the following acts:

> ***(a) With intent to bring about an interference effect as follows, collaborating with an external force to engage in a conduct, and using improper means when engaging in the conduct –***
>
> ***(i) influencing the Central People's Government or the executive authorities of the HKSAR in the formulation or execution of any policy or measure, or the making or execution of any other decision;***
>
> ***(ii) interfering with election(s) of the HKSAR;***
>
> ***(iii) influencing the Legislative Council in discharging functions;***
>
> ***(iv) influencing a court in discharging functions; or***
>
> ***(v) prejudicing the relationship between the Central Authorities and HKSAR, or the relationship between China or the HKSAR and any foreign country.***
>
> ***(b) "Collaborating with an external force" can cover the following circumstances -***
>
> ***(i) participating in an activity planned or otherwise led by an external force ;***
>
> ***(ii) engaging in the conduct on behalf of an external force;***
>
> ***(iii) engaging in the conduct in cooperation with an***

[58] Sections 17 and 18 of the Foreign Interference (Countermeasures) Act 2021 of Singapore.

external force;

(iv) engaging in the conduct under the control, supervision or direction of an external force or on request by an external force;

(v) engaging in the conduct with the financial contributions, or the support by other means, of an external force.

(c) "Using improper means" can cover the following circumstances –

(i) knowingly making a material misrepresentation;

(ii) using or threatening to use violence against a person;

(iii) destroying or damaging, or threatening to destroy or damage, a person's property;

(iv) causing financial loss to a person, or threatening to cause financial loss to a person;

(v) damaging or threatening to damage a person's reputation;

(vi) causing spiritual injury to, or placing undue spiritual pressure on, a person;

(vii) the conduct constituting an offence.

Laws on prohibition of organisations from endangering national security

7.7 The existing statutory provisions that regulate societies which are political bodies that have a connection with a foreign political organisation or a political organisation of Taiwan are mainly set out the Societies Ordinance. The main provisions are as follows –

(a) Make an **order prohibiting the operation of a society:** In accordance with the existing Societies Ordinance, **if a society is a political body**[59]

[59] Under the Societies Ordinance, "political body" means -
(a) a political party or an organization that purports to be a political party; or
(b) an organization whose principal function or main object is to promote or prepare a candidate for an election.

that has a connection[60] with a foreign political organisation[61] or a political organisation of Taiwan[62], or if it is in the interests of national security or public safety, public order or the protection of the rights and freedoms of others, the Societies Officer may recommend to the Secretary for Security to make an order prohibiting the operation or continued operation of the society.

(b) **Scope of application of the regulatory mechanism:** The regulatory mechanism under the existing Societies Ordinance is only applicable to local societies[63], and is not applicable to the local organisations set out in the Schedule to the Societies Ordinance (e.g. company, co-operative society, incorporated management committee, corporation, etc.[64]). The Societies Ordinance also cannot effectively deal with the establishment of "shadow organisation" outside the HKSAR by local organisation which has already been prohibited from operating, and continuing to conduct activities endangering national security against the HKSAR.

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[60] In relation to a political body to which the Societies Ordinance applies, "connection" includes the following circumstances —
(a) if the society solicits or accepts financial contributions, financial sponsorships or financial support of any kind or loans from a foreign political organisation or a political organisation of Taiwan;
(b) if the society is affiliated with a foreign political organisation or a political organisation of Taiwan;
(c) if the society's policies or any of them are determined by a foreign political organisation or a political organisation of Taiwan; or
(d) if a foreign political organisation or a political organisation of Taiwan directs, dictates, controls or participates in the decision making process of the society.

[61] Under the Societies Ordinance, "foreign political organisation" includes —
(a) a government of a foreign country or a political subdivision of a government of a foreign country;
(b) an agent of a government of a foreign country or an agent of a political subdivision of the government of a foreign country; or
(c) a political party in a foreign country or its agent.
Items (a) and b) above cover the governments of foreign countries below national level or at district level and their agents.

[62] Under the Societies Ordinance, "political organisation of Taiwan" includes —
(a) the administration of Taiwan or a political subdivision of the administration;
(b) an agent of the administration of Taiwan or an agent of a political subdivision of the administration; or
(c) a political party in Taiwan or its agent.

[63] Includes organisations which are established outside Hong Kong but deemed to be a society established in Hong Kong under section 4 of the Societies Ordinance.

[64] These local societies are of various types and regulated by different legislation, including the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) and the Education Ordinance (Cap. 279). However, generally speaking, the existing mechanism cannot fully safeguard national security. In particular, most of the legislation have not specifically provided for the mechanism on dissolution or cancellation of registration of societies endangering national security.

(c) **Offences associated with "unlawful society"**[65] include –

(i) being an office-bearer or acting as an office-bearer;

(ii) being a member or acting as a member;

(iii) allowing a meeting of an unlawful society to be held on premises;

(iv) inciting a person to become a member; and

(v) procuring subscription or aid.

7.8 The Hong Kong version of "colour revolution" has fully demonstrated that there are local organisations willingly acting as agents of foreign political or intelligence organisations to engage in acts and activities endangering national security. There are also law-breakers who have absconded overseas unscrupulously colluding with external forces to continue engaging in acts and activities endangering national security. In view of the above, it is necessary to improve the mechanism for regulation of organisations in order to address the relevant risks. The following proposals are recommended.

(A) Improving the scope of applicable organisations

7.9 The mechanism for prohibiting the operation of societies under the Societies Ordinance is only applicable to societies[66] and not applicable to the organisations listed in the Schedule to the Ordinance, which is unsatisfactory. Organisations to which the Societies Ordinance is not applicable may be used to cultivate forces endangering national security in the HKSAR, thereby endangering national security. The existing law lacks a similar, sound mechanism to deal with these organisations which are not subject to the regulation of the existing Societies Ordinance.

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[65] Section 18(1)(b) of the Societies Ordinance provides that a society prohibited from operation under section 8 of the Ordinance is an "unlawful society" while sections 19 to 23 of the Societies Ordinance provide for the offences and penalties relating to "unlawful societies" prohibited from operation.

[66] It is worth noting that under section 360C of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), if the Chief Executive in Council is satisfied that a company would, if it were a society in respect of which the Societies Ordinance applied, be liable to have its operation or continued operation prohibited by the Secretary for Security under section 8 of the Societies Ordinance, the Chief Executive in Council may order the Registrar of Companies to strike such company off the Companies Register. This provision can help to prevent any person from establishing companies to engage in acts and activities endangering national security.

7.10 Although some of the organisations listed in the Schedule to the Societies Ordinance are regulated by other legislation[67], the regulatory mechanisms concerned generally do not contain provisions for prohibiting the operation of these organisations on the ground that it is necessary in the interests of national security. As such, to better prevent and suppress external forces or individuals endangering national security from endangering national security through establishing organisations such as incorporated management committees in relation to a school or incorporated owners which are not regulated by the existing Societies Ordinance, and to ensure that all organisations prohibited from operation on the ground that it is necessary in the interests of national security are treated as the same type of prohibited organisations, we recommend standardising the handling of matters such as prohibition of operation of organisations in the interests of national security, dissolution of organisations, through a unified mechanism under the proposed Ordinance. We recommend that the Secretary for Security may order prohibition of the operation of relevant organisations in the HKSAR on the following grounds –

(a) If the Secretary for Security reasonably believes that prohibiting the operation or continued operation of any local organisation in the HKSAR is necessary for safeguarding national security, the Secretary for Security may, by order published in the Gazette, prohibit the operation or continued operation of the organisation in the HKSAR.

(b) If a local organisation is a political body and has a connection with an external political organisation, the Secretary for Security may, by order published in the Gazette, prohibit the operation or continued operation of the local organisation in the HKSAR.

(B) Prohibiting external organisations endangering national security which are affiliated with the HKSAR from operating in the HKSAR

7.11 In recent years, some individuals endangering national security have fled outside the HKSAR and continued to endanger national security. For

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[67] For instance, incorporated management committee are regulated by the Education Ordinance (Cap. 279).

instance, some local organisations in the HKSAR have relocated outside the HKSAR and established destructive "shadow organisations" there, and continued to engage in activities against the HKSAR that endanger national security. While these organisations are established outside the HKSAR, they actually still have affiliation with the HKSAR. For example, such organisations conduct activities in the HKSAR, and individuals in the HKSAR provide such organisations with any form of aid, etc. We recommend stipulating that external organisations which are affiliated with the HKSAR cover the following circumstances –

(a) the organisation conducts any activity in the HKSAR;

(b) any person in the HKSAR acts as an office-bearer or member of the organisation, or professes or claims to be an office-bearer or member of the organisation;

(c) the organisation solicits or accepts financial contributions, loans, or financial sponsorships of any kind, or aid of other kinds, directly or indirectly from any person in the HKSAR; or

(d) the organisation provides financial contributions, loans, or financial sponsorships of any kind, or aid of other kinds, directly or indirectly to any person in the HKSAR.

Also, we recommend empowering the HKSAR Government to prohibit such external organisations from operating in the HKSAR if it is necessary in the interests of national security. Once such organisations are prohibited from operating in the HKSAR, no one should conduct activities in the HKSAR on their behalf or provide them with any form of aid.

7.12 In addition, it is also a common practice in other countries to establish a mechanism for prohibiting organisations that endanger national security from operation. Take the Terrorism Act 2000 of the UK as an example, the UK Secretary of State may exercise his or her power to proscribe an organisation if he or she believes that it is engaging in terrorism[68]. A person commits an offence if he or she belongs or professes to belong to a

[68] Section 3, Terrorism Act 2000 of the UK.

proscribed organisation, or if he or she invites support (not restricted to the provision of money or other property) for a proscribed organisation[69].

Concluding remarks

7.13 Freedom of association is protected under the Basic Law in the HKSAR. However, as mentioned in paragraph 2.22 above, according to the ICCPR, freedom of association is not absolute and may be subject to restrictions that are provided by law and necessary for pursuing legitimate aims such as the protection of national security or public order. The regulatory mechanism under the existing Societies Ordinance is in conformity with the protection for freedom of association under the Basic Law. In improving the regulatory mechanism under the existing Societies Ordinance so as to more effectively prevent, suppress and impose punishment for acts endangering national security, the protection for freedom of association under the existing mechanism will be respected.

7.14 Regarding the offence of "external interference", as pointed out in this Chapter, the HKSAR Government has the responsibility to prohibit external forces from unlawfully interfering in the affairs of our country or the HKSAR through local organisations or individuals, in an attempt to undermine the sovereignty and political independence of our country, and endanger national security. In the past, there were cases in which external forces participated in political activities through local organisations or individuals to influence the implementation of policies by the HKSAR Government using improper means and interfere in the affairs of our country or the HKSAR. Therefore, we recommend introducing an offence to prohibit such interference.

7.15 The studies and recommendations mentioned in this Chapter will ensure that the factors conducive to the strengthening of Hong Kong's status as a cosmopolitan city and international financial centre will not be affected, so that legitimate international exchanges will continue to take place smoothly in the HKSAR, the restrictions on the rights and freedoms of individuals will be very limited, and any limitations imposed must be reasonable, necessary and proportionate.

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[69] Sections 11 and 12, Terrorism Act 2000 of the UK.

Chapter 8: Extra-territorial application of the proposed Ordinance

This chapter examines, in respect of the extra-territorial effect of offences, principles of international law and international practices, the existing provisions of the HKNSL and existing laws, with a view to providing directions for recommendations for the extra-territorial application of the proposed Ordinance.

8.1 Criminal acts endangering national security, which are different from general criminal acts, threaten the fundamental interests of a state. Given their serious nature, such acts, be they committed outside the territory or locally, should be reasonably prevented, suppressed and punished. Therefore, when enacting local legislation for safeguarding national security, we recommend stipulating appropriate extra-territorial effect in respect of offences endangering national security.

Principles of international law and international practices

8.2 We propose making reference to the following three international law principles and international practices in stipulating the suitable scope of application for the legislative proposal on Article 23 of the Basic Law:

(a) **"territorial principle"**: in general, the criminal law of a state only regulates acts that take place within the territory of that state. This is known as the "territorial principle" under international law and international practices. In respect of the HKSAR, the offences proposed in the legislation to implement Article 23 of the Basic Law naturally apply to acts and activities endangering national security all or parts of which take place in the HKSAR, and this conforms not only to the "territorial principle" but is also a basic common law principle and need not be otherwise provided by law.

(b) **"personality principle"**: under this principle, a state may exercise jurisdiction over criminal acts committed by its citizens or residents outside its territory. The offender is one whose identity has close connection with the state, rather than a foreigner who has absolutely no ties with the state. As a matter of fact, as a citizen or resident of a

state or a region, it is incumbent on him or her to abide by the laws of the respective country or region, regardless of where he or she is.

(c) **"protective principle"**: if foreigners situated outside a sovereign territory commit criminal acts abroad against the sovereign state that endanger its security or its vital interests (such as government institutions or functions), the sovereign state can adopt laws with extra-territorial effect to exercise prescriptive criminal jurisdiction.

Scope of application of the HKNSL

8.3 The scope of application of the HKNSL in respect of its specified offences is as follows:

(a) Under Article 36 of the HKNSL, the HKNSL shall apply to offences under the HKNSL which are committed in the HKSAR by any person. An offence shall be deemed to have been committed in the HKSAR if an act constituting the offence or the consequence of the offence occurs in the HKNSL;

(b) Under Article 37 of the HKNSL, the HKNSL shall apply to a person who is a permanent resident of the HKSAR or an incorporated or unincorporated body such as a company or an organisation which is set up in the HKSAR if the person or the body commits an offence under the HKNSL outside the HKSAR; and

(c) Article 38 of the HKNSL provides that the HKNSL shall apply to offences under the HKNSL committed against the HKSAR from outside the HKSAR by a person who is not a permanent resident of the HKSAR.

The above scope of application of the HKNSL is also in line with the principles of international law and international practices aforementioned.

Other existing laws

8.4 Apart from the offences under the HKNSL, some offences endangering national security covered by the existing laws also have extra-territorial effect. For example:

(a) **Offence of "treason" under Part I of the Crimes Ordinance:** Under the common law, the extra-territorial effect of this offence should be interpreted in accordance with the principles established by the courts in the case law[70] – that is, if a foreigner who is under the protection of a host country collaborates with the enemies outside that country, he or she shall be deemed to have committed the offence of "treason", as long as he or she has not renounced that protection; and

(b) **Offences related to unlawful disclosure under Part III of the Official Secrets Ordinance:** Under section 23 of the Official Secrets Ordinance, any act done by a British national[71], a Hong Kong permanent resident or a public servant outside Hong Kong shall, if it would be an offence by that person under any provision of Part III "Unlawful Disclosure" of the Official Secrets Ordinance (other than certain provisions) when done by him or her in Hong Kong, be an offence under that provision.

8.5 It is worth noting that although the common law has consistently adopted the "territorial principle" (i.e. statutory and common law offences are generally presumed not to have extra-territorial effect, but an offence may be conferred extra-territorial effect through clear provisions in the statute), common law case authorities have developed a wider and more pragmatic approach to determine whether an offence has been committed within jurisdiction. As long as the "substantial activities constituting the crime" of an offence occur within the HKSAR, the courts of Hong Kong have the jurisdiction to adjudicate on the offence, even if other essential elements of the offence occur outside the HKSAR[72].

<u>Recommended extra-territorial effect of the offences</u>

8.6 Taking into account altogether the above-mentioned principles of international law and international practices, the provisions of the HKNSL, the provisions of existing laws, as well as the common practices adopted by

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[70] *"…an alien abroad holding a British passport enjoys the protection of the Crown and if he is adherent to the King's enemies he is guilty of treason, so long as he has not renounced that protection"* (See Joyce v DPP [1946] AC 347).

[71] After Hong Kong's return to the Motherland, the term "British national" in this section should be construed as "Chinese national" according to the principles of adaptation of laws.

[72] *HKSAR v WONG Tak-keung* (FACC 8/2014), at paragraphs 33(b) and 45.

different countries, and in view of the nature of offences endangering national security and their possible impact on our country and the HKSAR, we recommend providing for appropriate extra-territorial effect for the various offences proposed in the legislation to implement Article 23 of the Basic Law. Nevertheless, we need to provide for proportionate and reasonable extra-territorial effect based on the national security threats which the offences are designed to address, as well as the circumstances in which different individuals or organisations may commit such relevant acts outside the HKSAR.

8.7 In order to ensure that the extra-territorial effect of each category of offences is in line with the nature of the category of offences concerned, and that such effect is necessary and proportionate, we will, upon formulation of the offences, examine each of them in detail before determining its scope of application.

8.8 As a matter of fact, the national security laws of various countries, including the US, the UK, Australia and Canada, also have extra-territorial effect under principles such as the "personality principle" and the "protective principle":

(a) There are also numerous overseas examples of national security laws that tackle criminal acts committed outside the sovereign territory in accordance with the "personality principle", such as -

(i) the offences of treason, unlawful disclosure of classified information as well as the Logan Act (which targets activities of collusion with a foreign country or with external forces) of the US;

(ii) the offence of treason and the Terrorism Act 2000 of the UK;

(iii) the foreign interference offence of Australia; and

(iv) the offence of treason of Canada.

(b) The national security laws of other countries in which the "protective principle" is applied include -

(i) the terrorism offences of the US;

(ii) the National Security Act 2023 of the UK;

(iii) the offence of espionage of Australia; and

(iv) the offence of espionage of Canada.

Concluding remarks

8.9 The purpose of enacting national security legislation is to safeguard national security and to prevent, suppress and impose punishment for acts and activities endangering national security. In general, acts and activities endangering national security, regardless of whether they are carried out outside or inside the territory, are no different in nature and should be prevented, suppressed and punished. Otherwise, it will be tantamount to condoning acts and activities endangering national security carried out by ill-intentioned people outside the territory. Prescribing appropriate extra-territorial effect for offences endangering national security is an essential component of legislation for safeguarding national security, and also fully aligns with the principles of international law and international practices, and the common practices adopted in different countries and regions.

8.10 In view of this, we will carefully consider the actual national security risks targeted by the offences with a view to proposing a scope of application which is proportionate and necessary for safeguarding national security.

Chapter 9: Other matters relating to improving the legal system and enforcement mechanisms for safeguarding national security

This chapter analyses the experience in the investigation, enforcement, prosecution and trial of cases concerning offence endangering national security and the handling of matters relating to safeguarding national security since the implementation of the HKNSL, and explores ways to improve matters relating to the legal system and enforcement mechanisms for safeguarding national security, including:

- existing provisions on law enforcement powers and procedural matters relating to safeguarding national security;
- shortcomings and deficiencies revealed by the experience in handling cases concerning offence endangering national security;
- protecting persons handling cases or work concerning national security.

9.1 The fundamental purpose of Article 23 of the Basic Law is to require the HKSAR to enact laws on its own to safeguard national sovereignty, security and development interests. Therefore, legislation of the HKSAR for safeguarding national security should move with the times, with a view to properly addressing the traditional and non-traditional national security risks that our country is facing or may face in the future. Since 2020, the Central Authorities have, through a series of measures, further affirmed the HKSAR's constitutional duty to safeguard national security, and provided for the overall institutional arrangement for safeguarding national security in the HKSAR, including the adoption of the 5.28 Decision and the promulgation and implementation of the HKNSL. The 5.28 Decision and the HKNSL have clearly provided for the HKSAR's constitutional duty and institutional setup for safeguarding national security. Pursuant to Article 4 of the 5.28 Decision, the HKSAR must establish and improve the institutions and enforcement mechanisms for safeguarding national security, strengthen the enforcement forces for safeguarding national security, and step up enforcement to safeguard national security. Article 7 of the HKNSL not only requires the HKSAR to complete, as early as possible, legislation for safeguarding national security as stipulated in the Basic Law, but also requires the HKSAR to refine the relevant laws on safeguarding national security.

9.2 The implementation of the HKNSL has established the fundamental strengths for safeguarding national security in the HKSAR. However, we

must ensure that the legal system for safeguarding national security can be implemented effectively and can operate continuously to safeguard national security. In this regard, the legal system concerned should:

(a) ensure that the institutions for safeguarding national security established under the HKNSL can operate effectively;

(b) ensure that cases concerning offence endangering national security are handled in a fair and timely manner so as to effectively prevent, suppress and impose punishment for such offences;

(c) ensure that institutions, organisations and individuals responsible for safeguarding national security are provided with all appropriate support and protection in a timely manner, so as to enable them to discharge the important function of safeguarding national security;

(d) be forward-looking, being able to address not only existing national security risks but also risks and threats that may arise in the future; and

(e) provide a mechanism for implementing and enforcing the measures stipulated in the HKNSL and the proposed Ordinance.

9.3 In addition, the HKNSL, being a national law, has become part of the legal system of the HKSAR after its promulgation and implementation. The local laws and system of the HKSAR should achieve further convergence, compatibility and complementarity with the HKNSL. The proposed Ordinance provides an opportunity for such convergence, compatibility and complementarity.

Existing provisions on enforcement powers and procedural matters for safeguarding national security

9.4 Under Article 43 of the HKNSL, when handling cases concerning offence endangering national security, the law enforcement authorities of the HKSAR may take measures that are allowed to apply under the laws in force in the HKSAR in investigating serious crimes, and may also adopt the seven

types of measures set out in Article 43(1) of the HKNSL[73]. The Chief Executive, in conjunction with the Committee for Safeguarding National Security of the HKSAR, has made the Implementation Rules in accordance with the authorisation under Article 43(3). The Implementation Rules set out in detail the stringent procedural requirements to be observed by the relevant officers in taking the measures, including the conditions that need to be fulfilled when applying for the authorisation to take investigation measures.

9.5 Article 41(1) of the HKNSL stipulates that the HKNSL and the laws of the HKSAR shall apply to procedural matters, including those related to criminal investigation, prosecution, trial, and execution of penalty, in respect of cases concerning offence endangering national security over which the HKSAR exercises jurisdiction. Most of the provisions under the HKNSL apply not only to the handling of cases concerning offence endangering national security under the HKNSL, but also to the offences endangering national security under the existing laws of Hong Kong. Examples include HKNSL provisions under Article 35 on the disqualification of persons convicted of an offence endangering national security from holding any public office, Article 42(2) on bail, Article 43 on enforcement powers, Article 44 on the designation of judges, and Article 45 on the jurisdiction of each level of HKSAR courts to deal with cases concerning offence endangering national security[74]. The enforcement powers and procedural matters under the laws in force, such as the Police

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[73] The measures include:
(a) search of premises, vehicles, vessels, aircraft and other relevant places and electronic devices that may contain evidence of an offence;
(b) ordering any person suspected of having committed an offence endangering national security to surrender travel documents, or prohibiting the person concerned from leaving the Region;
(c) freezing of, applying for restraint order, charging order and confiscation order in respect of, and forfeiture of property used or intended to be used for the commission of the offence, proceeds of crime, or other property relating to the commission of the offence;
(d) requiring a person who published information or the relevant service provider to delete the information or provide assistance;
(e) requiring a political organisation of a foreign country or outside the mainland, Hong Kong, and Macao of the People's Republic of China, or an agent of authorities or a political organisation of a foreign country or outside the mainland, Hong Kong, and Macao of the People's Republic of China, to provide information;
(f) upon approval of the Chief Executive, carrying out interception of communications and conducting covert surveillance on a person who is suspected, on reasonable grounds, of having involved in the commission of an offence endangering national security; and
(g) requiring a person, who is suspected, on reasonable grounds, of having in possession information or material relevant to investigation, to answer questions and furnish such information or produce such material.

[74] *HKSAR v Ng Hau Yi Sidney* (2021) 24 HKCFAR 417, [2021] HKCFA 42, paragraphs 27-31.

Force Ordinance (Cap. 232), the Criminal Procedure Ordinance (Cap. 221), the Magistrates Ordinance (Cap. 227), etc., are applicable to cases concerning national security, unless there is any inconsistency with the provisions of the HKNSL.

9.6 Article 42(1) of the HKNSL stipulates that when applying the laws in force in the HKSAR concerning matters such as the detention and time limit for trial, the law enforcement and judicial authorities of the HKSAR shall ensure that cases concerning offence endangering national security are handled in a fair and timely manner so as to effectively prevent, suppress and impose punishment for such offences. We need to examine how to improve the relevant provisions on enforcement powers and procedural matters in order to meet the requirements of handling cases concerning offence endangering national security in a fair and timely manner.

Shortcomings and deficiencies as revealed from experience gained from handling cases concerning offence endangering national security

9.7 During the "black-clad violence" where large-scale riots and situations endangering national security occurred, law enforcement agencies gained much experience in their law enforcement actions. Since the implementation of the HKNSL and Implementation Rules, law enforcement agencies have taken law enforcement actions against various cases concerning offence endangering national security, and conducted preventive investigatory work necessary for safeguarding national security, in order to prevent and suppress offences endangering national security. The courts have also tried a number of cases concerning offence endangering national security. In this connection, we have reviewed the shortcomings and deficiencies as revealed from various stages of law enforcement and examined the methods deployed by other countries in handling similar matters. The major issues concerned are outlined in the ensuing paragraphs.

(A) Existing circumstances regarding detention of and bail arrangement for arrested persons during investigation

9.8 Under section 50 of the Police Force Ordinance, a police officer has the power to apprehend any person who the officer reasonably suspects of being guilty of an offence for which the person may be sentenced to imprisonment.

When a police officer makes an arrest, the officer must act according to the law and in an appropriate manner. The arrested person will then be delivered to the investigation team for conducting an inquiry. Upon completion of preliminary investigation, the Police will, having regard to the actual circumstances of individual cases, consider taking the following actions:

(a) charging the arrested person and taking him or her into custody pending appearance in court, or discharge the arrested person on bail pending appearance in court. In general, a person will not be detained for more than 48 hours;

(b) if the Police cannot complete investigation into the case forthwith, discharging the arrested person on bail to appear at such police station and at such time as specified; or

(c) unconditional release of the arrested person.

9.9 The legal basis and statutory authority concerning police bail is set out in section 52 of the Police Force Ordinance. Pursuant to section 52(1) of the said Ordinance, as regards an arrested person whom the Police have decided to charge, unless the offence appears to the Police to be of a serious nature or unless the Police reasonably considers that the person ought to be detained pending appearance before a magistrate (for reasons such as that the person arrested may abscond, commit an offence whilst on bail, interfere with the witnesses, impede investigation or attempt to pervert the course of justice), the Police may discharge the arrested person on his or her entering into a recognizance. In general, an arrested person should appear before a magistrate at the time and place named in the recognizance. If such person is detained in custody, the person should be brought before a magistrate as soon as practicable. In addition, according to section 52(3) of the Police Force Ordinance, if the Police considers that inquiry into the case cannot be completed forthwith, the person arrested may be discharged on his or her entering into a recognizance to appear at such police station and at such time as is named in the recognizance.

9.10 The experience gained from handling the "black-clad violence" shows that, after the occurrence of large-scale riots, the Police may encounter grave difficulties in gathering evidence and require relatively more time to complete preliminary investigation on all the persons arrested. As to cases concerning offence endangering national security, relatively more people

could be involved in a case. Furthermore, such cases could also implicate many local and external organisations and involve huge amounts of fund flows, possibly coupled with a certain degree of interference from external anti-China forces at the same time. Most of such criminal acts would be more insidious, complex and serious in nature. Some suspects would even attempt to exchange information with external sources and other members of their syndicate related to the case through various channels after the law enforcement actions have commenced, with a view to attempting to impede investigation and even engage in other acts endangering national security. In those special circumstances, the Police require a longer time than that in other general cases to complete the gathering of evidence and decide if charges should be laid against the arrested persons.

9.11 An arrested person involved in an offence endangering national security may also pose considerable national security risks while on bail. For example, the person may associate or communicate with other members of his syndicate who are at large and disclose details about the investigation, tamper the evidence, interfere with the witnesses, transfer offence related property out of the HKSAR, make arrangements for himself or herself or other suspects to abscond, or even plan and commit further offences endangering national security.

9.12 It has come to our attention that the National Security Act 2023 of the UK has, in dealing with similar issues, conferred extensive powers upon the law enforcement authorities to take prevention and investigation measures, which include the following, so as to deal with people who are suspected to be involved in acts and activities endangering national security, thereby reducing the national security threats that they pose in the course of the investigations:

(a) Powers conferred on the police to apply to a judicial authority for extension of detention, so that the detention period of an arrested person can be extended without charge, so as to allow the police to obtain, preserve, analyse or examine relevant evidence: in addition to Part 6 of Schedule 6 to the National Security Act 2023 of the UK, which specifies the means for the police to apply to a judicial authority for an extension of detention, other existing UK laws also give the UK police the power to apply to a judicial authority for an extension of

detention of people arrested for serious crimes (especially those involved in terrorist activities) to up to 14 days.

(b) Sections 8 and 9 of Schedule 6 to the National Security Act 2023 of the UK empower police officers of at least the rank of superintendent to direct that a detained person may not consult a particular solicitor or to delay a detained person's consultation with a solicitor.

(c) Section 39 of and Schedule 7 to the National Security Act 2023 of the UK stipulates that the Secretary of State may, subject to specified conditions (e.g. he or she reasonably believes that an individual is involved in foreign power threat activity), and subject to the court's permission, impose an array of measures on an individual, including –

(i) the requirement to reside at a specified residence;

(ii) the requirement not to enter a specified area or place without permission;

(iii) restrictions on the individual's association and communication with other persons;

(iv) requirements for him or her to comply with directions given by a constable in respect of his or her movements;

(v) not to hold any accounts without the permission of the Secretary of State;

(vi) impose restrictions on the transfer of property to or by the individual and/or requirements in relation to the disclosure of property;

(vii) impose restrictions on his or her possession or use of electronic communication devices; and

(viii) impose restrictions or specified conditions in connection with his/her work or studies (including training).

9.13 In this connection, we may consider introducing measures to ensure that when handling cases concerning offence endangering national security, the law enforcement agencies have sufficient time to carry out all the necessary preliminary investigation on the arrested persons and the case, and prevent any circumstances that may jeopardise the investigation and prevent the risks of arrested persons further endangering national security.

(B) Suspects absconding overseas

9.14 Individuals endangering national security often abscond overseas to evade criminal liability, and continue to endanger national security through various means (e.g. colluding with external forces to exert pressure on the Central Authorities and the HKSAR Government, or setting up, outside the HKSAR, organisations endangering national security, etc.). An example is the issuance of arrest warrants by the court in 2023, upon application by the National Security Department of the Hong Kong Police Force, against a total of 13 persons who had absconded overseas and were suspected to have committed offences under the HKNSL. The 13 absconders have allegedly continued to engage in certain acts and activities endangering national security after absconding overseas, including requesting foreign countries to impose "sanction" against officials and judges of the HKSAR, and inciting secession and subversion.

9.15 There are also some legal or administrative measures in foreign countries that aimed at addressing, combating, deterring and preventing acts of abscondment, and procuring the return of absconded persons to their home countries to face law enforcement and judicial proceedings, examples of which include:

(1) Cancelling the passports of absconded persons - under the relevant law of the US (Code of Federal Regulations, Title 22, sections 51.60-65), a law enforcement agency may request the Department of State to revoke a person's passport in accordance with the provisions of that law for any of the following reasons -

(a) the person is wanted on a criminal charge for which a warrant has been issued;

(b) a court order has been made to prohibit the person from leaving the country;

(2) Suspending the benefits or rights of absconded persons - under the relevant law of the US listed below, benefits and entitlements (mainly social security benefits) of fugitive offenders shall be suspended and denied -

(a) Disqualification from participation in the Supplemental Nutrition Assistance Program (US Code Title 7 Ch. 51 §2015(k));

(b) Not entitled to payment of Old-Age and Survivors Insurance benefits and Disability Insurance benefits (US Code Title 42 Ch. 7 §402(x)(1)(A));

(c) Not entitled to supplemental security income for aged, blind, and disabled individuals (US Code Title 42 Ch. 7 §1382(e)(4)(A));

(3) Providing for offences to prohibit the harbouring or concealing of fugitive offenders - under the relevant law of the US (US Code Title 18 §1071 (Concealing Person from Arrest)), it is an offence for "whoever harbors or conceals any person for whose arrest a warrant or process has been issued under the provisions of any law of the United States, so as to prevent his discovery and arrest, after notice or knowledge of the fact that a warrant or process has been issued for the apprehension of such person".

In this connection, we may consider making reference to US laws and adopting measures of sufficient strength to address, combat, deter and prevent acts of abscondment, and to procure the return of absconded persons to the HKSAR.

(C) Procedural matters

9.16 Although criminal procedural matters have already been provided for under certain local laws of the HKSAR, as far as the procedural matters of cases concerning offence endangering national security are concerned, the provisions under the local laws should be convergent with the relevant requirements of the HKNSL, and should be improved as appropriate in order to meet the said requirements. For instance, the HKSAR Government introduced amendments to the Criminal Procedure Ordinance in 2023 to provide for statutory appeal procedures for the prosecution to appeal against a verdict or order of acquittal given by the Court of First Instance constituted by a panel of three judges without a jury under Article 46 of the HKNSL. The amendments aimed to address lacunae in the criminal appeal system due to the prosecution's inability to appeal against any acquittals by professional judges of the Court of First Instance in cases concerning offence endangering national security that were erroneous, so as to prevent possible miscarriage of justice.

9.17 It should be noted in particular the provisions of Article 42 of the HKNSL relating to the handling of cases concerning offence endangering national

security "in a fair and timely manner". When handling cases concerning offence endangering national security, both the Police and the Department of Justice strictly comply with the provisions of Article 42 of the HKNSL and the relevant law. However, as cases concerning national security are often complex in nature and involve a large number of defendants, the legal procedures involved take time and often entail a longer period of time before the case can proceed to trial. While the court always proactively accords priority to the handling of cases related to the HKNSL and endeavours to fix an earliest possible trial date for each of those more complex cases involving a large number of defendants, the time taken between the institution of prosecution and the trial of each case would depend on a multitude of factors, such as whether further investigation is required, whether the defendant requires time to seek legal advice for consideration of his or her plea, whether the defence requires the court's certification of translated documents or exercises entitlements under the law to make any pre-trial application.

9.18 According to the judgment of the Court of Final Appeal in the case of *HKSAR v Ng Hau Yi Sidney*, with the full cooperation of the parties, judges should proactively seek ways to bring cases concerning national security to trial expeditiously, consistently with the interests of justice. There should be proactive case management and a monitoring of progress by the court rather than leaving all initiatives to the parties. The courts should set and enforce strict timetables and should consider whether any prescribed procedural steps can be eliminated, modified, etc. to avoid delay and wasted effort, consistent always with a fair trial[75].

9.19 In this connection, we can consider improving some procedural matters in this legislative exercise, including eliminating certain procedures, so that cases concerning national security can be scheduled for trial as soon as possible, with an aim to enable the fulfilment of the goal for cases concerning offence endangering national security to be handled in a timely manner on the premise of maintaining fair trials.

[75] *HKSAR v Ng Hau Yi Sidney* (2021) 24 HKCFAR 417, [2021] HKCFA 42, paragraph 34.

(D) Arrangements on the serving of sentences of convicted persons

9.20 Under rule 69 of the Prison Rules (Cap. 234A), a prisoner serving a sentence of imprisonment for an actual term of more than one month may, on the ground of industry and good conduct, be granted remission of sentence, and the remission shall not exceed one-third of the total of the actual term and any period spent in custody. The requirements for early release of prisoners under supervision are set down in various Ordinances including the Post-Release Supervision of Prisoners Ordinance (Cap. 475) and the Long-term Prison Sentences Review Ordinance (Cap. 524). However, there have been cases in which prisoners convicted of offence endangering national security absconded or continued to carry out acts and activities endangering national security when they were granted early release under supervision.

9.21 In this regard, we note that there are provisions in law relating to terrorist offenders in the UK (Terrorist Offenders (Restriction of Early Release) Act 2020) that address the issue concerned. It tightens the threshold for eligibility for the parole of offenders convicted of terrorist offences such that the relevant authority must be satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined before an early release may be granted to the prisoner.

9.22 In this regard, consideration maybe given to whether similar provisions should be introduced. For example, the relevant authority must have sufficient grounds to believe that the offender no longer poses risks to national security before considering his or her early release.

<u>Protecting persons handling cases or work involving national security</u>

9.23 During the "black-clad violence", the court, upon applications by the Department of Justice, granted interim injunctions to prohibit any person from unlawfully disclosing the personal data of any police officers, judicial officers and their family members; and prohibit any person from engaging in acts such as intimidation, harassment, or threats against any police

officers, judicial officers and their family members[76]. Notwithstanding this, since the implementation of the HKNSL, incidents of unlawful disclosure of the personal data of public officers handling work relating to safeguarding national security continue to occur from time to time. There have also been cases of "doxxing" against officers in charge of such work.

9.24 In 2021, the Personal Data (Privacy) Ordinance (Cap. 486) underwent major amendments, which aim to combat "doxxing" acts that are intrusive to personal data privacy, through the criminalisation of "doxxing" acts, and conferring on the Privacy Commissioner for Personal Data power to conduct criminal investigation and institute prosecution for "doxxing" cases. However, the penalties for the relevant offences fail to reflect the seriousness of acts of "doxxing" against persons handling cases or work involving national security.

9.25 As for acts of harassment, there is currently no specific law prohibiting acts of harassment. While section 24 of the existing Crimes Ordinance prohibits certain acts of intimidation[77] and section 160 of the same Ordinance also prohibits loitering in a public place, there is no specific law prohibiting the act of harassment. Existing offences are insufficient in covering all forms of harassment of a certain level of severity that target at

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[76] The High Court granted an interim injunction order (HCA 1957/2019) in October 2019 to restrain any person from disclosing the personal data of any police officers and their family members without the consent of the person concerned to intimidate or harass the police officers and their family members. The said injunction order also prohibits any person from intimidating or harassing any police officers and their family members, as well as assisting, inciting or abetting others to commit any of the aforesaid acts. The interim injunction order is still effective as at today. Moreover, the High Court granted an interim injunction order (HCA 1847/2020) in October 2020 to restrain any person from disclosing the personal data of any judicial officers and their family members without the consent of the person concerned to intimidate or harass the judicial officers and their family members. The said injunction order also prohibits any person from intimidating or harassing any judicial officers and their family members, as well as assisting, inciting or abetting others to commit any of the aforesaid acts. The interim injunction order is still effective as at today.

[77] Any person who threatens any other person –

(a) with any injury to the person, reputation or property of such other person; or

(b) with any injury to the person, reputation or property of any third person, or to the reputation or estate of any deceased person; or

(c) with any illegal act,

with intent in any such case –

(i) to alarm the person so threatened or any other person; or

(ii) to cause the person so threatened or any other person to do any act which he is not legally bound to do; or

(iii) to cause the person so threatened or any other person to omit to do any act which he is legally entitled to do,

shall be guilty of an offence, with a maximum penalty of five years of imprisonment.

the aforesaid officers. Therefore, we may consider introducing new offences in this regard.

9.26 In the light of the current situation, any public officers, barristers or solicitors handling cases concerning national security or other work for safeguarding national security, and informers and witnesses of national security cases face risks of unlawful disclosure of personal data and harassment no less than judicial officers and police officers. Their safety, as well as the safety of their family members, should be appropriately protected so as to enable them to handle or participate in cases concerning national security and other work for safeguarding national security without worries, thereby buttressing and strengthening the enforcement forces for safeguarding national security.

Concluding remarks

9.27 This Chapter sets out the shortcomings and inadequacies revealed by the experience in handling cases concerning national security. These include the need of the Police for more time than cases generally to complete the gathering of evidence and decide whether to lay charges against complex cases concerning national security; suspects tipping off their accomplices through different channels; the possibility of arrested persons to continue to commit offences or pose national security risks while on bail; suspects absconding overseas at all costs; longer waiting time for cases to be brought to trial; prisoners engaging in acts and activities which endanger national security or even absconding overseas when under supervision upon early release; and officers handling work of safeguarding national security being "doxxed" or harassed. Members of the public may consider the relevant foreign laws cited in the Consultation Document, the existing laws applicable to the HKSAR, and HKSAR's actual situation, and provide their views on these shortcomings and inadequacies, with a view to improving the legal system and enforcement mechanisms for safeguarding national security, in particular those mentioned in this Chapter, including:

(a) measures that can allow sufficient time for law enforcement agencies to investigate complex cases concerning offence endangering national security, prevent circumstances that would jeopardise the investigation such as tipping off accomplices, and avoid risks of bailed persons from further endangering national security;

(b) measures that can cope with, combat, deter and prevent acts of absconding, and cause the return of absconded persons to Hong Kong to participate in law enforcement and judicial proceedings;

(c) measures that can better achieve the objective of handling cases concerning national security in a fair and timely manner, with a view to improving the legal proceedings of national security cases;

(d) measures that will allow early release of prisoners convicted of offences endangering national security only when the relevant authority has sufficient grounds to believe that the prisoners no longer pose national security threats;

(e) measures that can effectively protect persons handling work concerning national security from being "doxxed" or harassed.

Annex 1

Summary of Recommendations

Recommendations of Chapters 1 to 9 of this Consultation Document are listed below to facilitate members of the public to give their views. Other views on this legislative exercise are also welcomed.

Legislative principles (Chapters 1 to 2)

1. Considering that the decision of the National People's Congress on safeguarding national security in the HKSAR (the "5.28 Decision") and the HKNSL contain clear provisions on the HKSAR's constitutional duty and system for safeguarding national security, we recommend that the legislation for Article 23 of the Basic Law should fully implement the relevant requirements and seek convergence, compatibility and complementarity with the HKNSL, so as to form an improved and effective legal system for safeguarding national security. We propose **to introduce a new "Safeguarding National Security Ordinance"** to comprehensively address risks endangering national security that the HKSAR is facing at present and may face in the future, as well as to fully implement the constitutional duty and obligation of the HKSAR under the 5.28 Decision and the HKNSL.
2. Considering that the HKNSL has already created offences and provided for two types of acts, namely secession and subversion, we recommend that it is not necessary for the HKSAR to legislate on the offences of secession and subversion again.

Legislation against acts and activities endangering national security (Chapters 3 to 8)

Chapter 3 : Treason and related acts

3. Having taken into account the relevant laws of foreign countries cited in the Consultation Document, existing laws applicable to the HKSAR and HKSAR's actual situation, we recommend to improve "treason" (「叛逆」) and related offences under the existing Crimes Ordinance, to effectively prevent acts in the nature of treason and to protect the territory of our country from invasion, including :
   (a) introduce the offence of "treason" (「叛國」罪) modelled on the existing offence of "treason" (「叛逆」罪), covering the use or threat of

force with the intention to endanger national sovereignty, unity or territorial integrity;

(b) codify the existing offence of "misprision of treason" under common law;

(c) retain existing "treasonable offences" and make amendments in accordance with the provisions on the offence of "treason", so as to deal with the overt manifestation of the intention to commit "treason";

(d) improve the existing offence of "unlawful drilling" to prohibit receipt of or participation in training in the use of arms or the practice of military exercises or evolutions involving external forces, and prohibit the provision of the same in collaboration with external forces.

Chapter 4 : Insurrection, incitement to mutiny and disaffection, and acts with seditious intention

4. Having taken into account the relevant laws of foreign countries cited in the Consultation Document, existing laws applicable to the HKSAR and HKSAR's actual situation, we recommend to improve the offences relating to "sedition" under the existing Crimes Ordinance, with a view to curbing acts that endanger national security, such as incitement to mutiny, incitement to disaffection, and incitement to hatred, including :

   (a) improve the existing offence of "incitement to mutiny", including providing a clear definition of the term "mutiny";

   (b) model on the existing offence of "incitement to disaffection" and adjust its coverage such that any person who knowingly incites a public officer to abandon upholding the Basic Law or allegiance to the HKSAR, or incites members of the offices of the Central People's Government in the HKSAR (other than the Hong Kong Garrison) to abandon their duties or allegiance to the People's Republic of China, is guilty of an offence;

   (c) improve the existing offences relating to "seditious intention" to deal with incitement of hatred against the fundamental system of the State, Central Authorities and the executive authorities, legislature and judiciary of the HKSAR.

5. We also recommend to introduce the offence of "insurrection" to effectively prevent insurrectionist acts, and protect the public from violent attacks and coercions that endanger national security.

Chapter 5 : Theft of state secrets and espionage

6. Having taken into account the relevant laws of foreign countries cited in the Consultation Document, existing laws applicable to the HKSAR and HKSAR's actual situation, we recommend to improve the offences and provisions relating to "protection of state secrets" under the existing Official Secrets Ordinance, so as to protect secrets relating to our country or the HKSAR from theft or unlawful disclosure, including :
   (a) provide detailed definition of "state secrets" in view of the scope of "state secrets" in relevant national laws;
   (b) replace the term "public servant" with "public officer", and suitably adjusting the scope of the definition to cover officers who are more likely to have access to or possession of state secrets;
   (c) consolidate and improve offences relating to "state secrets" under the existing Official Secrets Ordinance, so as to better protect state secrets.
7. We also recommend to improve the offences and provisions relating to "espionage" under the existing Official Secrets Ordinance, so as to curb acts of espionage and collusion with external elements with the intent to endanger national security, including:
   (a) improve the existing offences and relevant terms relating to "espionage" in order to cover acts and activities of modern-day espionage;
   (b) prohibit participation in, support to or receipt of benefits from foreign intelligence organisations.

Chapter 6 : Sabotage endangering national security and related activities

8. Having taken into account the relevant laws of foreign countries cited in the Consultation Document, existing laws applicable to the HKSAR and HKSAR's actual situation, we recommend to introduce a new offence to fully protect public infrastructure from malicious damage or impairment, and to combat acts endangering national security that are done in relation to a computer or electronic system, including:
   (a) prohibit acts of sabotage endangering national security;
   (b) prohibit unauthorised acts in relation to a computer or electronic system endangering national security.

Chapter 7 : External interference and organisations engaging in activities endangering national security

9. Having taken into account the relevant laws of foreign countries cited in the Consultation Document, existing laws applicable to the HKSAR and HKSAR's actual situation, we recommend to legislate to prohibit any person from collaborating with external forces to influence the formulation or implementation of policies or measures by the CPG and the HKSAR Government, performance of duties by the Legislative Council and the courts, or to interfere in elections of the HKSAR, etc., through improper means, so as to prevent external forces from improperly interfering in the affairs of our country or the HKSAR.

10. We also recommend, based on provisions in the existing Societies Ordinance relating to the safeguarding of national security or prohibition of a political organisation in the HKSAR from having connection with external political organisations, improvement should be made to prohibit all organisations endangering national security (including organisations established outside the HKSAR, but actually have a nexus with the HKSAR) from operating in the HKSAR, in order to effectively prevent and suppress the operation in the HKSAR of organisations that engage in activities endangering national security.

Chapter 8 : Extra-territorial application of the proposed Ordinance

11. Taking into account the principles of international law and international practices cited in the Consultation Document, provisions on the extra-territorial effect of offences under the HKNSL, existing laws of the HKSAR, as well as the current practices of other countries, we recommend that proportionate extra-territorial effect be provided for some of the offences to be stipulated under the proposed Ordinance.

<u>Improving the legal system and enforcement mechanisms to safeguard national security (Chapter 9)</u>

12. Chapter 9 sets out the shortcomings and inadequacies revealed by the experience in handling cases concerning national security. These include the need of the Police for more time than cases generally to complete the gathering of evidence and decide whether to lay charges against complex cases concerning national security; suspects tipping off their accomplices through

different channels; the possibility of arrested persons to continue to commit offences or pose national security risks while on bail; suspects absconding overseas at all costs; longer waiting time for cases to be brought to trial; prisoners engaging in acts and activities which endanger national security or even absconding overseas when under supervision upon early release; and officers handling work of safeguarding national security being "doxxed" or harassed. Members of the public may consider the relevant foreign laws cited in the Consultation Document, the existing laws applicable to the HKSAR, and HKSAR's actual situation, and provide their views on these shortcomings and inadequacies, with a view to improving the legal system and enforcement mechanisms for safeguarding national security, in particular those mentioned in Chapter 9, including:

(a) measures that can allow sufficient time for law enforcement agencies to investigate complex cases concerning offence endangering national security, prevent circumstances that would jeopardise the investigation such as tipping off accomplices, and avoid risks of bailed persons from further endangering national security;

(b) measures that can cope with, combat, deter and prevent acts of absconding, and cause the return of absconded persons to Hong Kong to participate in law enforcement and judicial proceedings;

(c) measures that can better achieve the objective of handling cases concerning national security in a fair and timely manner, with a view to improving the legal proceedings of national security cases;

(d) measures that will allow early release of prisoners convicted of offences endangering national security only when the relevant authority has sufficient grounds to believe that the prisoners no longer pose national security threats;

(e) measures that can effectively protect persons handling work concerning national security from being "doxxed" or harassed.

Annex 2

Laws of foreign countries relevant to national security

Listed below are the laws of foreign countries concerning national security mentioned in paragraph 2.2 of this Consultation Document; this Consultation Document has cited and made reference to 22 items of them (as denoted with *).

UK

Treason Act 1351

* Treason Felony Act 1848

* Official Secrets Act 1911 [repealed in 2023]

* Official Secrets Act 1920 [repealed in 2023]

Incitement to Disaffection Act 1934

Official Secrets Act 1989

Security Service Act 1989

* Computer Misuse Act 1990

Political Parties, Elections and Referendums Act 2000

* Terrorism Act 2000

Anti-terrorism, Crime and Security Act 2001

Terrorism Act 2006

Terrorism Prevention and Investigation Measures Act 2011

* Terrorist Offenders (Restriction of Early Release) Act 2020

* National Security and Investment Act 2021

* National Security Act 2023

US

The United States Code

- Title 8 Ch.12 Immigration and Nationality
- Title 18 Ch.37 Espionage and Censorship
- Title 18 Ch.45 Foreign Relations
- Title 18 Ch.47 Fraud and False Statements
- Title 18 Ch.90 Protection of Trade Secrets
- Title 18 Ch.113B Terrorism

* - Title 18 Ch.115 Treason, Sedition, and Subversive Activities

- Title 18 Ch.119 Wire and Electronic Communications Interception and Interception of Oral Communications
- Title 50 Ch.23 Internal Security

* Logan Act

Foreign Agents Registration Act of 1938

National Security Act of 1947

Central Intelligence Agency Act of 1949

National Security Agency Act of 1959

Foreign Intelligence Surveillance Act of 1978

Foreign Missions Act

USA PATRIOT Act of 2001

Homeland Security Act of 2002

Intelligence Reform and Terrorism Prevention Act of 2004

Cybersecurity Information Sharing Act of 2015

* The Code of Federal Regulations

Australia

Crimes Act 1914

* Criminal Code Act 1995

* Foreign Influence Transparency Scheme Act 2018
* National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018

Canada

* Criminal Code
* Security of Information Act
* Canada Evidence Act

  National Defence Act
* Canadian Security Intelligence Service Act

  Access to Information Act

  Canada Elections Act

  Secure Air Travel Act

  National Security Act, 2017

New Zealand

* Crimes Act 1961

  Intelligence and Security Act 2017

Singapore

* Penal Code 1871

  Official Secrets Act 1935
* Internal Security Act 1960

  Societies Act 1966

  Computer Misuse Act 1993
* Foreign Interference (Countermeasures) Act 2021

Annex 3

List of Abbreviations

HKSAR	The Hong Kong Special Administrative Region
UK	The United Kingdom
The Constitution	Constitution of the People's Republic of China
The Basic Law	The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China
CPG	The Central People's Government
NPC	The National People's Congress
The 5.28 Decision	The National People's Congress on Establishing and Improving the Legal System and Enforcement Mechanisms for the Hong Kong Special Administrative Region to Safeguard National Security on 28 May 2020
NPCSC	The Standing Committee of the National People's Congress
HKNSL	The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region
US	The United States
The Committee	The Committee for Safeguarding National Security of the Hong Kong Special Administrative Region
Implementation Rules	The Implementation Rules for Article 43 of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region
ICCPR	The International Covenant on Civil and Political Rights
ICESCR	The International Covenant on Economic, Social and Cultural Rights
The proposed Ordinance	A new Safeguarding National Security Ordinance

The Counterespionage Law	The Counterespionage Law of the People's Republic of China

Designed by the Information Services Department
Printed by the Government Logistics Department
The Government of the Hong Kong Special Administrative Region
(Printed with environmentally friendly ink and paper)

Annex 2

Safeguarding National Security:
Basic Law Article 23 Legislation Public Consultation
Summary of Written Submissions and Responses

I.	**General Comments**
	Summary of Views Overall speaking, the vast majority of the respondents supported completing the legislation on Article 23 of the Basic Law as soon as possible, while an extremely small number of people explicitly opposed the legislation. As for the overall strategy of legislation, opinions and suggestions include the scope of this legislation, the reference and basis for legislation, the focus of legislation, the consultation period, the protection of rights and freedoms/the principle of the rule of law, and reference to relevant national laws. Comments on individual parts are summarised as follows: *Legislative Exercise for Article 23 of the Basic Law* ● **A vast majority of the respondents support to complete the legislative exercise of Article 23 of the Basic Law as soon as possible.** They consider that the legislation can remedy the shortcomings in the national security law, and prevent sedition, intervention and infiltration by external forces, thereby enabling the HKSAR to tackle current and future national security risks in a forward-looking and comprehensive manner. ● Some of the respondents consider that as part of China, the HKSAR has the duty to enact legislation on Article 23 of the Basic Law and to discharge the constitutional and legal responsibility of the HKSAR, with a view to safeguarding national security and stability. The enactment of legislation on Article 23 is a necessity and should be done as quickly as possible. ● A local group that supports the government agrees and supports that legislation on Article 23 of the Basic Law is an urgent matter. ● A local chamber of commerce stated that based on the increasingly complex national security risks, this legislation is obviously necessary and urgent. ● A legal group expressed support for the Article 23 legislation. ● A local legal group expressed its full support for the Article 23 legislation.

	● **Only an extremely small number of respondents opposed the Basic Law Article 23 Legislation.** They were concerned about the negative impact of legislation on the economy. There were views that the existing Hong Kong National Security Law (HKNSL) was sufficient to deal with national security issues, and that there was no pressing need for legislation. Some people were worried that the legislation would threaten the freedom of speech, human rights and democratic values, and would affect the international status of Hong Kong and its competitiveness, or inevitably be used by those in power to suppress dissent. They considered that the legislation might impede the flow of information, jeopardise the business environment, leading to a loss of foreign investment. ● Some respondents pointed out that since the implementation of the HKNSL in 2020, the national security issues in Hong Kong have been dealt with in a timely manner. Quite a number of members of the public did not understand the necessity of the legislation on Article 23, and were of the view that there seemed to be duplication between the two. It is suggested that the Government need to carry out more publicity work to explain the urgency of legislation. ● A few responders requested the immediate suspension of Article 23 legislation, a comprehensive review of the implementation of laws related to national security, and an end to the suppression of human rights and freedoms in the name of national security. ● A very few respondents strongly condemned and objected to the provisions of Article 23. ● An anti-government organization opposes the Hong Kong government's legislation on Article 23 of the Basic Law, believing that the legislation will further weaken human rights, affect Hong Kong's international reputation and competitiveness, and provoke community conflicts and hatred. *Need for legislation / purpose of legislation* ● Some of the respondents consider that the enactment of legislation on Article 23 of the Basic Law can better secure personal safety and other rights and freedoms of the HKSAR residents and other people within the HKSAR. This can also ensure that assets and investments within the HKSAR can be protected by law. ● Some of the respondents also consider that the legislation can promote economic development, protect overall interests, attract more foreign investments, ensure long-term implementation of the principle of "One

	Country, Two Systems" and integrate Hong Kong into overall development of the country, thereby facilitating future exchanges and cooperation between Hong Kong and the Mainland. ● Considers that the legislation can enhance confidence and expectation of the public in the future of Hong Kong. Establishment of a sound legal system and enforcement mechanism can improve capability and level of governance of Hong Kong, thereby creating a more secure, stable and prosperous living environment. ● Deeply believes that the legislative exercise and enforcement of Article 23 of the Basic Law will bring more stability and transparency to Hong Kong's financial market, enhance confidence of international investors and bring new momentum to Hong Kong's economy. ● Points out that the enactment of legislation on Article 23 of the Basic Law encourages diversity of opinions and intellectual freedom, and builds an open and inclusive society. ● Points out that with a view to achieving the goals of high-quality development and high-level self-reliance in technology of the country, we do not only need to take the initiative to develop core technologies, but also protect them from illegal transfer and theft, and the risk of interruption of supply chain of technology enterprises. The enactment of legislation on Article 23 of the Basic Law will provide strong legal support in this regard, which helps enhance protection for development of these enterprises' core technologies, and prevent theft and outflow of these technologies and intellectual properties. ● It is considered that as an international city, a legislation complying with international practices and standards helps boost Hong Kong's international image and status. The legislation does not bring about restrictions on human rights and freedom. On the contrary, legal rights of citizens can be better protected through clear legal provisions and procedures. At the same time, combatting acts endangering national security helps safeguard people's life and property, and common interests of the society. ● Some of the respondents consider that in view of technology development and expedited globalisation, new types of cyber security threats also emerge. These threats may pose severe impact on national security of Hong Kong. The enactment of legislation on Article 23 can secure the totality and vision of the overall national security system, tackle different types of current and future national security risks, and maximise protection for the interests of all law-

	abiding citizens. ● In order to prevent people or foreign forces from exploiting the loopholes in the HKNSL to seek grey areas in the law, the expeditious legislation on Article 23 can comprehensively combat forces endangering national security. This will provide a more solid legal basis for plugging the loopholes in national security. ● A local chamber of commerce believes that the legislation can allow investors to have a clearer understanding of Hong Kong's bottom line for safeguarding national security and eliminate unstable factors in investment and business decisions. ● A local chamber of commerce supports Article 23 legislation to complete the legal system for Hong Kong society. ● A local legal professional agrees that the legislation on Article 23 will help consolidate the rule of law and social development in Hong Kong. The legislation must be completed as soon as possible to deal with various situations that may endanger national security. *Scope of legislation* ● Some of the respondents consider that the enactment of legislation on Article 23 of the Basic Law should fully implement the HKSAR's constitutional duty and obligation as stipulated under the 5.28 Decision and the HKNSL. Article 23 of the Basic Law needs to achieve high convergence, compatibility and complementarity with the HKNSL, with a view to establishing a comprehensive legal system for safeguarding national security. ● The core issue of Article 23 is effectiveness of the proposed ordinance. Being effective does not merely mean effective suppression and punishment. More importantly, the proposed ordinance needs to have sufficient resistance and deterrence, so that lawbreakers do not want to and dare not to contravene the law. ● Points out that from the point of view of the constitutional duty to enact legislation on Article 23 of the Basic Law, the Government should act within the boundaries of Article 23. It is not preferable to widen the scope of Article 23. ● A local academic society supports the Hong Kong government's legislation on Article 23 of the Basic Law and recommends strengthening protection of non-traditional security areas such as artificial intelligence security, network security and data security.

	Legislative References / Basis ● Some of the respondents emphasis that a sound legal system for safeguarding national security has to be established and experience of common law countries can be referred to in protecting business environment. The legislative exercise is necessary and pressing. Discharge of the constitutional duty is very important in maintaining long-term prosperity and stability of Hong Kong. ● It is considered that as the constitutional cornerstone of the HKSAR, the Basic Law clearly stipulates the duty and obligation to safeguard national security. Enactment of legislation on Article 23 of the Basic Law is an important means to comply with the requirements under the Basic Law. This also helps maintain the rule of law and constitutional order of Hong Kong. ● It is considered that the enactment of legislation on Article 23 of the Basic Law helps strengthen the rule of law and promote judicial independence in Hong Kong. ● Suggests that the HKSAR may refer to related legislative experience of other common law countries, with a view to forming a meticulous and efficient legal system for national security. ● It is proposed that the Criminal Law of the People's Republic of China be replicated in Hong Kong followed by the enactment of local legislation. *Relation with the HKNSL* ● Some respondents pointed out that the HKNSL is the superior law of the Hong Kong's domestic law. When formulating the Safeguarding National Security Ordinance, it was worried that putting the HKNSL together in order to achieve convergence, compatibility and complementarity with each other was not entirely appropriate. ● Points out that the HKNSL had been implemented in Hong Kong with continuous improvements, and that legislation on Article 23 was no longer a duty. ● In the process of enacting the legislation, consideration should be given that this legislation should be compatible with the legal status of the HKNSL. When interpreting the law and handling certain cases, the handling methods should be similar to that of the HKNSL, that is, a national-level treatment should be warranted. *Concerns about the legislation exercise*

	● In enacting legislation on Article 23 of the Basic Law, special attention needs to be given to clarity, predictability and fairness of the law. ● More attention needs to be given to brainwashing information brought forward to Hong Kong people amid technology development and soft resistance. The legislation needs to keep pace with the times; regular review should be carried out to make necessary adjustments in response to social development and changes in security circumstances. ● Points out that in ensuring that the national security law is sufficient and reasonably flexible, it is necessary to consider who is the judge to define what is reasonable, and how to minimise the uncertainties brought by flexibility. Future risks should be dealt with by future law and excessive legislation should be avoided. ● Points out that communication is very important in alleviating the concern of the press about the enactment of legislation on Article 23 of the Basic Law. ● Hopes that the enactment of legislation on Article 23 of the Basic Law can be completed without affecting normal life of the community. ● Points out that the legislative exercise can be conducted in a mild manner to avoid loss of our financial stability, as some foreign companies may leave Hong Kong out of fear. ● Points out that it is the best to ensure that Article 23 can effectively deal with intelligence officers who station in Hong Kong. The National Security Department should play the same role as the Special Branch before reunification and focus on political activities carried out by foreign countries in Hong Kong. Article 23 should confer sufficient statutory power on the National Security Department to perform this duty. ● The aim of the implementation of Article 23 of the Basic Law is to safeguard security and stability of Hong Kong, but it also triggers concerns about freedom of speech and democracy. Balancing safety and freedom is a difficult but important issue. Clear definitions, transparent enforcement procedures, supervision and inspection mechanisms, education and publicity, and communication and discussion are necessary. ● As long as the laws on safeguarding national security become stronger and clearer, the people will be able to live in peace, and their lives and property will be protected. ● The Government should provide clear provisions on the specific

	details of the Safeguarding National Security Ordinance to minimise possible disputes or even the need for "interpretation of the law" in the future. The Government should also be careful to avoid jeopardising Hong Kong's characteristics and advantages as an international city while achieving the legislative intent. ● The principle of "lenient legislation and strict enforcement" should be adopted. ● The legislative provisions of Article 23 of the Basic Law should be as clear as possible, but they should be stringent rather than loose. ● A Hong Kong non-government organisation fully supports the Hong Kong government's legislation on Article 23 of the Basic Law and calls on all sectors of society to work together to help explain the legislative exercise in the Hong Kong society so that citizens can have a clearer understanding of the content, principles and necessity of the legislation. *Consultation Approach / Length of Consultation* ● A consultation hotline should be set up, and in operation until after Article 23 legislation is implemented. ● Individual respondents pointed out that the consultation should not be too long and legislation should be enacted as soon as possible. ● Individual respondents pointed out that the consultation period was too short and called for a more extensive public consultation. They were of the view that the Government should first address the concerns about people's livelihood and improve governance before considering the need for legislation. ● The legislation for Article 23 of the Basic Law is a constitutional responsibility. Discussions among the society have been going on for many years. The public has been mentally prepared for it. Not many people think that the consultation period is too short. ● An anti-government organization pointed out that the one-month consultation period deviated from the general legal consultation procedures of legislation that have a significant impact on Hong Kong. ● If the public feels that the consultation period is insufficient, they can immediately respond or raise any unclear points to the government. *Protection of rights and freedom / principles of the rule of law* ● While safeguarding national security, the HKSAR Government should

	also take into account fundamental rights of members of the public that are protected under human rights legislations, so as to prevent violation of the universal legal principle of natural justice, such as "making judgment before trial". ● Suspects should have the right to legal advice in the absence of surveillance and, in the event of conviction, should retain the right to appeal on the ground of violation of procedural justice. ● Article 19(3) of the International Covenant on Civil and Political Rights stipulates that freedom of expression is not absolute, and the government can enact laws to provide for necessary restrictions to protect national security, public order, public health and morals. The Basic Law and the Hong Kong Bill of Rights guarantee freedom of expression, peaceful assembly, procession and demonstration for Hong Kong citizens. But most of the rights and freedoms are not absolute. ● It is necessary to ensure that human rights, freedoms, and principles of the rule of law are protected in accordance with international standard applicable to Hong Kong. ● The legislation of Article 23 needs to seek a reasonable balance between safeguarding national security and protecting civil rights. ● The Basic Law provides for freedom of the press in Hong Kong, but the detail boundary between rights and safeguarding national security is too vague. As such, the legislation of Article 23 needs to provide definitions, specifying the scope, conditions and impact. ● It is necessary to ensure the continuity of the common law spirit and avoid giving the public the impression that in enacting and enforcing laws to safeguard national security, law enforcement agencies deviate from existing common law practices and current enforcement models and rules. ● The legal framework must recognize the vulnerability of mentally incapacitated persons to manipulation and must provide fair protection. When trying national security crimes, their impaired capacity should be taken into account. ● A local chamber of commerce believes that the legislation strikes an appropriate balance between "maintaining national security" and "respecting and protecting human rights". The consultation document complies with the principles of international law and international practice, and reflects the provisions of the Basic Law and

	relevant international conventions on the protection of human rights. ● It is suggested that consultation documents should be printed in A5 format in the future, like the size of any books in general, which will be easier to bring along for reading. *Reference to relevant national laws* ● Some respondents suggested that we may wish to explore the possibility of adopting the relevant laws of the countries in the Five Eyes alliance and Singapore, or even to "reduce the harsh measures" as appropriate. Smearing Article 23 of Hong Kong is equivalent to deny the laws of common law jurisdictions such as the UK and Singapore at the same time. ● Sovereign states and regions around the world have legislations safeguarding national security. National security is a top priority that every sovereign state must fully uphold. The national security laws of countries such as the United States (US) and the United Kingdom (UK) are becoming increasingly strict. We should learn from the experiences of countries such as the US, the UK and Singapore regarding national security laws. The UK's National Security Act not only has a broader scope and greater punishment, but also strengthens the power of the police and judicial institutions. The UK government claims that its Online Safety Act 2023 is the most advanced legislative achievement in the field of network security, which can be emulated worldwide. The US's national security law is leading globally in terms of quantity and types. ● Reference should be made to the legislative experiences of countries such as the UK, the US and Australia in safeguarding national security in non-traditional security areas, so as to ensure the advancement and adaptability of Hong Kong's legal system. ● Based on the consultation document, the government's legislative proposal has fully considered and referenced relevant laws of Europe, the US and other regions. The content is comprehensive and the system is complete. ● Each provision should cite equivalent foreign legislations as reference notes to demonstrate that all items are not unique to Hong Kong. ● The legislation of Article 23 should draw reference from the undesirable practices of other countries which the HKSAR should not follow. ● Annex 2 of the consultation document lists laws from countries such

	as the UK, the US, Australia, Canada, New Zealand and Singapore that address threats to national security. Their lessons learnt over several decades or centuries tell us that it is unrealistic to codify, once and for all, offences relating to endangering national security. ● A local chamber of commerce believes that the consultation document takes into account overseas experience and local actual conditions, and the approach is benchmarked against common law jurisdictions such as the UK, the US, Australia, Canada, New Zealand and Singapore. ● A local legal professional agrees to the consultation document listing the national security laws of six overseas countries as a reference, which will help the public understand that other countries also have strict national security laws. <u>HKSAR Government's response</u> The Government has taken note of the opinions and suggestions. The rationale for Article 23 legislation in terms of constitutional responsibilities and actual needs has been explained in detail in Chapters 1 and 2 of the public consultation document. Regarding **the relationship between this legislation and the HKNSL**, it must be pointed out that the four categories of offences stipulated in Chapter 3 of the HKNSL are secession, subversion, terrorist activities, and collusion with a foreign country or external elements to endanger national security. Such crimes are targeted at the most blatant behaviors and activities endangering national security in the 2019 Hong Kong version of "colour revolution". As for this legislative proposal on Article 23 of the Basic Law, our goal is to address behaviors and activities that also endanger national security in addition to the four categories of offences stipulated in the HKNSL. The original intention and fundamental purpose of Article 23 of the Basic Law is to require the HKSAR to legislate on its own to safeguard national sovereignty, security, and development interests. It is too narrow of an understanding if Article 23 of the Basic Law is only interpreted literally to mean that the HKSAR government only needs to legislate to prohibit seven types of acts endangering national security in order to fulfill its responsibility to safeguard national security. Article 23 of the Basic Law stipulates in principle and in general terms seven categories of acts endangering national security, but this does not mean that there are only seven types of acts endangering national security, nor does it mean that the Hong Kong Special Administrative Region can only legislate to prevent, stop and punish these seven categories of behavior. Therefore, the legislation for safeguarding national security in the Hong Kong Special Administrative Region should evolve with time

	and properly address the traditional and non-traditional national security risks that the country faces and may face in the future. After the unsuccessful local attempt to legislate in 2003 to implement Article 23 of the Basic Law, which resulted in many years of chaos with behaviors and activities endangering national security, the central government passed the 5.28 Decision and the HKNSL, and the interpretation of Articles 14 and 47 of the HKNSL further clarify the HKSAR's responsibility for safeguarding national security. These provisions are completely consistent with the requirements under Article 23 of the Basic Law. In reality, although the Hong Kong SAR has established law enforcement agencies which performed their duties in accordance with the HKNSL, and carried out investigation, monitor and hearing of criminal cases concerning endangering national security, the establishment of an institutional system to safeguard national security in the HKSAR is still in its initial stage, there are still elements to be integrated into institutional arrangements or for concrete implementation. The HKSAR government has the responsibility to promptly amend and improve relevant local laws, make full use of local laws to resolve relevant legal issues encountered in the implementation of the HKNSL, and ensure that the provisions of the HKNSL are accurately and fully implemented. Regarding the **consultation period**, the consultation document has explained in detail the Government's recommendations and pointed out the national security risks faced by Hong Kong. It also examines and analyses, among others, the laws of different countries, in order to make it easier for the public to understand what the problems are, which will facilitate the public in giving their views. After experiencing the Hong Kong version of "colour revolution" and "black-clad violence" in 2019, the community has experienced and realised the importance of national security, understanding that national security risks are real and can emerge all of a sudden. We must remedy the shortcomings as early as possible. The earlier the legislative exercise is completed, the earlier we can better safeguard national security. Since the implementation of the HKNSL, we have accumulated practical experience in safeguarding national security and the courts have gained experience in handling cases concerning national security. As such, we no longer need to deal with the national security issue by guessing. Instead, we can consider and understand this issue in the light of practical experience. This also enables the public to better understand the problem and be able to express views.

	Regarding **rights and freedom, and principles of the rule of law**, safeguarding national security is fundamentally consistent with the protection of human rights and freedoms. The efforts to effectively prevent, suppress and impose punishment for illegal acts endangering national security are ultimately for better safeguarding the fundamental rights and freedoms of individuals and ensuring the property and investments in the HKSAR are protected by law. When devising the proposals of enacting local legislation for safeguarding national security, the HKSAR Government will fully and prudently take into consideration the relevant provisions of the Basic Law as well as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong. It should be noted that some rights and freedoms (including the freedoms of speech and of the press) may be subject to restrictions that are provided by law and necessary for pursuing legitimate aims such as the protection of national security, public order (ordre public) or the rights and freedoms of others. Moreover, the principles of the rule of law referred to in the common law and Article 5 of the HKNSL shall continue to apply to the offences created by the legislation for safeguarding national security. The legislative proposals will clearly define the elements of the offence, including actus reus and mens rea, and consider providing appropriate exceptions and defences. Members of the public need not worry that they will unwittingly violate the law. Regarding **making reference to relevant legislation of other countries**, many common law jurisdictions, including Western countries like the US, UK, Canada, Australia and New Zealand, as well as Singapore, etc. have already enacted various laws on safeguarding national security. In finalising the legislative proposals and provisions, reference would be made to the relevant laws of our country, the HKSAR and foreign countries. Of course, the laws of a place must be enacted in the light of the actual circumstances of that place. Hence, we should not copy all the foreign laws into the legal system of the HKSAR. The enactment of legislation for safeguarding national security must be conducted in accordance with the actual circumstances of the HKSAR. We should not necessarily adopt what the foreign countries have; on the contrary, if it is a necessary and effective measure for the HKSAR, we should adopt it even if there is no such measure in foreign countries.

(A) Legislative Approach	
	Summary of Views There are individual suggestions that express support for legislation in the form of a new "Safeguarding National Security Ordinance". The details are summarised as follows: ● It is pleased to see the adoption of an integrated approach to deal with national security through enactment of a new Safeguarding National Security Ordinance. HKSAR Government's response The HKSAR Government will continue to take forward legislation for Article 23 of the Basic law by way of creating a new "Safeguarding National Security Ordinance".
(B) Interpretation	
	Summary of Views Some opinions expressed their views on the definition of the terms "national security" and "external force" : *National Security* ● The scope of national security has been extended from traditional fields such as homeland security and military security to cover other fields such as economic security, cybersecurity and cultural security. ● Basic Law Article 23 legislation should cover a broader scope of "national security". Hong Kong society relies on economic and technological development. Protection and control in areas such as economic security, financial security, cultural security, technological security, cybersecurity and data security should be enhanced to prevent attacks from other countries, organisations and individuals (external and internal) which will affect the economy and social stability of Hong Kong and in turn affect the security at State level. ● The definition of "national security" in the existing Public Order Ordinance and Societies Ordinance is inconsistent with that in Article 2 of the National Security Law of the People's Republic of China. It is suggested that consistency in the definition of "national security" should be maintained. ● The convergence between Article 23 and the major national security fields (16 categories, etc.) should be improved.

	● There are 20 areas of national security in our country. There is no legislation prohibiting offences in most of these areas in the HKSAR (e.g. food security, space security, DNA data on Chinese people). ● It is sensible not to define "national security. This is because changes in environment and circumstances are faster than enactment of laws. We can trust the Attorney General, who should determine what are "national security", "national interests" and "public interests" according to statute law and unwritten law. ● The definition of "national security" in the laws of Hong Kong should be consistent with that in the laws of our country. ● A legal body suggested adding a definition of "national security" to Section 3 of the Interpretation and General Clauses Ordinance (Cap 1) which is consistent with the definition of Article 2 of the National Security Law of the People's Republic of China. ● The unlimited expansion of the connotation of "national security" and its introduction as a legal concept undoubtedly violates the common law, international law, and even the most basic principles of the rule of law. ● Some legal profession bodies have expressed clear support for adopting a definition of "national security" that is consistent with the National Security Law of the People's Republic of China, and hope that certain concepts or criminal elements (such as "mutiny", "confidential matter", "prohibited place", "public infrastructure", etc.) will be defined. *External Forces* ● The definition of "external forces" should be narrowed down and clearly stated to ensure that Hong Kong citizens or institutions will not accidentally violate the law when they connect with the international community. ● Under the legislation on Article 23, once any matter involves "external forces", regardless of the nature of such "external forces", it can be easily elevated to a "national security" issue or crime. ● Some legal profession bodies agree in principle with the proposed definition of "external forces", but believe that the condition of "substantial degree of control" in "associated entities" may make the definition very broad and may include any person being subject to legal authority of another jurisdiction at any time.

	HKSAR Government's response The **definition of "national security"** in the HKSAR's local legislation should be consistent with that in the laws of our country. It is recommended to adopt the same definition in the National Security Law of the People's Republic of China, with provision as follows: *"National security refers to the status in which the State's political regime, sovereignty, unity and territorial integrity, the welfare of the people, sustainable economic and social development, and other major interests of the State are relatively free from danger and internal or external threats, and the capability to maintain a sustained status of security."* As for the definition of the term "external force", in formulating the offences, we will target acts endangering national security with precision and define the elements (including the definition of "external forces") and penalties of the offences with clarity. Local institutions, organisations and individuals having normal exchanges with those from all parts of the world, will not unwittingly violate the law.
II.	**Comments on the offences**
(i)	**General comments**
	Summary of Views Some opinions and suggestions are about the scope, penalties, definitions and other considerations of the crimes proposed in the legislation. The details are summarised as follows: *Scope of offences* ● Most of the legislative proposals are to improve existing legislation and introduce new offences in the light of the actual situation. For example, it is proposed to introduce an offence of "external interference" to prohibit any person from collaborating with external forces to interfere with the affairs of our country and the HKSAR. ● Clear definition should be provided as to what behaviours will be regarded as acts endangering national security and their specific limits, so as to prevent the legislation from being too broad. ● The national security laws of countries such as the UK and the US are very stringent. Reference should be made to the relevant laws of the common law countries such as the UK, the US and Singapore. ● We should enact stringent legislation on Article 23 of the Basic Law. ● Considers that retrospective effect should not be stipulated under

	Article 23 of the Basic Law. ● The provisions and offences should be forward-looking, being able to address risks and threats that may arise in the future. ● Sabotaging your country is clearly an offence. The prosecution must identify and prove mens rea to the detriment of the state in order to bring charges. ● In determining whether one acts intentionally or inadvertently, we should follow the common law, especially the doctrine of reasonable expectation. ● The Basic Law Article 23 legislation does not need to cover the major offences under the Hong Kong National Security Law, including secession, subversion, terrorist activities, and collusion with external elements. ● All the offences under the Hong Kong National Security Law, such as secession and subversion, should be moved to the new legislation enacted to implement Article 23 of the Basic Law. ● It is not practical to codify offences endangering national security all at once. If there are any changes in the future, legislative amendments are required. Thus, it would be more appropriate to continue to apply the offences under the common law. ● It is necessary for the Government to combat illegal criminal acts on the Internet, including preventing commission of the seven types of acts endangering national security under Article 23 of the Basic Law on the Internet. ● It is pleased to see that the HKSAR Government plans to make adaptations and amendments to the existing statutory provisions such as the Crimes Ordinance, Official Secrets Ordinance and Societies Ordinance and incorporate them into the new Safeguarding National Security Ordinance. ● It is suggested that the Basic Law Article 23 legislation should regulate the dissemination of publications, words, pictures or other information that endanger national security on the said platforms in order to plug the gap in cybersecurity. ● Punishment should be imposed on assisting criminals to destroy evidence including clearing chat logs and leave the HKSAR ● There should not be any literary inquisition. One should not be

	convicted of an offence due to being not patriotic. ● Any person buying the national flag of a hostile country, etc. should not be regarded as collusion with a foreign country or an external force and guilty of an offence. ● The use of information technology has made it easy for many acts to take place across national boundaries. It is necessary to give due consideration to the high-tech factor when defining the jurisdiction and application of law for the relevant provisions to be fully effective. ● It is necessary to give due consideration to the high-tech factor in defining the application of law, etc. ● Some legal profession bodies have expressed clear support for adopting a definition of "national security" that is consistent with the National Security Law of the People's Republic of China, and hope that certain concepts or crime elements (such as "mutiny", "confidential matter", "prohibited place", "public infrastructure", etc.) will be defined. *Penalty* ● Consideration should be given to increase the penalty for wilful neglect or wilful omission by any public officer in the performance of his official duties which leads to endangering national security under the Basic Law Article 23 legislation. ● It is suggested that consideration should be given to providing for two levels of penalty. If there is collusion with external forces in an offence endangering national security, the offence will be an aggravated one? Examples are offence of "incitement to disaffection", offences relating to "seditious intention", offence of "unlawful disclosure of state secrets" and offence of "sabotage endangering national security". ● Efforts should be made to increase deterrence against disaffection of civil servants. If a civil servant incites disaffection, colludes with external forces, or discloses, without lawful authority, information, document or other article that he knows is a state secret and is in his possession by virtue of his position as such, with intent to endanger national security, the offence is an aggravated one and warrants more severe penalty. ● Reference should be made to Part 6 of Chapter III of the Hong Kong National Security Law to ensure consistency in the extra-territorial application of all the laws on safeguarding national security of the

	HKSAR. Consideration should be given to setting the maximum penalty for the majority of the proposed offences at life imprisonment to show the importance of national security. ● As regards sentencing, it is suggested that by reference to the provisions of the HKNSL, the starting points of sentencing and maximum penalties for different levels of offences should be specified. ● After all, Article 23 involves national security. It is not a law that ordinary people may violate casually in a couple of days, and committing such an offence must be planned and pre-meditated. Therefore, I am of the view that the offences under Article 23 should carry penalties of 10 years' imprisonment or more, so that criminals will be deterred from violating the law. *Definitions / Other considerations* ● An offence targeting civil servants should be introduced to cover all civil servants and staff of government-funded organisations and non-official organisations receiving government funding to prohibit them from engaging in acts endangering national security or anti-government acts. ● Hong Kong does not necessarily have to follow foreign cases in formulating Hong Kong's penalty bill. To rectify chaotic society, use heavy penalties. Only in this way will legislation be meaningful. But in fact, some penalties imposed by foreign countries in relation to national security are more severe than those in Hong Kong. ● Under the existing law, the prosecution seems not to be required to disclose who the "external forces" are. A trial can only be a fair one should such information be disclosed. ● The proposal of replacing the term "enemy" with "external force" may be inconsistent with the anti-secession law and may have negative effect on exchanges across the Taiwan Strait. It is suggested that in the case of Taiwan, "external force" only covers "Taiwan Independence forces" and does not include other organisations that support and promote unification. ● In the process of legislation, we must face up to and properly guard against the infiltration of undesirable ideologies, in particular those undesirable ideologies and measures that hinder Hong Kong from inheriting and promoting the fine traditional culture of the Chinese nation, and that directly or indirectly undermine the revival of the great Chinese nation. Examples include the fight for the legalisation of

	drugs and the legalisation of same-sex marriage. ● A local chamber of commerce believes that the provisions target a very small number of bad apples that endanger national security and do not affect freedom of speech. The new law will undoubtedly be more effective in preventing and suppressing "malignant behaviors that disrupt public order, endanger social tranquility and citizen safety". ● A Hong Kong association pointed out that if legislation only focuses on criminal acts and their consequences, it will cause a lag in the application of legislation and may not be able to effectively safeguard national security. Therefore, the preventive nature of the law must be considered. ● A Hong Kong practicing lawyer believes that ordinary citizens who interact with suspects or wanted persons suspected of violating Article 23 in legitimate business or other activities should be protected by law, so that Hong Kong citizens can continue to enjoy the freedom of association under the Basic Law. ● An overseas lawyers association believes that the criminal elements in Article 23 lack legal certainty and are inconsistent with international human rights law. <u>HKSAR Government's response</u> The HKSAR Government notes the above opinions and suggestions. Regarding the **scope** of offences, considering that the HKNSL has already created offences and provided for two types of acts, namely secession and subversion, we recommend that it is not necessary for the HKSAR to legislate on the offences of secession and subversion again. In formulating offences, we will precisely target acts endangering national security and clearly define the elements and penalties of the offence. The prosecution also has the burden to prove beyond reasonable doubt that the defendant had the actus reus and mens rea of the offence before the defendant may be convicted by the court. Law-abiding people will not unwittingly violate the law. When devising the proposals of enacting local legislation for safeguarding national security, the HKSAR Government will fully and prudently take into consideration the relevant provisions of the Basic Law as well as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong.

	In **formulating the offences and penalties**, reference would be made to the relevant laws of our country, the HKSAR and foreign countries. We will consider stipulating the meaning of "offence endangering national security". We will also consider, for some of the proposed offences, a higher penalty shall be applicable if collusion with external forces is involved.
(ii) Views in respect of specific offences	
Chapter 3: Treason and related acts	
A	**Offence of "treason"** <u>Summary of Views</u> Some opinions and suggestions were on the scope of the proposed offence of "treason", its applicability, and punishment. The details are summarised as follows: ● With amendments and adaptations, the existing laws of Hong Kong that have not been adapted can also be effective in protecting and safeguarding the national security of China. An example is the offence of "treason" under section 2 of the Crimes Ordinance. ● By enacting the legislation, the Government should clearly define treason and related acts, review the elements constituting the offence of treason and amend outdated expressions to ensure legal certainty and applicability. ● It is suggested that acts such as inciting public sentiment or posing national unity threats be incorporated into the offence of treason. ● The meaning of "war" should only be confined to wars. It is problematic to extend its meaning unnecessarily. Violent protestors will not be specified as public enemies in other countries, but it does not mean that they should not be punished for their violent acts. ● It is mentioned in paragraph 3.3 of the Consultation Paper that such punishable acts as killing, wounding, imprisoning or restraining His Majesty in the Crimes Ordinance are "outdated". It is inappropriate not to regard these acts as acts of "treason". If external forces launch a coup d'état in the HKSAR under "one country, two systems" and kidnap our head of state who is visiting Hong Kong, then what is the not outdated approach? Should the offender be prosecuted for "kidnapping"? ● It is understandable that the "offence of treason" should naturally

	apply to Chinese citizens only. In this connection, the definition of "Chinese citizens" is of particular importance and should be a clear one. ● If the offence of "treason" is only applicable to "Chinese citizens", some bad people may get away scot-free. The situations in Hong Kong and the Mainland are different in two aspects. First, the subject of the provision of the existing offence of "treason" in Hong Kong is "a person", not a Chinese citizen. Second, Hong Kong is an international city where there is a higher proportion of foreign passport holders in the upper and middle classes. Therefore, non-Chinese citizens settling in Hong Kong must also be required not to betray the country to which their living place belongs. Foreign visitors in Hong Kong who commit the offence of "treason" should not be exempted either. ● In addition to safeguarding national sovereignty, unity and territorial integrity, Hong Kong should also protect the country's constitution, national system, political system, etc. after its return to the Motherland. ● It is suggested that the maximum penalty of the offence of treason must be set as life imprisonment. ● "Killing or wounding a State leader" should be included as an act under the offence of "treason". ● A legal body suggested that for the offence of "treason", reference should be made to Article 2 of the current Crimes Ordinance and "Section 2385 of Chapter 115 of Title 18 of the United States Code" and add (f) killing or injuring the national leader, or cause bodily harm to a national leader; and (g) intends to do an act described in paragraph (f) and demonstrates that intention by a public act. ● Some legal profession groups suggested that the term "waging war" in the offence of "treason" should exclude local riots or riots that do not constitute armed rebellion. <u>HKSAR Government's response</u> The HKSAR Government notes the above opinions and suggestions. Having taken into account the relevant laws of foreign countries, existing laws applicable to the HKSAR and HKSAR's actual situation, we recommend to improve"treason" (「叛逆」) and related offences under the existing Crimes Ordinance, to effectively prevent acts in the nature of

	treason and to protect the territory of our country from invasion. It is recommended to introduce the offence of "treason"(「叛國」罪) modelled on the existing offence of "treason" (「叛逆」罪), covering the use or threat of force with the intention to endanger national sovereignty, unity or territorial integrity. At present, the offence of "treason" (「叛逆」罪) under section 2 of the Crimes Ordinance, which regards "killing or wounding Her Majesty" etc. as an act of treason, is outdated and requires legislative amendment. It is recommended that the scope of application shall cover all Chinese nationals who have committed the offence of "treason" within the HKSAR. According to the Nationality Law of the People's Republic of China, any person born in China whose parents are both Chinese nationals or one of whose parents is a Chinese national shall have Chinese nationality. Those who meet the above conditions are Chinese nationals.
B	**Offence of "misprision of treason"** <u>Summary of Views</u> Some responses specifically expressed support for codifying the offence of "misprision of treason", which is a common law crime, into a codified law. Others responded with opinions and suggestions on the scope of the crime, its targets, penalties, actual implementation, and whether it should be retained. Details are summarised as follows: ● The legislative proposals for Article 23 innovatively integrate the common law system of Hong Kong and the civil law system in an organic way by codifying some common law offences, such as the offence of "misprision of treason", in order to express the relevant offences in a clearer way, making them more accessible to the general public. ● A local chamber of commerce praised the Article 23 legislation for codifying some common law crimes such as "misprision of treason" into statute law, making them more accessible to the general public. ● For the offence of "misprision of treason", reports should be filed to government departments quickly. ● Codifying some common law offences will enhance the clarity and certainty of the laws. ● Reporting responsibility: A person who finds out that another person has violated the Hong Kong National Security Law or committed the

	offence of treason should file a report immediately, lest the offender will be further exploited by the informer. ● Regarding the offence of "misprision of treason", circumstances that constitute the commission of the offence should be set out clearly to help the public to understand the definition of the offence, so that they will not violate the law unknowingly. ● The crucial point is how to prove that a person knows the matters. ● On the recommendation of codifying the offence of "misprision of treason": Suggestion a. If the offence were to be codified, instead of using it for prosecuting the offenders, the law should only be used to show a gesture; suggestion b. The offence should not be codified at all as it already has the desired deterrent effect as a common law offence. ● Offence of "misprision of treason" make people feel harsh and cause concerns among citizens and foreign investors. It will encourage a culture of criticism of dissidents who criticize officials in Hong Kong and mainland China. Moreover, under common law, there should be no guilt in failing to report. Can it be changed to encouraging report? ● The offence of "misprision of treason" may be perceived as draconian, causing concerns of the public and foreign investors that the culture of denunciation will be encouraged to denounce the dissidents in Hong Kong and in the Mainland. Moreover, it is not an offence for failure to report a crime under common law. Is it possible that the approach be changed to encourage reporting of such an offence? ● The offence of "misprision of treason" is against the principle of "he who commits the crime does the time". ● It is worried that one may commit the offence of "misprision of treason" for not reporting a suspect because he is not certain whether the act of the suspect constitutes treason. While some expressed concerns that people may be accused of "causing wasteful employment of police" for having mistakenly reported act of "treason". ● Bad people may get away scot-free if the application of scope of the offence of "misprision of treason" covers only Chinese citizens. ● The recommendation that protection be provided by legal professional privilege in relation to the offence of "misprision of treason" might remind suspects that they can find lawyers to "conceal" the commission of the offence. Legal professional privilege and criminals' human rights do not override national sovereignty. The

	legislative principle of safeguarding national sovereignty mentioned in paragraph 2.19 should be upheld. ● It is suggested to include the stipulation that non-disclosure of the particulars relating to the commission of the offence on the part of family members living with the suspect and immediate family members of the suspect do not constitute an offence. To be specific, family members living with the suspect include siblings living with the suspect, while immediate family members include parents, children, spouses, grandparents and grandchildren living or not living with the suspect. ● It is suggested that how the identity of a "harbourer" is to be construed should be incorporated into Article 23 to reduce overly academic debates and unrealistic interpretations. ● It is suggested to remove the offence of "misprision of treason" as such offence is, in the case of other countries, stipulated in the provisions for other offences. Two types of circumstances under which exceptions may apply are mentioned: [relevant information] having been widely reported in the media and legal professional privilege. What is meant by "widely reported"? Does media include online media and unconventional media? There is no detailed explanation in the Consultation Document. ● An anti-government organization stated that the bill will be equivalent to forcing citizens to report some acts that have not yet occurred, regardless of whether these acts may constitute crimes. This will force Hong Kong citizens to monitor each other and infringe on citizens' private domains. ● A person in the religious field pointed out that many believers will seek spiritual counseling from clergy in private, during which they may express their dissatisfaction with the government, society or the country. However, the legal requirement for "disclosure" conflicts with the tradition and rules of religious secrecy. The clergy may not have enough legal knowledge to judge whether what the believers express commits treason. It is recommended to consider granting clergy the same protection of "professional confidentiality" as members of the legal profession, and clarifying which religious behaviors could be protected. <u>HKSAR Government's response</u> The HKSAR Government notes the above opinions and suggestions.

	It is recommended to codify the existing offence of "misprision of treason" under common law. The act of "misprision of treason" is committed when a person knows that another person has committed the offence of "treason" but fails to disclose this to the proper authority within a reasonable time, and this may endanger national security. Due to the nature of the offence of "treason", and the possible serious consequences caused by endangering national sovereignty, unity or territorial integrity, it is necessary to ensure that acts of treason can be effectively suppressed and that criminals are apprehended as quickly as possible. Requiring Chinese nationals to reveal acts of treason which they know of is consistent with the HKNSL and the common law principles. We recommend codifying the offence of "misprision of treason" and clarifying the elements of the offence (including the provision of exceptions). The offence of "misprision of treason" is also found in the statutory laws of other countries such as the US, Australia, New Zealand, Canada and Singapore. In the event that the particulars relating to the commission of the offence are protected by legal professional privilege, non-disclosure on the part of the lawyer concerned does not constitute an offence. According to the case law on the common law offence of "misprision of treason", where a person subject to legal professional privilege knows that another person has committed the offence of "treason", non-disclosure on the part of the person concerned does not constitute an offence. This common law provision is consistent with the protection of Hong Kong residents' right to confidential legal advice currently provided under Article 35 of the Basic Law. For instance, in such circumstances as a person is not certain whether his or her act constitutes the offence of treason under the law and seeks legal advice accordingly, or a person who has committed the offence of treason wants to seek legal advice on the possible legal consequences, all correspondence between the person concerned and a lawyer for the purpose of seeking legal advice is subject to legal professional privilege.
C	**Treasonable Offences** <u>Summary of Views</u> Some responses specifically expressed support for "treasonable offences". Details are summarised as follows: ● "Treason" and related offences under the existing Crimes Ordinance can be improved to effectively prevent acts in the nature of treason and

	to protect the territory of our country from invasion. ● With amendments and adaptations, the existing laws of Hong Kong that have not been adapted can also be effective in protecting and safeguarding the national security of China. An example is the "treasonable offences" under section 3 of the Crimes Ordinance. <u>HKSAR Government's response</u> The HKSAR Government notes the above opinions and suggestions. It is recommended to retain existing "treasonable offences" and make amendments in accordance with the provisions on the offence of "treason", so as to deal with the overt manifestation of the intention to commit "treason". If any person forms an intention to commit treason and manifests such intention by an overt act, even if the person has not committed the act of treason, others may follow such act, which will pose serious risks to national security. Therefore, we must effectively prevent such act. Currently, section 3 ("Treasonable offences") of the Crimes Ordinance prohibits people from overtly manifesting their intention to commit treason. The concept of "treasonable offences" is not unfamiliar in common law jurisdictions. For example, Canada has a similar offence.
D	**Offence of "unlawful drilling"** <u>Summary of Views</u> Some responses specifically expressed support for the **offence of "unlawful drilling"**, and some expressed opinions and suggestions on the scope, exceptions and extraterritorial applicability of the offence. The details are summarised as follows: ● It is suggested to extend the scope of the offence of "unlawful drilling" to include military drills conducted with the use of other arms, dangerous goods and computers or technological means. ● The introduction of the offence of "unlawful drilling" is supported. This can prevent external elements from providing training using organisational platforms and endangering national security. ● Provision for exceptions should perhaps be made in respect of "war games". ● It is considered that, in order to safeguard the national security of our country, there is indeed an absolute need to combat the acts of Hong Kong residents and other people in Hong Kong joining "Taiwanese armed forces" or receiving formal and informal "military training" by

	"Taiwan's army" in the Taiwan region of China. ● It is suggested that: extra-territorial effect should be expressly stipulated in respect of the offence of "unlawful drilling" (to at least cover the acts of Hong Kong residents outside Hong Kong); formal and informal "military training" provided by Taiwan or "Taiwan's army" should be classified as "specified drilling", which is to be expressly outlawed; and participation of Chinese citizens (including those who are residents of Hong Kong, Macao and Taiwan) and non-Chinese citizens in formal and informal "military training" provided by Taiwan or "Taiwan's army" should be specifically ruled out as an exception to the offence. ● There are concerns as to whether the offence of "unlawful drilling" is committed by certain acts, such as: i. having dual nationality, especially in the case of people who are obliged to perform military service in the other country; ii. holding a gun licence and receiving relevant training in other countries; and iii. participating in survival games/war games, stage performances, training in fighting skills, etc. ● It should be specified in relation to the offence of "unlawful drilling" to be provided under the proposed Ordinance that "criminal or administrative penalties arising from compliance with the national security law" shall have no legal effect in the Hong Kong Special Administrative Region. Provisions providing for the non-recognition of "criminal or administrative penalties arising from compliance with the national security law" should be included in the Rehabilitation of Offenders Ordinance (Cap. 297), the Civil Service Regulations and other applicable related ordinances or legal documents. The Fugitive Offenders Ordinance (Cap. 503), the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) and other applicable related ordinances should be amended to specify that the HKSAR Government will not provide to other jurisdictions any legal assistance in the surrender of fugitive offenders or criminal matters regarding "criminal or administrative penalties arising from compliance with the national security law", so that Chinese citizens concerned in the HKSAR will not have to face any criminal or administrative consequence imposed by jurisdictions outside Hong Kong and can have ease of mind when discharging their obligation to safeguard national security under the proposed Ordinance.

	● Exception to the offence of "unlawful drilling": It is suggested to include an exception for residents of Taiwan to perform military service in the Taiwan region, while no exception should be provided for members of "Taiwanese armed forces" receiving training by external forces. ● Unlawful drilling: Since it involves the approval of the Secretary of Security or the Commissioner of Police, it is necessary to carefully determine the scope of approval to avoid being perceived as endowing too much power. ● An anti-government organization pointed out that the suggestion does not specify that the location of relevant activities is in Hong Kong, or includes all overseas military training. It may affect not only Hong Kong residents, but all persons covered by the law who accept trainings by non-Chinese Communist Party or Hong Kong regimes. This will greatly affect the willingness of foreign citizens to come to Hong Kong because they will not know whether they have committed the offence. <u>HKSAR Government's response</u> The HKSAR Government notes the above opinions and suggestions. We recommend introducing new offences with greater deterrent effects in a targeted manner based on the existing offence of "unlawful drilling", so as to prohibit people from receiving, participating in or providing military drills involving external forces without the permission of the Secretary for Security or the Commissioner of Police, while providing for exceptions. In order to ensure that the extra-territorial effect of each category of offences is in line with the nature of the category of offences concerned, and that such effect is necessary and proportionate, we will, upon formulation of the offences, examine each of them in detail before determining its scope of application. Regarding the offence of "unlawful drilling", even if the coverage of the offence is extended to include acts of drilling conducted abroad, the relevant offence will only cover military drills in connection with external forces (such as foreign governments, authorities of an external place or area, external political organisations, etc.). Leisure shooting or other training (such as war games conducted abroad) will not constitute such offence. Regarding the offence of "unlawful drilling", under the Nationality Law of the People's Republic of China, the People's Republic of China does not

	recognise dual nationality for any Chinese national. A Hong Kong resident who has Chinese nationality remains a Chinese national and a Hong Kong resident unless he or she applies and is given approval for renunciation of his or her Chinese nationality. Therefore, in general, exemption will only be given to a non-Chinese national with a foreign nationality who serves in an armed force of the government of that foreign country. Nevertheless, we will also consider further exempting those who have immigrated to a foreign country and are required to participate in or perform military service in accordance with the requirements of laws of that country.
Chapter 4: Insurrection, incitement to mutiny and disaffection, and acts with seditious intention	
A	**Offence of "incitement to mutiny"** Summary of Views Some responses expressed support for the **offence of "incitement to mutiny"**, while others expressed opinions and suggestions on the scope of the crime, targets of incitement, terms, etc. Details are summarised as follows: ● Some respondents agree with and support the proposal to improve the offence of "incitement to mutiny" under the existing Crimes Ordinance and incorporate it into the proposed Ordinance. ● However, apart from participating in a mutiny, the coverage should be further extended to include inciting a member of a Chinese armed force to organise or initiate a mutiny, which is also a serious situation severely endangering national security. The coverage of "incitement to mutiny" should be extended to include the act of inciting a member of a Chinese armed force to organise or initiate a mutiny. ● Incitement to mutiny should be extended to cover all Hong Kong citizens rather than public officers only. ● It is suggested that "incitement", whether successful or not, shall be illegal. ● Offence of "incitement to mutiny": paragraph (a) stipulates the requirements "to abandon the duties and to abandon the allegiance to China", in which the word "and" is a coordinating conjunction meaning that both requirements, "to abandon the duties" and "to abandon the allegiance to China", must be met for constituting the offence of incitement to mutiny. It is suggested that "and to abandon

	the allegiance to China" be deleted. ● The act of incitement to mutiny is too vague by definition, which leaves no room for opposing views. ● It is suggested that the wording in paragraph 4.4 of the Consultation Document be amended to "Knowingly seducing a member of a Chinese armed force - (a) from the duties and allegiance to China; or (b) into participating in a mutiny". <u>HKSAR Government's response</u> The HKSAR Government notes the above opinions and suggestions. We recommend to improve the existing offence of "incitement to mutiny", including providing a clear definition of the term "mutiny". We recommend that the relevant provisions should be improved by covering members of the armed forces of the People's Republic of China. Given the special nature of members of the armed forces (in particular, they are responsible for defence work and have the easiest access to firearms and military intelligence), abandonment of duties, abandonment of allegiance and carrying out mutinous acts by members of armed forces, including the Chinese People's Liberation Army, would pose great national security risks. Therefore, we recommend extending the scope of the offence of "incitement to mutiny" to cover members of the armed forces of the People's Republic of China. We will also consider, for incitement of a member of a Chinese armed force to participate in a mutiny, apart from participating in a mutiny, incitement of a Chinese armed force to organize or initiate a mutiny should also be covered.
B	Offence of "incitement to disaffection" <u>Summary of Views</u> Some responses expressed support for the offence of "incitement to disaffection", and some responded with opinions and suggestions on the scope of the offence, objects of incitement, penalties and terms, etc. The details are summarised as follows: ● Some respondents agree with and support the proposal to improve the offence of "incitement to disaffection" under the existing Crimes Ordinance and incorporate it into the proposed Ordinance. In addition, the scope of the targeted person under the offence of "incitement to disaffection" should be amended in the light of the current situation in the HKSAR.

	● The offence of "incitement to disaffection" should be extended to cover all Hong Kong citizens rather than public officers only. ● There are concerns as to whether public officers will commit the offence of "incitement to disaffection" if they resign due to personal reasons. It is suggested that an exemption clause be included to protect the rights of civil servants. ● It is suggested that heavier criminal sanction be imposed against incitement of a public officer to disaffection, as well as incitement of a member of the offices of the CPG in the HKSAR and a member of a Chinese armed force to disaffection or negligence of duty if the acts involve collusion with external forces. ● There will be a loophole in the offence of "incitement to disaffection" for not covering members of state-owned enterprises in Hong Kong. Consideration should be given to including members of stated-owned enterprises, especially those of financial institutions, in paragraph (b). ● The penalty level for the offence prescribed in section 7 of the Crimes Ordinance cannot truly reflect the severity of the offence of "incitement to disaffection" in terms of national security. Support is rendered to the Government for extending the coverage of offences related to incitement and raising the penalties to achieve deterrent effect. ● Offence of incitement shall be liable to an imprisonment of at least 10 years, and a maximum penalty of a fine of $5 million and life imprisonment to achieve deterrent effect. ● State clearly whether advising, persuading and arranging for public officers' emigration fall within "incitement to disaffection". ● Acts of incitement to disaffection are too vague by definition, which leave no room for opposing views. ● The Government may consider including exceptions, so that advising or causing a public officer to abandon upholding the Basic Law or allegiance to the HKSAR by legal means under the laws of Hong Kong would not be an offence. ● Unlike the disciplined services, ordinary civil servants are usually not required to take an oath. As such, they should not be required to obey lawful orders according to the same set of standards. ● It is suggested that the wording in paragraph 4.5 of the Consultation Document be amended to "Knowingly - (a) seducing a public officer

	from upholding the Basic Law or allegiance to the HKSAR; or (b) seducing a member of the offices of the CPG in the HKSAR (other than the Hong Kong Garrison) from the duties or allegiance to the People's Republic of China.". ● It is suggested that the wording in paragraph 4.5 of the Consultation Document be amended to "(a) knowing that a member of a Chinese armed force is about to desert the duties …(b) knowing that a member of a Chinese armed force has deserted the duties or …". ● Some legal profession bodies are concerned about the proposal to extend the current "incitement to disaffection" to cover public officials. They believe that the government may consider adding only personnel related to the Hong Kong Garrison or disciplinary services, such as personnel of the Correctional Services Department. <u>HKSAR Government's response</u> The HKSAR Government notes the above opinions and suggestions. It is recommended to introduce the offence of "incitement to disaffection" modelled on the existing offence, and adjust its scope of coverage, i.e., any person who knowingly incites a public official to abandon upholding the Basic Law or allegiance to the HKSAR, or to incite members of the offices of the Central People's Government in Hong Kong apart from the Hong Kong Garrison to abandon their duties or abandon allegiance to the People's Republic of China, shall be guilty of the offence. We will consider increasing the penalty of offence of "incitement to disaffection". We will also consider, for inciting disaffection of public officers, inciting disaffection of personnel of offices of Central Authorities in Hong Kong, and assisting members of Chinese armed force to abandon duties or absent without leave, if collusion with an external force is involved, a higher penalty should be applicable. The scope of officers covered by the offence of "incitement to disaffection" should be wider than the definition of public officers under section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) (i.e. "any person holding an office of emolument under the HKSAR Government, whether such office be permanent or temporary"), given that national security will be seriously endangered by an incitement to disaffection. Given that public officers such as those responsible for the formulation and implementation of policies, the maintenance of public order, the management of public finance, the upholding of due administration of justice, as well as members of the offices of the Central People's

	Government in Hong Kong apart from the Hong Kong Garrison, are closely related to the performance of functions by the bodies of power of the HKSAR in accordance with the law, national security will probably be endangered should they be incited to disaffection. As such, there is a practical need to include such officers and members concerned under the scope of the officers covered by the offence of "incitement to disaffection".
C	**Offence of "Seditious Intention"** Summary of Views Some responses expressed support for the offences relating to "seditious intention", and some responded with opinions and suggestions on the scope, penalties, definitions/provisions, necessity, etc. of the offence. Some respondents said that the definition of "seditious intention" is not clear. Details are summarised as follows: *Scope of coverage* ● Some respondents agree with and support the proposal to improve the offence of "seditious intention" under the existing Crimes Ordinance and incorporate it into the proposed Ordinance. ● The laws previously in force in Hong Kong can also become effective in safeguarding national security upon amendments and adaptations, for example, "Seditious Intention" and "Offences" under sections 9 and 10 of the Crimes Ordinance. ● The existing "anti-regime" and "anti-HKSAR Government" articles concerning "concealed treason" should be included in the incitement to disaffection and seditious intention under Chapter 4, and the publication/distribution/promotion of such reactionary press should be proscribed and prosecuted. ● Expanding the scope of the offence of "sedition", etc., including amending some common law offences to be comparable to the existing statute laws of the country, which also includes the dissemination of false information on the Internet, etc. ● It is suggested that punishment for cyber/offline bullying against persons with patriotic political views be included, in order to alleviate the pressure that patriots might face. ● It is suggested that "the intention to induce hatred or enmity amongst residents of the HKSAR or amongst residents of China SAR (sic)", which will have indistinct boundaries in actual practice, be deleted. ● Considers the scope of (v) "the intention to incite any other person to

	do a violent act in the HKSAR" and (vi) "the intention to incite any other person to do an act that does not comply with the law of the HKSAR or that does not obey an order issued under the law of the HKSAR" under "seditious intention" too wide. ● Believes that the offence of sedition should be expanded to include provision on "advocating or promoting the killing of any member of an organisation, or causing actual damage to the conditions of existence, with the intention of destroying the organisation". In addition to this, legislation should be introduced for fake news and discrimination against persons of the same race, and the provisions should be brought into line with those in Singapore. ● The distinction between mere expression of opinion and intention to incite is not clear, and there is concern that the unclear scope of the legislation might lead to abuse to curb freedom of expression. ● It is suggested that "the intention to incite any other person to do an act that does not comply with the law of the HKSAR" be deleted from the offence of "seditious intention". ● It is suggested that the Government gives serious consideration to replacing the current wording of the offence of "seditious intention" with more objective and specific wording that clearly defines each legal requirement, and to consider whether there is room to reduce the scope of the offence. ● Many overseas KOLs use channels such as Youtube, etc., to promote messages opposing policies of the Hong Kong Government, and there are overseas media using certain talking points of netizens to create China-Hong Kong conflicts, playing up "soft resistance". Not sure whether these problems can be addressed through legislation. ● A person in the religious field believes that religious groups passively receive publications from different organizations around the world and local areas, but rarely check the content of each publication in detail, which may make religious groups inadvertently commit the offence of "possessing seditious publications". It is recommended that legislation clarify the definition of such publications. ● A legal body believes that it is too wide to cover the intention to incite any other person to do an act that does not comply with the law of the HKSAR or that does not obey an order issued under the law of the HKSAR" under "seditious intention". ● Some legal profession bodies have expressed opinions on whether

	relatively minor cases of incitement should be prosecuted as offences related to "seditious intention". ● Some legal profession bodies are concerned about the proposed wording of conduct being excepted only if done "with a view to giving an opinion on the improvement of the matter". Does this mean that in addition to expressing a view or frustration, the public must also put forward suggestions for improvement, in order not to constitute "seditious intention"? *Penalty* ● Given that many public officers were incited to take to the streets during the "black-clad violence" in 2019, the possibility of control and deployment by external forces could not be ruled out. Therefore, penalties should be more severe if collusion with external forces is involved. ● As for the legislation on and interpretation of the offence of "seditious intention", especially acts involving collusion with external forces, more stringent legal sanctions should be imposed. ● The public consultation paper recommends increasing the penalty for this offence. We believe that the current maximum penalty for seditious intention has sufficient deterrence. ● A legal scholar suggested that it is more appropriate to maintain the current penalties, because the current case law has had a deterrent effect on Hong Kong society, and the development of social media has made the scope of application of this offence wider than when it was legislated in the first half of the last century. There are also other offences related to sedition in the HKNSL. At the same time, considering that the average sentence of the convicted parties of "sedition" is lower than the maximum penalty in the current law, based on the above situation, it is not meaningful to increase the penalty for this offence. *Definition / Provision* ● Offences relating to "seditious intention": it is suggested that paragraph (iii) be amended to read as follows: "(iii) the intention to incite any person to attempt to procure the alteration, otherwise than by lawful means, of any matter determined or stipulated by the Central Authorities for the HKSAR in accordance with the law, or any matter established in accordance with the law in the HKSAR". ● Acts of incitement are vaguely defined, and need to be clearly defined

	to distinguish between lawful expressions and unlawful incitements. Defining acts of incitement involves an element of subjectivity, and people might have varying understanding and interpretation of incitement. It is therefore necessary to ensure fairness and reasonableness when enforcing the law. ● It is arguable whether the use of "amongst residents of different regions of China" in paragraph 4.8(a)(iv) of the Consultation Document is appropriate. It is because the provision concerned will, when interpreted in the literal sense, prohibit any intention to incite hatred or enmity towards political regime and individuals advocating "Taiwan independence", which is clearly not in line with its legislative intention of safeguarding national security. It is suggested that "amongst residents of different regions of China" be defined to clearly exclude any separatists and individuals endangering national security in our country, including but not limited to advocates of "Taiwan independence". It is also suggested that the exemption clause include "the intention to induce hatred or enmity amongst residents of the HKSAR or amongst residents of different regions of China for the purpose of safeguarding national security". ● Regarding "incitement of public hatred", this provision covers a wide range of issues, and it is hoped that the Government will further elaborate it during the consultation period on this legislation to address the concerns of the public and the academia. The use of the word "hatred" needs to be defined very carefully in order to safeguard the freedom of speech. Criticisms in this regard should not be regarded as incitement to hatred. ● In October last year, the Privy Council of the United Kingdom advised in the judgment in Attorney General of Trinidad and Tobago v Vijay Maharaj that the elements of the offence of sedition require an intention to incite violence or disorder. Hence, the revised definition of "seditious intention" as proposed in the Consultation Document should be revised again. ● The definition of "seditious intention" is so ambiguous that many Hong Kong residents choose to remain silent when problems arise. This phenomenon will definitely make the Government less efficient in gauging views. The offence of "seditious intention" is not in line with the international standard of striking a balance between human rights and national security. ● The definitions of "sedition" and "incitement" are broad and vague. It is recommended to adopt precise and clear definitions to safeguard the

	right to peaceful protest and constructive dialogue. ● It is hoped that the authorities can provide clear provisions and at the same time set clear boundaries for creative works, so that law enforcement agencies can clearly judge illegal situations and prevent creators from accidentally violating the law. ● An international environmental-protection organization pointed out that the intentions covered by "seditious intention" are relatively broad and unclear, and suggested that organizing and encouraging peaceful public petitions, marches or assemblies, and collective actions of peaceful submission of opinions on government policies should be explicitly excluded from "seditious intention" etc. *Necessity* ● It is suggested that the legislation should be refined, but a balance between freedom of speech and national security needs to be struck. ● It is considered that the improved offence will strike a proper balance between safeguarding national security and protecting the rights and freedoms of individuals, and is in line with the standards of international covenants. ● Issues involving significant public interest such as the definition of sedition should be dealt with by introducing exemption clauses. ● Retaining the offence of "seditious intention" will simply make "freedom of speech" under the modern human rights standard unenforceable. If conviction is for the offence of "seditious intention", freedom "of speech, of the press and of publication" under Article 27 of the Basic Law cannot be enforced. ● An anti-government organization suggested that the expansion and explicit modification of the offence of "seditious intention" can infinitely expand room for interpretation and greatly restrict the freedom of speech and expression of Hong Kong people. ● A respondent strongly opposes the offence of sedition, which has been abolished in many common law jurisdictions in the West. Sedition-related offences in Western countries are in fact mostly directed against specific acts of violence and terrorism. Words such as "hatred", "contempt" and "disaffection" are relatively subjective. In many common law jurisdictions, the "seditious intention" is more often related to incitement to violence and affecting public order, but in Hong Kong it is more than that, and may be inconsistent with the requirements of the International Covenant on Civil and Political

	Rights. ● A lot of opposing views will be suppressed in effect against the backdrop of sedition and the offence may have a chilling effect on ordinary members of the public with insufficient legal knowledge. ● Acts with seditious intention are too vague by definition, which leave no room for opposing views. ● It is suggested that provisions involving "seditious intention" be taken out because "sedition" is an archaic offence originated from the UK in the 17th century when the modern concept of human rights was yet to develop in the world. <u>HKSAR Government's response</u> The HKSAR Government notes the above opinions and suggestions. Our suggestion is to improve the existing "seditious intention" related offences, to deal with seditious intention aiming to cause hatred acts towards the basic system of the People's Republic of China, or HKSAR's administration, legislature, or judiciary etc. According to the Constitution, the socialist system led by the Communist Party of China is the fundamental system of the People's Republic of China. The Constitution has also provided for the state institutions. The Constitution expressly prohibits any organisation or individual from damaging the socialist system. Article 22 of the HKNSL also prohibits subversion of the State power, which includes acts of organising, planning, committing or participating in acts by force or threat of force or other unlawful means to overthrow or undermine the basic system of the People's Republic of China established by the Constitution, as well as to overthrow the body of central power of the People's Republic of China, with a view to subverting the State power. Article 23 on the other hand prohibits acts of inciting or abetting subversion of the State power, among other things. In the light of past experiences, we also recommend that the incitement of hatred against the fundamental system of the State, such state organs as provided for in the Constitution, the offices of the CPG in the HKSAR, and the constitutional order of the HKSAR, be incorporated into the offences relating to "seditious intention". Having taken into account the seriousness of offences endangering national security, as well as the harm and damage done to the HKSAR caused by the relevant acts in the past few years, we recommend raising the penalties for the offence of "seditious intention" and the related offence of "possession of seditious publication".

	We will consider, for violation of offence relating to "seditious intention", if collusion with an external force is involved, a higher penalty should be applicable. Some of the elements of the existing offences relating to "seditious intention" lack clarity, leading to legal disputes over the elements of the relevant offences during trials. We recommend clarifying or improving the elements of the offences based on past practical experience in the current legislative exercise. One of the examples is, for the offence of "seditious intention", whether proof of the intention of inciting public disorder or inciting violence is required. Past experiences show that acts of inciting hatred against the Central Authorities or the HKSAR Government do not necessarily at the same time incite others to use violence or cause public disorder. Nevertheless, the cumulative effect of leaving such acts of incitement unchecked is that any large-scale riots once commenced will spiral out of control. These acts must be prohibited by law. The courts of the HKSAR have confirmed in various cases that offences relating to "seditious intention" comply with the provisions on human right protection in both the Basic Law and the Hong Kong Bill of Rights Ordinance. It has also been confirmed that a proportionate and reasonable balance between safeguarding national security and protecting the freedom of speech has been struck. The offences are definitely not intended to suppress legitimate criticism of the Government based merely on objective facts. Therefore, offences relating to "seditious intention" will not hinder legitimate expression of opinions (such as making reasonable and genuine criticism of government policies based on objective facts, or pointing out issues, with a view to giving an opinion on the improvement of the matter). Accordingly, members of the public can still point out errors of the Government or alter by lawful means matters established by the HKSAR in accordance with the law.
D	**Offence of "Insurrection"** <u>Summary of Views</u> Some responses agreed to the new offence of "insurrection" and provided opinions and suggestions on the scope of the crime, targeted behaviors, extraterritorial effects, etc. The details are summarised as follows: ● The proposed amendments are as follows: (a) joining or being a part of a foreign armed force***, a government or its agent*** that is in a conflict with the People's Republic of China ***when the People's Republic of***

	China is under an armed or a cyber attack; (b) with intent to prejudice the situation of the People's Republic of China in an armed ***or a cyber*** conflict, assisting an armed force***, a government or its agent*** that is in an armed ***or a cyber*** conflict with the People's Republic of China; (c) with intent to prejudice the situation of the People's Republic of China in an armed ***or a cyber*** conflict, assisting an armed force***, a government or its agent*** that is preparing for an armed ***or a cyber*** conflict with the People's Republic of China. ● Insurrection should be extended to cover all Hong Kong citizens rather than public officers only. ● Proposing a new offence regarding the provision of advantages in support of "insurrection". ● It is suggested that the offence of "insurrection" be explicitly given extra-territorial effect (at least for acts committed by Hong Kong residents outside Hong Kong) and that a definition for "armed conflict" be added, for example, being in a state of belligerence (both de jure or de facto, i.e. including ongoing liberation wars), confrontation with, or having the intention to attack the armed forces of the People's Republic of China (i.e. including the Chinese People's Liberation Army, the Chinese People's Armed Police Force, and the Militia), etc. ● Without the offence of "insurrection" but only the offence of "sedition" in Article 23 of the Basic Law, legislation in the name of Article 23 lacks proper basis. Such "insurrection", which resembles insurrection by declaring "Taiwan independence" and amounts to an outbreak of civil war in China, should in nature be under the jurisdiction of the Anti-Secession Law and addressed by a reunification war led by the State. ● Acts of insurrection are too vague by definition, which leave no room for opposing views. ● There are doubts and concerns over the acts targeted by the offence of insurrection, such as territorial integrity. <u>HKSAR Government's response</u> The HKSAR Government notes the above opinions and suggestions. Our suggestion is to introduce the offence of "insurrection" to effectively prevent insurrection and protect citizens from violent attacks and coercion that endanger national security.

	We will consider, for the offence of "insurrection", apart from covering assisting an armed force that is in an armed conflict with a Chinese armed force, the act of assisting the government, authority or organization to which that armed force belongs should also be covered. We will also consider to cover the act of initiating armed conflict against a Chinese armed force. There is no offence known as "insurrection (叛亂)" under the existing laws. There was a series of riots and acts of violence lasting for more than 10 months since June 2019. During this period, rioters instigated the so-called "mutual destruction", territory-wide obstruction, occupation of the airport and major traffic routes, and damage to MTR stations and other public and transport facilities, such as traffic lights, railings and switchboxes to paralyse the operation of Hong Kong. They even used bricks, knives and hammers to attack people with different views, set people on fire and stabbed people in their neck with knives, causing serious bodily injuries. The above-mentioned large-scale violence did endanger the public safety of the HKSAR as a whole and posed threats to the national sovereignty, unity and territorial integrity, but is currently dealt with by the offence of "riot" under the Public Order Ordinance, which fails to adequately reflect, both in terms of criminality or the level of penalty, its nature in endangering national security. There is therefore a practical need to introduce the offence of "insurrection" separately Another consideration in introducing the offence of "insurrection" is that, in the offence of "treason", the concepts of "instigating a foreign country to invade China with force" and "an enemy at war with China" in general are only related to acts of treason that involve armed conflicts between our country and "foreign enemies". It is doubtful whether they are constitutionally or legally appropriate for dealing with a serious civil disturbance or even an armed conflict within China.
Chapter 5: Theft of state secrets and espionage	
A(I)	**Definition of "State Secrets"** <u>Summary of Views</u> Some responses agreed to the definition of "state secrets" to be in accordance with national law, while others believed that "state secrets" should be clearly defined, and some provided opinions and suggestions on how to clearly explain the definition to the public. The details are summarised as follows: ● Some respondents agreed with the proposal to follow the definition of

	"state secrets" as adopted in the national law. ● A legal scholar believes that since the secrets involved are state secrets and not just the secrets of the Hong Kong SAR government, it is understandable to adopt the definition of state secrets in China's "Law on the Protection of State Secrets". ● By their very nature, "state secrets" should be given a wide definition to accommodate the variety of unforeseeable situations. ● Paragraph 5.8 of the Consultation Document lists the seven aspects covered by "state secrets", which plug the existing loopholes of the Official Secrets Ordinance. ● The Government should, inter alia, give "state secrets" a clear and precise definition with operability and establish a mechanism to protect the confidentiality of secret messages for maintaining a free flow of information. This can avoid reduction of investments in Hong Kong by investors over concerns about unwittingly committing offences related to "state secrets". ● It is requested that "state secrets" and the internal secrets of businesses/institutions should be clearly defined. ● It is suggested to define the socio-economic aspect of state secrets with reference to the instances of Canada and the Law of the People's Republic of China on Guarding State Secrets. Mainland economics experts should also be invited to define and explain which socio-economic information may be classified as state secrets. ● It is suggested to classify state secrets on the basis of the Law of the People's Republic of China on Guarding State Secrets. In parallel, a confidentiality office should be established under the Security Bureau, responsible for classifying internal government documents and enhancing relevant training. The three classifications of "state secrets" must be invariably reflected in legislating against the offence of "theft of state secrets". ● It is suggested to amend the wording as follows: "If any of the following ~~**secrets**~~ **information**, the disclosure of which without lawful authority would likely endanger national security, the ~~**secret**~~ **information** amounts to a state secret:". ● It is suggested to enact archives and information transparency laws requiring public bodies to maintain complete file records and consider disclosing confidential information after a certain time period.

	• The authority should expound the details to the public and foreign businesses to give them more confidence and a peace of mind. • The wide definition of "state secrets" has potential impacts on Hong Kong's economy. • It is suggested to explore the feasibility of adopting a comparable legal mechanism as that provided in section 25A of the Organized and Serious Crimes Ordinance (Cap. 455). What merits consideration is the establishment of an authorisation mechanism for officials or entities to give guidance and permission to citizens who are uncertain of the nature of the information they obtained directly or indirectly. • Paragraph 5.8(g) ("secrets concerning the relationship between the Central Authorities and the HKSAR") of the Public Consultation Document is ambiguous and unclear. It can be inferred that this subsection may concern the communication and exchange between the Central Authorities and the HKSAR. If so, it is recommended to redraft the subsection concerned to more suitably align with the legislative intent. • The National Security Act 2023 of the UK adopted the concept of "protected information", which can prevent the possible vacuum arising from a definition by way of a detailed list and is more compatible with the characteristics of "state secrets". • On the definition of "state secrets", it is recommended to delete the item "secrets concerning the relationship between the Central Authorities and the HKSAR" since the scopes of "state secrets" of the country or Hong Kong are already covered under other subsections. • It is recommended to make reference to the existing Law of the People's Republic of China on Guarding State Secrets regarding the fact that the public has no obligation to distinguish "state secrets" and should not be given the responsibility. • It is necessary to clarify the elements or ingredients of the offences, such as "states secrets", "knowing", "having reasonable ground", "lawful authority". Correspondingly, the Government's discretionary power should be restrained, especially that of the executive authorities. • The legal concept of "state secrets" should not have an overly broad extension lest it will restrict the flow of information and affect Hong Kong's status as an international information and financial hub and its long-term interests.

	• An international environmental protection organization pointed out that the definition of "state secrets" covers a very broad scope. They are concerned that Hong Kong's environmental data are also state secrets, and conducting environmental-related scientific research will violate the law. It is suggested to add exemptions, including ecological environment data and geographical information and other information involving public interests to protect the public's right to know and ensure transparency of government information. • An anti-government organization pointed out that the draft adopts the definition of state secrets under China's legal system. The definition is entirely determined by the Chinese Communist Party, which undermines the foundation of "one country, two systems". In addition, the draft is similar to the part of the China's statutory law that restricts information designated as state secrets from leaving the country. It also expands the definition of public officials to include government-related contractors and employed individuals, which will greatly affect the flow of information in Hong Kong. • The mechanism under Article 47 of the HKNSL should be improved so that the Chief Executive can take the initiative to issue a certificate as a proof of whether the court proceedings or the evidence of such proceedings involve matters on national security or State secrets. • Some legal profession bodies have raised concerns about the scope of "state secrets" and opine that when drafting the legislation, the government should ensure that trade secrets will not accidentally fall under the scope of "state secrets" related offences. • Some legal professional bodies are concerned about the responsible party for identifying "state secrets" in legal proceedings, and some are concerned about the application of Article 47 of the HKNSL. <u>HKSAR Government's response</u> The HKSAR Government notes the above opinions and suggestions. Considering the scope of "state secrets" in relevant national law, our suggestion is to provide a detailed definition of "state secrets". The HKSAR has the duty to protect state secrets from theft or unlawful disclosure. However, the term "state secrets" is not used in the existing Official Secrets Ordinance, and only a few specified types of confidential information are protected by the Official Secrets Ordinance, e.g. "defence information" and "information related to international relations" etc., which is not broad enough to cover information which amounts to state

	secrets. Hence, it is necessary to improve the relevant provisions to effectively protect state secrets. As neither the HKNSL nor the existing legislation has provided a definition of "state secrets", the HKSAR Government considers it necessary to define what constitutes a "state secret" so that public officers, government contractors and members of the public can understand what secret matters constitute state secrets. We recommend that with reference to the scope of "state secrets" under the Law of the People's Republic of China on Guarding State Secrets, only those matters the disclosure of which without lawful authority would be likely to endanger national security are considered "state secrets". Some of the official secrets covered by the existing Official Secrets Ordinance do not reach the level of "state secrets" and are not suitable to be included in the legislation on Article 23. We therefore propose to retain the Official Secrets Ordinance, but the provisions relating to espionage and state secrets will be deleted, and only the provisions relating to official secrets that are not state secrets will be retained. As far as the "classification of secrets" mechanism is concerned, although the HKSAR has not established a "classification of secrets" mechanism exactly the same as that of our country, the HKSAR Government has other relevant guidelines and administrative regulations, such as the "Security Regulations" formulated by the HKSAR Government, which aims to identify which documents, materials and information that may need to be classified as confidential and provide guidance on this to ensure an appropriate level of protection. The Security Regulations also provide guidance on the classification of confidential documents and the control of confidential documents to ensure that confidential information is protected to an appropriate degree wherever it is transferred between departments. To cope with the implementation of the new legislation, the HKSAR Government will consider to suitably amend the Security Regulations, in order to tie in with the provisions relating to protection of state secrets under the new legislation.
A(II)	**Improving the definition of "public servants"** <u>Summary of Views</u> Some responses supported replacing "public servant" with **"public officer"** and provided comments and suggestions on the scope of this definition. Details are summarised as follows: ● It is strongly agreed to the Consultation Document that "public servant" should be replaced by "public officer" and hoped that "public

	officers" can cover contractors of significant government outsourced programmes or projects, such as contractors of election technology management. ● It is suggested that employees of statutory bodies, committees, non-government bodies, caput schools, government outsourced service contractors and other people who are closely associated with public officers should be covered. ● Teachers of aided schools should be covered. ● Employees of organisations which are wholly or 80% financed by the Government(e.g. university professors, teachers of primary/secondary schools, social workers and healthcare staff)should be covered. ● Improving the definition of "public servants": Add "and his/her assistant(s), and employees of the Legislative Council Secretariat after (d) a member of the Legislative Council. ● It is suggested that the seriousness of offences and levels of classification of the information should be used as considerations for sentencing and convictions, rather than just considering that person being a public servant or not. ● The definition of "public officer" should be moved to the first part of the bill, preferably in its beginning sections. ● The reason of replacing the term "public servant" with "public officer" should be explained. Does it mean that "public servants" who are not "officers" will not commit the offences related? ● As the work of the staff of the Hong Kong Stock Exchange involves many secrets of the Mainland and Hong Kong, should they also be listed under the control scope of those "more likely to have access to or possession of state secrets"? ● A legal professional body suggested amending the term "public servant" in the Official Secrets Ordinance to defining "public bodies" and "public servants" with reference to the interpretation of the Prevention of Bribery Ordinance, Cap. 201 of the laws of Hong Kong. They believe that statutory bodies and private enterprises do not belong to "public servants", and so it proposes to change the "public servants" in the Ordinance to "public officers"; at the same time, it proposes to define certain statutory bodies and private enterprises as a "public body" in the form of a schedule, and theirs employees as "public officers". Amendments to these schedules can be made by the

	Chief Executive on a "negative vetting" basis. HKSAR Government's response The HKSAR Government notes the above opinions and suggestions. Our proposal is to replace "public servant" with the term "public officer" and to moderately adjust the definition to cover persons who are more likely to obtain or possess state secrets. Under the existing Official Secrets Ordinance, the definition of "public servant" contains references to "any person who holds an office of emolument under the Crown in right of the Government of Hong Kong" and "any person employed in the civil service of the Crown in right of the United Kingdom", etc. They must be suitably amended to suit the present situation of the HKSAR. We recommend replacing the term "public servant" with "public officer", and suitably adjusting the scope of the definition to cover officers who are more likely to obtain or possess state secrets. As far as acts of "theft of state secrets" are concerned, when determining the suitable definition for "public officer", we will consider who will have the opportunity to obtain state secrets. For instance, public officers who can request certain information from the HKSAR Government by virtue of their statutory investigation powers are likely to have access to confidential information of the Government in the course of their investigation.
A(III)	**Offences related to "State Secrets"** Summary of Views Some responses expressed support for crimes related to "state secrets", while others provided opinions and suggestions on the coverage, penalties, defense grounds, data protection, practical guidelines, etc. of these crimes. The details are summarised as follows: *Scope of Offence* ● Considerations should be given to include the offence of "unlawful use of state secrets" within the scope of the Ordinance. ● The scope of the theft of state secrets should be extended to cover all citizens of Hong Kong, not only limited to public officers. ● On prohibition of unlawful acquisition, possession and disclosure of state secrets, the scope should be extended to cover such sensitive information as the private lives, preferences, family status, financial position and contacts of government officials and their families, with a view to preventing hostile actors from taking advantage of such

	information. ● It must be ensured that the definition of state secrets/prejudice to the interests of the HKSAR Government or Central Authorities will not be abused by the authorities to prevent the media from revealing the possible malpractice, bribery or misconduct of the Hong Kong Government and Central Authorities. For instance, the SNOWDEN incident which revealed the US Government's surveillance of communications. ● It is recommended to remove offences relating to unlawful acquisition, possession or disclosure of state secrets on the grounds that the consultation document does not clarify the definition of "state secrets", who should determine that disclosure of certain information is "likely to endanger national security", and who is the final authority in interpreting "national security". Also, there is no exemption clause for disclosure of documents involving public interests in media investigation. ● A legal scholar suggested that the government should refer to mainland China's "Law on the Protection of State Secrets" and the "Criminal Law" when legislating to clearly define the scope of offences such as unlawful acquisition, unlawful possession and unlawful disclosure of state secrets. For ordinary citizens, it is recommended that the offence of disclosing state secrets only applies to situations where they intentionally disclose certain information or documents known to him to be state secrets. ● To improve the definition of "public servants", it should cover the existing service providers of the Hong Kong Government or institutions responsible for the operation of Hong Kong's infrastructure as most of them, being statutory bodies or private enterprises, may have access to the "state secrets" mentioned above. *Penalty* ● It is suggested that the offences of "unlawful acquisition of state secrets", "unlawful possession of state secrets" and "unlawful disclosure of state secrets" should be clearly stipulated in the legislation. Regarding the three offences, if a person knows that any information, document or other article is or contains a state secret and he, with intent to endanger national security or being reckless as to whether national security would be endangered, acquires, possesses or discloses the state secret without lawful authority, a higher penalty should be applicable.

	● Public officers or government contractors have easier access to state secrets and they should have clear understanding of the sensitivity of such information. If a public officer or a government contractor knows that any information, document or other article which has been acquired or possessed by virtue of his position is a state secret and discloses such information, document or article without lawful authority, he should be subject to a more severe penalty. ● If a person commits the offence of "unlawful disclosure of information that appears to be confidential matter" and if collusion with an external force is involved, a higher penalty should be applicable. ● Regarding the offences of "unlawful acquisition, possession and disclosure of state secrets", it is suggested that a more severe penalty should be imposed when a public officer or a government contractor commits the offence of unlawful disclosure. A public officer or a government contractor with intent to endanger national security should be prohibited from unlawful disclosure of information that appears to be confidential matter, and a public officer should be prohibited from unlawful possession of state secrets when leaving Hong Kong. It is also suggested that if a person commits one of the aforesaid five offences and when colluding with an external force is involved, he should be subject to a more severe penalty, i.e. from fixed term imprisonment of not less than three years to a maximum penalty of life imprisonment in accordance with Article 30 of the Hong Kong National Security Law. ● The acts of spying or divulging state secrets in a knowing or even calculated manner should be targeted in the legislation. Those who perform such acts absolutely deserve a penalty. If a person knows that any information or document is a state secret and he, with intent to endanger national security (or being reckless as to whether national security would be endangered), discloses, acquires or possesses the state secret unlawfully, he should be subject to a more severe penalty. *Defence* ● There is absolutely no legitimate excuse for the offence of divulging state secrets. The commonly discussed public's right to know is not a legitimate excuse either, because national security overrides all such rights. ● A local political party suggested that "public interest" can be used as a defence. ● It is suggested to provide an exemption clause when public interests

	are involved. A reporter protection policy and ordinance should be introduced to enable public officers to disclose information in the public interest or information that may pose a public danger. ● On defending on grounds of "public interests", it depends on the overriding principle of public interests and whether all circumstances can be covered exhaustively in a codified form. For circumstances not covered, the doctrine of precedents in common law can be applied. Common law courts are highly experienced in determining what circumstances can be exempted on grounds of public interests, and there are plenty of widely applicable precedents. ● If the Government has, upon serious consideration, contemplated that "significant public interest" should be accepted as a ground of defence, it is suggested that an absolutely high threshold must be adopted for such defence. It must satisfy the significant emergency and overriding requirements, while the burden of proving a significant public interest should be borne by the defendant instead. ● It is suggested that the common law doctrine of precedent should be adopted when handling the overriding requirement of public interest. ● Terms such as "public interest" are too general in nature. It must clarify that who is responsible for defining what a "public interest" is. ● More exemptions should be provided for unlawful disclosure of state secrets. In cases involving important infrastructures, government works projects and community building that will affect peoples' livelihood as well as that involving public interest (disclosing the health issues of some prominent social and political figures), a member of the public disclosing such inside information should not be considered as having committed the offence of unlawful disclosure of state secrets. ● It is suggested that exemptions may be granted on the following grounds: (i) monitoring the functions of government departments; (ii) involving malfeasance or serious dereliction of duty by a public officer or an officer of a public body; (iii) involving graft by an officer of a public body or a public officer; (iv) involving significant public interest in areas such as food safety, occupational safety, public order, as well as in cases involving loss of life and significant loss of property; (v) presence of prima facie evidence that a person has committed an act punishable by immediate imprisonment, and that such person is a prominent public figure, a retired public officer or so on; (vi) being a person affected by the codes of conduct, operating procedures, practice directions or technical specifications adopted by

	any trade or sector, including the codes and orders of government departments; (vii) the information is disclosed or obtained in court proceedings through the media; (viii) keeping or disclosing published reports, endorsed minutes or so on of the government or public bodies in the capacity of stakeholders, potentially affected persons, and representatives of other countries, concern groups or institutions, etc.; (ix) the information is in the public domain including books, newspapers, magazines and the internet, like the Panama Papers; (x) exercising the rights conferred under the Constitution of the PRC, the International Covenant on Civil and Political Rights of the United Nations and the Laws of Hong Kong or acting in accordance with the provisions thereof; (xi) being in the course of classifying state secrets with reference to the standards of the Central People's Government; and (xii) disclosing in the capacity of a respondent in the court proceedings of his case the information of the integrity of a person who is called as a witness by the court. ● In Australian legislation, disclosure of information which is conducive to crime prevention is not regarded as theft of state secrets. It is recommended to include this as a reasonable defence by making reference to the relevant Australian legislation. ● There is no clear definition in law. The media cannot ascertain what kinds of reports will be considered as contraventions of law, particularly those pertaining to national security. ● It should not require general civil servants like disciplined services officers, national security officers or intelligence officers to possess the same level of awareness of protection of state secrets and counter-espionage. ● It is not agreed that public interest should be included as a defence because "public interest" is not a legally justifiable defence. There is no overlapping between national security and public interest, otherwise, it is self-contradictory. ● With regard to the financial services sector, there are doubts and concerns in the market as to whether neutral and objective stance can be maintained in future economic study or financial analysis reports. It is suggested to allow these reports to continue with neutral and professional reporting in order to preserve investor confidence in Hong Kong and further consolidate Hong Kong's status as an international financial centre. ● The onus should be on the defendant to prove that his/her "public interest" defence complies with the requirements of Article 23 of the

	Basic Law. ● Including a proportionate but not overly stringent "public interest" defence clause can make citizens and journalists feel more relieved, and can also ensure that news organizations can continue to monitor government policies and operations with confidence, ensuring that the government is accountable to the public. ● Local groups supporting the Government pointed out that there is concern in society if there is sufficient and detailed explanations regarding protection of state secrets and freedom of speech in the legislative exercise, and whether the public interest is sufficient to constitute a defence. ● A legal scholar is in favor of adding “public interest defence”. For specific content, please refer to the relevant laws of Australia and Canada (laws related to state secrets and information disclosure) (for example, Australia, Criminal Code, Division 122, section 122.5(6)). In addition, the defence of "prior publication" (already published) that is available in some foreign countries can also be added, i.e., the information regarded as a state secret has been made known to the public by others through another channel (this constitutes a defence in Australia: Australia, Criminal Code, Division 122, section 122.5(8)). ● A local legal professional believes that “public interest” can be considered as a defence, but its definition must be clear to prevent abuse. *Safeguarding of information* ● The prevailing Official Secrets Ordinance has specific provisions on “safeguarding of information” (section 22). It is suggested that such provisions should be applied to the context of “states secrets”, or that provisions similar to that of “safeguarding of information” be introduced to the new ordinance. ● Other than public officials, government contractors etc. may also be involved. It is necessary to clearly define their responsibilities and how to protect confidential information and fulfill their responsibilities in their work. ● Regarding the offence of unlawful disclosure of "state secrets", a local chamber of commerce suggested that the government should take the lead in re-examining the information dissemination mechanism of the government and public service agencies, and sort out the data confidentiality rules involved in government contracts or public works

	projects. *Practical guidelines* ● A local chamber of commerce suggested that the government should formulate practical guidelines and doubt-clearing demonstrations regarding safeguarding national security for individual industries or specific situations, so as to eliminate the risk of inadvertently violating the law. <u>HKSAR Government's response</u> The HKSAR Government notes the above opinions and suggestions. Our suggestion is to integrate and improve the offences related to "state secrets" in the current Official Secrets Ordinance to better protect state secrets. Regarding "protection of state secrets", we recommend that a detailed definition of "state secrets" be provided and offences pertaining to the protection of state secrets be introduced. In deciding the details of the offences, we will give due regard to the importance of protection of the rights and freedoms of individuals (especially the right to the freedoms of speech and expression). We will consider, if a public officer or government contractor, without lawful authority, discloses any information, document or other article that is or contains a state secret and that is acquired or possessed by the person by virtue of the person's specified capacity, a higher penalty should be applicable. For the offences of "unlawful acquisition of state secrets", "unlawful possession of state secrets" and "unlawful disclosure of state secrets", we will consider that, if a person knows that any information, document or other article is or contains a state secret, but still, without lawful authority, acquires / possesses / discloses the information, document or article with intent to endanger national security (or recklessness as to whether national security would be endangered), should be subject to higher penalty. We will consider, for violation of offence of "unlawful disclosure of information that appears to be confidential matter", if collusion with an external force is involved, a higher penalty should be applicable. Regarding the offences relating to unlawful disclosure of state secrets, there are views that disclosure in certain circumstances concerning significant public interest should constitute a defence. The so-called "public interest" must be a significant one, and such interest would

	outweigh the risk of national security and thus the threshold is very high, rather than just for the sake of satisfying curiosity of the public. This threshold may not be met in most cases. We will consider introducing the relevant defence. We will also consider, as regards protection of state secrets, modelling on s.22 of the Official Secrets Ordinance, to introduce provisions similar to "Safeguarding of Information".
B(I)	**Offence of "espionage"** <u>Summary of Views</u> Some responses expressed support for the **offence of "espionage"**, while others expressed opinions and suggestions on the scope of the crime, crime elements, word definitions, and even the threshold for conviction. Details are summarised as follows: ● A person should be regarded as having committed the offence of "espionage" if he orshe colludes with an external force to disseminate false information or misleading statements of fact to the public with intent to engender national security. That the person has no knowledge of the falsehood of the information should not be an excuse. ● There may be concerns about the term "misleading". While the term "misleading" may be somewhat vague, one must have "colluded with an external force" for the offence to apply. Therefore, generally speaking, if no "collusion with external elements" is involved, Hong Kong residents who have disseminated misleading information will not be convicted of the offence. The threshold to convict suspects of the offence is appropriate. ● Some respondents are of the view that extending the coverage [of the offence] to drones or similar technologies will be helpful in preventing espionage. ● It is suggested to establish the criminal liability for illegal use of unmanned aircrafts for espionage activities and to define the liability concerned. ● Under the holistic view of national security, anti-espionage operations should be extended to cover areas such as trading and commerce. Also, concerns have been expressed that with the advanced technologies nowadays, discarded papers, computers, servers, photocopiers or even conversation between staff members may become potential sources of intelligence for espionage. It is agreed

	that there is a need to create offences in relation to espionage. ● It is also suggested that elements in relation to "becoming their agents" should be added to the corresponding provisions so as to provide a more comprehensive coverage of the modes of espionage activities. ● Clandestine photo-taking, stalking or conducting surveillance of government officials and their family members, or in possession of their personal information, communication records or pictures revealing their hobbies which are obtained by clandestine photographing or stealing should be regarded as acts of espionage. ● The scope of espionage should be extended to cover activities that target all the people of Hong Kong and not only public officers. ● There is a technical problem with the phrase "and knows that the statement is false or misleading" at the end of paragraph 5.20(b) of the Consultation Document. It should be rephrased as "and has reasonable grounds to believe that the statement is false or misleading" (as it should not limit to what the person knows). ● The threshold for conviction and the expressions for the offence should tally with those for other offences stated in the Consultation Document (such as the offences relating to "state secrets" which are set out in paragraph 5.12). Otherwise, members of the public will find it difficult to comprehend the offence. ● An anti-government organization claimed that by replacing the term "enemies", which used to be specifically designated by the government under common law, with "external forces", making general communications with foreign organizations and individuals will potentially be classified as "espionage" and subject to surveillance or arrest. ● A legal scholar believes that the offense proposed in paragraph 5.20(b) involves "false or misleading facts", and in reality (especially on some controversial issues in society) many statements may be considered by government authorities as misleading. In addition, the definition of national security adopts the "holistic view of national security" concept of the National Security Law of the People's Republic of China. However, China's definition of national security is relatively broad, which makes people who express opinions worry that they will be criminalized for their words. ● A legal scholar suggested that the relevant offenses of "colluding with external forces" in paragraph 5.20(b) of the consultation paper should

	be limited to situations where the person accepts instructions from foreign intelligence agencies to publish false or misleading factual statements to the public. HKSAR Government's response The HKSAR Government notes the above opinions and suggestions. Our suggestion is to improve the offences and provisions relating to "espionage" in the current Official Secrets Ordinance to curb spies and collusion with external forces with the intention of endangering national security, including improving the offenses and related terms related to the current "espionage" to cover modern espionage practices and activities. Most of the provisions relating to espionage activities under the Official Secrets Ordinance are inherited from the legislations of the UK in the early 20th century (the Official Secrets Acts 1911 & 1920), which have become out of line with the prevailing standards of technology, the complex and ever-changing landscape, and the diverse modes of espionage activities. The National Security Act 2023 recently passed in the UK includes an array of new offences with very wide coverage, and other updates. Prevailing legislations in the HKSAR are inadequate in addressing modern-day espionage activities and related risks. Therefore, it is necessary to make reference to the laws of other countries to improve the content of the espionage offence. We will consider, for the offence of "espionage", the act of approaching, inspecting, passing over or under, entering or accessing a prohibited place, or being in the neighbourhood of a prohibited place, should cover causing an unmanned tool (e.g. drone) to perform the above act. We will also consider, for the offence of "espionage", the act of any person colluding with external force to publish to the public a statement of fact that is false or misleading, and with intent to endanger national security, should cover the scenario of the person having reasonable grounds to believe that the statement is false or misleading.
B(II)	**Improving concepts relating to the offence of "espionage"** Summary of Views Some responses specifically expressed support for improving the definition of "prohibited place" in the offence of "espionage". Details are summarised as follows: *"Prohibited place"*

	● Agree with the proposal to improve the definition of "prohibited place" within the offence of "espionage" in the consultation document. ● It is suggested that police officers or guards be conferred with certain power in relation to a prohibited place, e.g. the power to instruct any person who has entered (or accessed) a prohibited place to leave (or cease to access) the place immediately. Refusal to comply with a lawful direction given by a police officer or guard should be made an offence, and the officer or guard concerned may resort to lawful use of force in arresting the offender. ● It is suggested that the law makes it an offence for a person to intentionally obstruct, knowingly mislead or otherwise interfere with or impede a police officer or guard on duty in relation to a prohibited place. ● The "prohibited places" or scope of "secrecy" as they are called should be defined in the law to prohibit a person who knows (or has reasonable grounds to believe) that he/she does not have lawful authority, or who has no reasonable excuse, from approaching, inspecting, passing over or entering, or being in the neighbourhood of, a prohibited place. ● The National Security Act 2023 of the UK modernises the legal means to protect sensitive places, providing a wider coverage so as to deal with new strategies and technologies and guarding against trespass on sites that are of utmost importance to national security. It serves as a good reference for Hong Kong. ● As a countermeasure to incitement to disaffection by spies, legislation should be enacted to prevent press freedom and academic freedom from being abused by secret service. ● The HKSAR Government may make reference to the definition of "prohibited place" in the National Security Act of the UK passed last year, as well as the provision on the "power to designate additional sites as prohibited places" contained therein. ● It is suggested that the Chief Executive may, by order, designate certain premises or sites as "prohibited places" on considerations of national security and interests in accordance with the law. ● Some international environmental protection organizations are concerned that Hong Kong's urban planning is densely planned. In the absence of clear definitions, organizations or individuals may accidentally encounter "forbidden areas" when conducting

	environmental surveys. They suggest that the scope of prohibited areas should be clearly disclosed or restrictive conditions should be imposed on illegal activities. HKSAR Government's response The HKSAR Government notes the above opinions and suggestions. Our suggestion is to improve the definition of "prohibited place" in the offence of "espionage" to provide appropriate protection against current espionage activities. We will consider, modelling on the National Security Act 2023 of the UK, to introduce an offence to prohibit any person, without reasonable excuse or lawful authority, inspects, passes, enters or accesses a prohibited place, knows (or has reasonable grounds to believe) that he or she has no lawful authority to do so. We will consider providing police officers or guards power exercisable in respect of the prohibited place, e.g. to order a person who has entered or accessed a prohibited place to leave the prohibited place immediately. A person who contravenes an order made by a police officer or a guard commits an offence. We will consider to provide that any person obstructing, interfering or impeding a police officer or a person discharging duty as a guard in respect of the prohibited place, in discharging duty in respect of a prohibited place, commits an offence.
B(III)	**The offence of "participating in or supporting external intelligence organisations or receiving advantages from external intelligence organisations, etc."** Summary of Views Some responses expressed support for the offence of "participating in or supporting external intelligence organisations or receiving advantages from external intelligence organisations, etc.", and some responded with opinions and suggestions on the criminal intent and the terms and definitions of this offence. The details are summarised as follows: ● It is suggested that a new offence in respect of "participation in, support to or receipt of benefits from foreign intelligence organisations" shall be introduced to help fight against Hong Kong-based collaborators of hostile external forces. ● It is reckoned that acts relating to the offence of "participating in or supporting external intelligence organisations or receiving advantages

	from external intelligence organisations" by anyone who is reckless as to whether his/her acts would endanger national security and whether he/she would become a member of external intelligence organisations or would be supporting external intelligence organisations should be further prohibited. ● It is suggested that a new offence be introduced to "prohibit any person who disregards the possibility of endangering national security and is reckless as to whether he/she has been recruited as a member of external intelligence organisations from supporting those external intelligence organisations by any means and accepting money, material benefits or any other direct or indirect transfer of benefits from those organisations". ● It is suggested that "external intelligence organisation" be defined in the law or codes of practice be provided to assist businesses in conducting due diligence in their daily operation or before making important business decisions. HKSAR Government's response The HKSAR Government notes the above opinions and suggestions. Our suggestion is to prohibit participating or supporting external intelligence organizations or accepting advantages of external intelligence organizations. We will consider that in addition to prohibiting the relevant acts of the offence of "participating in or supporting external intelligence organisations or receiving advantages from external intelligence organisations, etc." with the intention of (or regardless of whether they will) endanger national security, we should further prohibit anyone from recklessly doing so without regard to whether they will endanger national security, and regardless of whether someone will become a member of a foreign intelligence organization or support a foreign intelligence organization.
Chapter 6: Sabotage endangering national security and related activities	
A	**Offence of "sabotage activities which endanger national security"** Summary of Views Some responses expressed support for the **offence of "sabotage activities which endanger national security"**, and some responded with opinions and suggestions on the punishment, criminal behaviour, and targets of sabotage of the offence. The details are summarised as follows:

	• Support the introduction of this offence to enhance protection for physical facilities. Take cyber-attacks as an example. Their goal is no longer to simply paralyse the network of other parties or steal secret information, but to attack the operating system of real-world infrastructure such as water and power supply by infecting it with viruses. • Agree with the introduction of the "sabotage activities which endanger national security" offence to prevent acts similar to "colour revolutions" which cause severe damage to public facilities, posing serious threats to national security. Many western countries have already enacted legislation to deal with similar situations. For example, the UK has enacted the National Security Act 2023 which covers more broadly damage to assets within and outside its territory. • It is suggested that a heavier punishment should be imposed on offenders colluding with external forces to duly punish and effectively deter such malicious act. • It is suggested that the scope of "public facilities" should be extended to include those that may contain state secrets. • Sabotage activities which endanger national security is not necessarily limited to causing damage to infrastructure, but also to the environment. • Causing damage to the public transport system not only endangers national security, but also affects our basic daily lives. A severe sentence is therefore absolutely necessary. • As the offence of "sabotage activities which endanger national security" proposed in paragraph 6.2 of Chapter 6 of the Consultation Document is equivalent to Part VIII (Criminal Damage to Property) and Part XIII (Miscellaneous Offences) of the Crimes Ordinance, amending the relevant parts of the existing Ordinance should suffice. • It should be considered that the Ordinance should cover not only public facilities, but also public officers. The reason is killing public officers by means of sabotage activities (such as plane bombing) can achieve the same strategic effect of undermining the regime, the operation of government and social stability without causing any damage to public facilities. <u>HKSAR Government's response</u> The HKSAR Government notes the above opinions and suggestions.

	Our proposal is to introduce new offences to adequately protect public infrastructure from malicious damage or impairment, including prohibiting sabotage activities that endanger national security. The offence of "sabotage activities which endanger national security" covers acts of "sabotage" or "impairment" of public infrastructure by any person who intends to (or is reckless as to whether the act will) endanger national security. If a person commits this new offence due to damage of public infrastructure, he is likely to commit the offence of "criminal damage" at the same time. However, if a person only causes a facility to be more likely to be abused or damaged, the act of "impairment" of public infrastructure will contravene the new offence of "sabotage activities which endanger national security", but it may not constitute the offence of "criminal damage". We will consider, for violation of offence of "sabotage activities which endanger national security", if collusion with an external force is involved, a higher penalty should be applicable.
B	**Offence of "doing an act in relation to a computer or electronic system without lawful authority and endangering national security"** Summary of Views Some responses expressed support for the **offence of "doing an act in relation to a computer or electronic system without lawful authority and endangering national security"**, and some responded with opinions and suggestions on the definition of the relevant terms, law enforcement framework, etc. Details are summarised as follows: ● Some respondents support introducing an offence to combat acts endangering national security that are done in relation to a computer or electronic system. ● It is agreed that the legislation can safeguard cyber security and prevent attacks by hackers, thereby ensuring information security. ● The introduction of this offence is supported, as it exhibits a forward-looking mindset that dovetails with the new landscape in the era of digital economy and prevents national security risks arising from the advancement of the Internet and technology, thereby strengthening the security and protection of infrastructure. For instance, cyber attacks may be launched with the aim of not only paralysing other parties' networks or stealing their confidential information, but also attacking the operating systems of infrastructure such as water and electricity supplies in the physical world through spreading computer viruses.

	In addition, technologies such as artificial intelligence (AI) and the Internet of Things will become increasingly prevalent in the foreseeable future. ● It is suggested that the HKSAR Government can enact legislation to order online platforms to remove unlawful content and introduce an offence of publishing content in violation of national security, with a view to stepping up efforts to combat endangering acts targeting at computer/electronic systems. Meanwhile, AI should also be subject to control, as a precaution against potential errors or offences. ● It is worried that Hong Kong residents would be prohibited from using Western social media, bringing inconvenience to their everyday lives. ● It is suggested that the HKNSL should use AI to examine online content and improve the law enforcement framework. ● Should let the public have a clearer understanding on the reasons why electronic systems may endanger national security. ● As the offence of "doing an act in relation to a computer or electronic system without lawful authority and endangering national security" mentioned in paragraph 6.5 in Chapter 6 of the Consultation Document corresponds to the "criminal damage to property" and "miscellaneous offences" stipulated in Parts VIII and XIII of the Crimes Ordinance respectively, it is deemed appropriate to amend only the provisions concerned. ● The expression "done in relation to a computer or electronic system" is ambiguous. ● This offence should cover the doxxing acts targeting at cases and officers in relation to national security, and higher penalty should be imposed to produce adequate deterrent effects. ● This seems to be an appropriate proposal in response to the technology era. ● A local chamber of commerce believes that the new offence of " doing an act in relation to a computer or electronic system without lawful authority and endangering national security" proposed in the consultation document is a "timely move" to update and improve national security regulations to be in line with the new digital economy era. <u>HKSAR Government's response</u>

	The HKSAR Government notes the above opinions and suggestions. Our proposal is to introduce new offenses to combat acts in relation to computers or electronic systems that endanger national security, including prohibiting actions in relation to computers or electronic systems that endanger national security without legal authority. Although most of the offences mentioned in the Consultation Document do not depend on the method or technology actually used to commit an offence (and should therefore be able to cover most of the acts and activities endangering national security done in relation to computers), in order to address the national security risks posed by the current cyber or digital world and new technologies that may be developed in the future, we recommend to introduce this new offence to combat acts endangering national security done in relation to computers or electronic systems. For instance, hackers launch cyber attacks with intent to influence the operation of the Government and endanger national security. Under the proposed provisions, it does not depend on the method or technology actually used in the commission of the offence, and therefore can effectively cover any acts and activities endangering national security done in relation to computers.
Chapter 7: External interference and organisations engaging in activities endangering national security	
A	**Offence of "external interference"** <u>Summary of Views</u> Some responses expressed support for the **offence of "external interference"**, and some responded with opinions and suggestions on the scope, penalties, definitions, provisions, etc. of the crime. The details are summarised as follows: *Coverage / Penalties* ● Some respondents have supported the creation of the offence of "external interference" to combat external interference, prohibit disruption of Hong Kong's affairs and protect national security. ● It is agreed and supported that the new offence of "external interference" is different from "seditious intention". Collusion with foreign forces in an attempt to jeopardise Hong Kong and national security is a premeditated, organised, well-considered and well-planned act, which is a serious offence and should lead to a more severe penalty.

	• Regarding penalties, the maximum penalty for such offence in Australia is 20 years' imprisonment and that in the UK is 14 years' imprisonment. It is considered that the penalty for the offence of "external interference" after the enactment of the legislation in Hong Kong should not be lower than that in those two countries. • The legislation is targeted at a very small number of offenders who seriously jeopardise national security, and the majority of Hong Kong people will not be affected. • Laws related to external interference exist in the United Kingdom, Australia and Singapore, reflecting that other countries also have concerns about such offence. • It is of paramount importance to maintain the HKSAR's autonomous decision-making power and to protect business activities from the undue influence of foreign political forces. • Considering the U.S. practice of "espionage under the guise of business" in recent decades and Taiwan's use of "diplomacy through non-governmental organisations (NGO diplomacy)" in recent years, it is apparent that a wider coverage is needed for "circumstances of interference (interference effect)". • Foreign politicians and political organisations have regular exchanges in Hong Kong. They may put forward ideas that are different from or opposed to those of the Government. • The British people can call for an end to their monarchy, while the Americans can call for their president to step down. But in Hong Kong, such remarks may be seen as interfering with the operation of the HKSAR Government and the Central Government. This will tarnish the image of "One Country, Two Systems" of the city in the eyes of foreigners, causing them to feel that Hong Kong's freedoms have been seriously eroded. • It is suggested that the offence of "external interference" be removed because Hong Kong is an international city and, if the new offence is created, any foreign organisation holding opposing views to those of the HKSAR Government may be regarded as an "external force" interfering in Hong Kong's affairs, while any member of the public who has exchanges with these foreign organisations or groups and commits opposing acts may also be regarded as "collaborating with an external force". • A legal scholar agrees that it is necessary to establish relevant crimes

	in Hong Kong, and believes that the scope of the offence of "external interference" recommended in the consultation document should be more clearly defined in legislation. ● A legal scholar believes that if one has only participated in the activities of an overseas organization and there is no evidence to show that he interfered in Hong Kong with the support of external forces after returning to Hong Kong, the offence of external interference should not be committed. ● A legal scholar noticed that Chapter 7 did not define external forces, and suggested that the definition of external forces in this chapter be limited to foreign governments or foreign ruling parties, and not include private organizations, in order to maintain Hong Kong's external exchanges as an international city. ● A foreign lawyers association is concerned that the newly established offence of "external interference" will be used as a means to prevent overseas lawyers from appearing in court on others' behalf in Hong ● Some legal profession groups are concerned about whether the prosecution needs to prove that the defendant knew that the relevant person or entity was an "external force" in terms of "collaborating with an external force" in the offence of "external interference". *Definition / Provision* ● Overseas partners of the local business community may not understand the definition of the consequences of interfering with the "relationship between the Central Authorities and the HKSAR" or "relationship between China and the HKSAR and any foreign country". It is suggested that the Government should elaborate on it. ● The offence of "external interference" mentioned in paragraph 7.6 of the consultation document should not be a new offence. It should be an amendment to the Societies Ordinance. ● The use of communication software, including Telegram, should be prohibited. This communication software played a leading role in the riots and did not co-operate with the police in their investigation, making it easy for the rioters to evade legal responsibility. ● To define external forces will hinder exchanges in various sectors, including the academic and business sectors, and undermine Hong Kong's status as an international financial centre. ● Using "influence" as a description can easily satisfy this element of

	the charge. The government should raise this threshold. ● What is considered to be “participating in” or “acting on behalf of” external forces is not clearly defined. The government should clarify the relevant terms to reduce the chance of misunderstanding and over-interpretation. ● The offence of “external interference” may be considered to adopt a definition similar to the national security law of the UK, defining foreign governments and ruling parties as foreign forces, and covering the Taiwan region. However, in Taiwan, a clearer definition is needed to ensure cross-strait academic and cultural exchanges are not affected and to benefit Taiwan reunification. ● An anti-government organization pointed out that the draft offence of “external interference" did not clearly define the scope of overseas organizations and interference behaviors. The overseas organizations mentioned in the draft include any foreign government, organization and individual, and the scope is very wide. ● A legal scholar believes that the definition of "improper means" can be drawn from relevant provisions in Australia and Singapore (Singapore, Foreign Interference (Countermeasures) Act 2021, section 17(d); Australia, Criminal Code, section 92.2(1)(d), including the concepts of covert and deception). ● A legal scholar believes that the definition of "interference effect" can include the words "causing serious consequences" in some clauses in paragraph 7.6(a). In addition, the scope of the word "influence" in paragraph 7.6(a) can be changed to "obstruction" or "destruction" by referring to Article 29 of the National Security Law. <u>HKSAR Government’s response</u> The HKSAR Government notes the above opinions and suggestions. We recommend following the laws of other jurisdictions to introduce a new offence of “external interference” to prohibit acts of any person in collaborating with external forces to interfere in the affairs of the country or the HKSAR through improper means(including influencing the formulation or execution of policies, the election(s) of the HKSAR, the decisions of the legislature and the judiciary of the HKSAR; and prejudicing the relationship between the Central Authorities or the HKSAR on the one hand and any foreign country or any other parts of China on the other). One may have committed the offence of “external interference” only when

	three conditions are met concurrently: (i) The first condition is collaborating with an external force; (ii) The second condition is using improper means, e.g. knowingly making a material misrepresentation, using violence, threatening to damage a person's property or reputation; (iii) The third condition is intent to bring about an interference effect, e.g. influencing the Government, Legislative Council or Court in discharging functions, and interfering with an election of the HKSAR.
B	**Improving the scope of applicable organisations** <u>Summary of Views</u> Some responses expressed support for improving the mechanism under the Societies Ordinance, where **the Secretary for Security can prohibit any organisation that endangers national security from operating in the HKSAR in the interests of safeguard national security**. Others responded to the coverage, definitions and provisions of the mechanism, relevant law enforcement powers, other auxiliary mechanism, etc. to provide opinions and suggestions. The details are summarised as follows: *Scope of Coverage* ● The recommendation to treat all organisations which may endanger national security as the same type of prohibited organisations, and empower the Secretary for Security to order prohibition of the operation of such organisations in the HKSAR on the ground of national security as well as prohibit any person from providing them with aid, is supported. ● It is suggested that owners' corporations (OCs) of buildings, as specified in Cap. 344, should be included in the list of organisations to be regulated by Article 23. In considering enacting manageable legislation to safeguard OCs, the rights and interests of owners should also be protected. ● It is agreed that contacts with foreign or Taiwanese political organisations be restricted to prevent any interference in Hong Kong from external forces. ● Due to the regulatory rules in the Societies Ordinance, most political parties in Hong Kong have chosen to register as limited companies in order to circumvent certain regulatory issues under the Ordinance.

	● Non-governmental organisations have raised funds under the guise of environmental protection or conservation and used the proceeds to support foreign forces or carry out smear campaigns against Hong Kong or China. It is necessary to consider enacting legislation to prevent such criminal acts. ● Over the years, certain organisations in Hong Kong have been engaging in non-religious affairs in the name of religion. It is hoped that the S for S and the courts can be facilitated upon the legislative amendments to effectively execute, among others, the power of ceasing the operation of societies under the Societies Ordinance. ● Quite a number of religious organisations in Hong Kong have global connection which is different from the connection with external political organisations endangering national security. Academic organisations in Hong Kong, particularly tertiary institutions, generally maintain exchanges and cooperation with overseas institutions on various fronts. Apparently, they shall not be regarded as having connection with external political organisations capable of endangering national security. ● Since the definition of "political organisations or bodies" was too narrow in the past, and there were no limitations on non-governmental, non-party political organisations or bodies under the Societies Ordinance, anti-China, destabilising elements seized the opportunities to set up such organisations as incorporated management committees and owners' corporations which were not regulated under the Societies Ordinance, and committed acts of endangering national security. Similarly, as political organisations in Hong Kong were exempted by law from registration under the Companies Ordinance, the Co-operative Societies Ordinance and the Trade Unions Ordinance, loopholes were made available to unlawful political organisations. ● The existing Societies Ordinance is too loose and cannot regulate the current social organizations or even monitor their daily operations. Therefore, it is necessary to amend the Societies Ordinance to comply with Article 23 legislation. ● We suggest that the government to conduct individual reviews on the national security risks that different types of organizations may pose rather than covering all organizations across the board. ● A religious figure in the aforementioned statement believes that many international religious conferences are held locally. Although the participating religious organizations generally do not have established political stances or positions, the religious individuals involved may

	have strong political inclinations. Their positions may be reflected in the conclusions of the conferences. Concerns are raised about Hong Kong religious figures who attend such conferences and may inadvertently become involved in endangering national security. It is suggested that legislation should focus on individuals engaged in activities that endanger national security rather than categorizing the entire organization as a threat to national security. *Definition/Provision* ● Some international environmental protection organizations have suggested setting up a more specific definition of overseas political organizations and their associated entities and individuals to help organizations or individuals identify which overseas organizations are political organizations. Otherwise, normal exchanges and cooperation may be hindered. ● A legal group suggested that the words "foreign or Taiwanese agents" in Article 3 of the Official Secrets Ordinance, and "Taiwanese political organizations" and "foreign political organizations" in Article 2 of the Societies Ordinance should be changed to "foreign or external forces". *Relevant law enforcement powers* ● It is suggested that reference shall be made to section 15 of the Societies Ordinance to empower the S for S to perform his "function of prohibiting the operation of organisations". As regards certain information as he may reasonably require for the performance of the function of prohibiting the operation of organisations, officers can be authorised to request the organisation or every office-bearer and every person managing or assisting in the management of any such organisation in Hong Kong to supply the information, including the income, the source of the income and the expenditure of the organisation. ● It is suggested that reference shall be made to section 16 of the Societies Ordinance to stipulate that every office-bearer of the organisation and every person managing or assisting in the management of the HKSAR who fail to comply with the notice served, or furnish any information which is false, incorrect, or incomplete in any material particular shall be guilty of an offence. ● As capital chain constitutes crucial evidence for external forces' collusion with local organisations, submission of such information should not be refused on the pretext of commercial confidentiality.

	Other auxiliary mechanisms ● Hong Kong should introduce the "foreign influence transparency registry" established by the US, Australia and Canada to the Schedule of the Societies Ordinance as complementary and enforcement measures for Articles 54 and 61 of the HKNSL. ● Concurred with the idea of not following foreign countries to establish the "foreign influence transparency registry". ● Consideration can be given to setting up a voluntary registration mechanism, under which related bodies can have prior consultations and registrations on a voluntary basis in respect of connection with a foreign organisation. With reference to SB's categorisation of the foreign organisation, local bodies can avoid contravening the law out of negligence. ● Clear guidelines on the operation and management of societies/political parties should be drawn up in the Article 23 legislation. ● The legislation should stipulate provisions to the effect that bodies or individuals whose activities are prohibited by the definition of being unlawful or affecting national security in the Mainland shall have their activities prohibited in Hong Kong as well. <u>HKSAR Government's response</u> The HKSAR Government notes the above opinions and suggestions. We also recommend, based on provisions in the existing Societies Ordinance relating to the safeguarding of national security or prohibition of a political organisation in the HKSAR from having connection with external political organisations, improvement should be made to prohibit all organisations endangering national security (including organisations established outside the HKSAR, but actually have a nexus with the HKSAR) from operating in the HKSAR, in order to effectively prevent and suppress the operation in the HKSAR of organisations that engage in activities endangering national security. We will consider referring to Section 15 of the Societies Ordinance. If the Secretary for Security reasonably needs certain information in order to perform his function of "prohibiting the operation of an organization", he may authorize an officer to make such request to any officer of the organization or any person assisting in the management of the organisation in the HKSAR. Written notice served on the person assisting in the management of the organization may require the organization to submit

	information including the organization's income, sources of income and expenditures. We will also consider referring to Section 16 of the Societies Ordinance. If the officers of the organization and those who manage or assist in the management of the organization in the HKSAR fail to comply with the notice, or any information provided is false, incorrect or incorrect in a material particular, complete, the person concerned shall be guilty of an offence. The HKSAR Government previously considered whether to establish a registration system to enhance transparency of political activities or activities involving national security conducted by external forces through organisations in Hong Kong and individuals. However, after careful consideration, we believe that the community is already familiar with the mechanism under the existing Societies Ordinance that can prohibit the operation of societies in the interest of national security, and that there is operational experience in that mechanism (including the experience of prohibiting the operation of the "Hong Kong National Party" in accordance with the law in 2018). Besides, in accordance with Schedule 5 of the Implementation Rules for Article 43 of the Law of the HKSAR, with the approval of the Secretary for Security, the Commissioner of Police may require foreign or Taiwan political organisations and agents to provide specific information for the prevention and investigation of an offence endangering national security. Therefore, we decided not to introduce a similar registration system, but to tackle the problems in a focused manner by creating an offence of "external interference" and improving the mechanism for regulating and prohibiting the operations of organisations endangering national security.
C	**Prohibiting external organisations endangering national security which are affiliated with the HKSAR from operating in the HKSAR** <u>Summary of Views</u> Some individuals responded with comments and suggestions on the **mechanism to prohibit overseas organisations endangering national security which are affiliated with the HKSAR from operating in the HKSAR**. The details are summarized as follows: ● The enactment of statutory provisions can boost confidence of citizens and investors. ● An international environmental organization suggested that the Secretary for Security must publicly explain his reasons and provide sufficient evidence when exercising his power to prohibit the

	organization from operating or continuing to operate in the HKSAR, and establish a complaint mechanism. HKSAR Government's response The HKSAR Government notes the above opinions and suggestions. We recommend, based on provisions in the existing Societies Ordinance relating to the safeguarding of national security or prohibition of a political organisation in the HKSAR from having connection with external political organisations, improvement should be made to prohibit all organisations endangering national security (including organisations established outside the HKSAR, but actually have a nexus with the HKSAR) from operating in the HKSAR, in order to effectively prevent and suppress the operation in the HKSAR of organisations that engage in activities endangering national security. In recent years, some individuals endangering national security have fled outside the HKSAR and continued to endanger national security. For instance, some local organisations in the HKSAR have relocated outside the HKSAR and established destructive "shadow organisations" there, and continued to engage in activities against the HKSAR that endanger national security. While these organisations are established outside the HKSAR, they actually still have affiliation with the HKSAR.
Chapter 8: Extra-territorial application of the proposed Ordinance	
	Recommended extra-territorial effect of the offences Summary of Views Some responses expressed support for the **establishment of proportionate extraterritorial effects** for certain offences, and some also expressed opinions and suggestions on relevant national and foreign laws, whether they are applicable to foreigners, legal terms, etc. Details are summarised as follows: ● It is suggested that corresponding extra-territorial application shall be introduced for certain offences stipulated in the legislation. ● Given that it is a common and international practice to take extra-territorial effect into consideration in legislation, the same effect should be provided in the legislation to implement Article 23. Many countries, including the United Kingdom and the United States, exercise jurisdiction on the criminal acts endangering national security committed by their nationals outside their countries. ● Consideration should be given to the provision of extra-territorial

	effect for certain offences to enhance the application of law and its implementation. ● The extra-territorial effect proposed in the Consultation Paper aligns with the “protective principle” in the HKNSL. The recommendation should be supported. ● Given that the legal status of Article 23 of the Basic Law is applicable outside the HKSAR, it will serve as the basis for the Government to bring charges against people outside the HKSAR who make "anti-China" remarks and cause disturbance to Hong Kong. ● It is a common and international practice to apply extra-territorial effect. For instance, the United Kingdom and the United States exercise jurisdiction on criminal acts endangering national security committed by their nationals outside their countries. ● The scope of application (extra- territorial effect) of criminal law in China is basically applicable to all crimes and offences. By the same token, the scope of application (extra- territorial effect) of the HKNSL should apply to all offences endangering national security in Hong Kong. The approach of Chapter 8 of the Consultation Paper might raise query that the HKNSL and Laws of Hong Kong do not bear a relation as higher-level and lower-level laws. Scrutiny of each and every offence is unnecessary for the implementation of the scope of application for imposing punishment on offences endangering national security in Hong Kong. ● When exercising jurisdiction over offences endangering national security committed outside the HKSAR, the respective law would need to be applicable precisely to people with foreign nationality. ● High precision is required when using legal terms because some of the crimes or offences may not be applicable to non-Chinese citizens with foreign nationality outside the HKSAR. ● Offences related to foreign dignitaries and senior officials should be handled by the Central Government. ● Acts endangering national security are all complicated and covert. The provision of extra-territorial effect in legislation is supported. ● When deciding to apply the territorial principle, personality principle and/or protective principle, it is recommended to use the principle of "proportionality and necessity" as a guide. At the same time, we hope that the government can clearly explain the scope of each crime in the

	Bills Committee. ● A Hong Kong based association proposed to add and specify extraterritorial enforcement effects in the Ordinance to bind organizations and media from abroad. ● A person in the religious community believes that when a local religious group attends an international religious conference oversea, if other participants make remarks that endanger national security, and the motion is still passed despite the objections of the Hong Kong representative, the Hong Kong representative can put forward his or her personal opinions on the motion, but religious community may not have enough knowledge to distinguish which sentence contains or hides content that is detrimental to the country. He expressed concern over whether Hong Kong representatives will commit a crime overseas in such scenario. <u>HKSAR Government's response</u> The HKSAR Government notes the above opinions and suggestions. In order to ensure that the scope of application of each category of offences is in line with the nature of the category of offences concerned, and is necessary and proportionate, we will, upon settling the formulation of the offences, examine each of them in detail and determine their respective scopes of application. Formulating extra-territoriality for offences endangering national security aligns with the principles of international law, international practice and common practice adopted in various countries and regions. Such practice is both necessary and legitimate, and is also in line with those of other countries and regions around the world. It can be seen that the national security laws of various countries, including the US, the UK, Australia, Canada and the Member States of the European Union, also have extraterritorial effect under the "personality principle" and the "protective principle". We cannot directly adopt the provisions on extra-territorial effect under the HKNSL to deal with the offences involved in this legislative exercise as the relevant provisions only apply to the offences committed under the HKNSL: according to Article 37 and Article 38 of the HKNSL, the HKNSL shall apply to commission of offences under the HKNSL outside the HKSAR by a permanent resident of the HKSAR or a company or an organisation which is set up in the HKSAR, and commission of offences under the HKNSL against the HKSAR from outside the HKSAR by a

	person who is not a permanent resident of the HKSAR. Besides, we cannot directly apply the principles relating to extra-territorial effect under the HKNSL to all of the offences proposed in this legislative exercise: the four types of offences stipulated under the HKNSL are more serious offences endangering national security which all have extra-territorial effect, whereas the current legislative exercise involves offences of varying degree of severity and are concerned with different natures and circumstances. In view of this, in determining the extra-territorial effect of various offences in the Ordinance, we need to consider the nature of each offence, the possible impact on the State and the HKSAR, the national security threats which the offence is designed to address and the circumstances in which different individuals or organisations may commit such relevant acts outside the territory in order to provide for proportionate and reasonable extra-territorial effect where necessary.
Chapter 9: Other matters relating to improving the legal system and enforcement mechanisms for safeguarding national security	
A	**Existing circumstances regarding detention of and bail arrangement for arrested persons during investigation** <u>Summary of Views</u> Some responses specifically expressed support for the power to **take specific measures against arrested persons** similar to those provided for in the UK's National Security Act 2023, while others expressed opinions and suggestions on extending the detention period, consulting lawyers, and taking preventive and investigative measures. Details are summarised as follows: ● The law enforcement authorities of the HKSAR should be conferred with the power to take prevention and investigation measures, similar to those under the UK National Security Act 2023. ● "Extending the period of detention", "prohibiting the arrested person from consulting a lawyer", "delaying the arrested person's meeting with a lawyer", etc. should not be introduced rashly. ● We may refer to the arrangements in the UK to restricted suspects from consulting any lawyer. This can prevent lawyers from "tipping off" the suspect to other accomplices under the guise of providing legal advice. *Extension of detention period* ● It is recommended that senior police officers should be allowed to lodge applications to magistrates and specify circumstances where the

	extension of detention should be allowed. These circumstances may include: (a) despite the strenuous and prompt efforts being made by the Police, investigation cannot be completed before the detention period expires; (b) extension of detention of the arrestee is essential for the preservation or retention of evidence, or examination for the purpose of obtaining evidence. ● It is recommended that the detention period for people suspected of having committed an offence endangering national security should be significantly extended from the current period of 48 hours as permitted by law. ● In the case when a charge is not brought against an arrestee, the Police should be conferred with the power to apply to the court an extension of detention to allow more time for evidence gathering. By doing so, the risk of tipping off by the released arrestee to other suspects or absconding overseas can be reduced. Consent to extension without charge should be determined by judicial officers. ● It may be more transparent if the specific standards or justifications for the permission for extension are enacted in legislation. For instance, (i) refusal to or failure in reporting to the Police; (ii) sustained risks in endangering national security supported by evidence; (iii) tendency of interference or abuse of appropriate legal proceedings, such as falsifying witnesses. ● Reasonable arrangements, such as gazetting or announcing through other means the list of detainees engaged in prohibited contact, should be made to give solicitors a better picture of the circumstances, and to avoid practical and operational difficulties and concerns from the legal profession. ● The respective legislation should be strengthened to ensure that sufficient time and resources are given to investigation officers. The oversight mechanism should also be strengthened to ensure legality and fairness in investigation. ● Legislation should be improved to prevent acts detrimental to investigation, such as tipping off. While stepping up efforts in combating disclosure of confidential information, security measures on investigation should also be strengthened to ensure its validity. ● Supervision of persons on bail should be strengthened while risk assessment should be conducted to protect public and national security.

	● It is absolutely necessary to criminalise wilful obstruction/hindrance to investigation conducted according to the law, such as improper disclosure of investigation contents; concealment of facts to subject officers; falsification, concealment, destruction or other means for the disposal of materials related to the offence. Although offences such as wilful obstruction to police officers in execution of duty, obstruction to public officers in the performance of duty and interference with the course of justice are already provided in law, given the importance and special nature of national security, it is absolutely necessary to set out in Article 23 a specific offence to ensure that investigations related to national security will not be obstructed or hindered. The offence thus created would need to produce deterrent effect reasonably. ● The bail threshold under the HKNSL should be adjusted as soon as possible as the current bail arrangement is in fact similar to "arbitrary" administrative detention in the Mainland, which will raise concerns among foreign investors and the business sector. ● To fully protect the statutory rights of a detainee, it is proposed that the time limit for the Police to make an application for "extension" or a decision to "defer/delay" a detainee from consulting a solicitor should be specified as follows: (a) The Police should apply ***to the magistrate within 48 hours*** for an extension of detention…; (b) … (to empower police officers) to direct that a detainee may not consult a particular solicitor or to delay his consultation with a solicitor, and ***such deferment or delay should not be more than 48 hours***; and (c) …subject to the permission granted by the ***magistrate, who believes that his decision is conducive to the safeguarding of national security or eliminating a threat to national security***. An array of measures on individuals should also be imposed. ● It would be desirable to introduce something between detention and bail arrangement, a confinement camp similar to quarantine. The purpose of the camp is to restrict arrestees from escaping, and no restrictions will be imposed on their activities in the camp. The arrangement will reflect presumption of innocence, and law enforcement officers can exercise due diligence for the manifestation of law. This is known as "house arrest" overseas. ● A legal scholar suggested that we may follow the UK measures. Under normal circumstances, the detention of relevant persons is limited to 48 hours. The police and prosecutors may further apply to the court for a detention order and obtain an approval for further detention. The suspect may be detained for a maximum of 7 days, which may be further extended to 14 days upon request, and only if there are

	reasonable grounds to believe that further detention of the person involved is necessary; and the investigation related to the detention of the person is being conducted seriously and expeditiously. Only then the judicial authorities can issue a further detention order. ● A local legal group expressed its support for law enforcement agencies to have the right to apply to the court for an extension of detention through legal procedures on the premise of sufficient objective grounds and with caution. This will help prevent the arrested from abusing the bail process and reduce the risk of them continued causing considerable national security risks during the bail period, or even the possibility of planning and implementing further crimes of endangering national security. *Consultation with a Solicitor* ● Regarding the power to direct that a detainee may not consult a particular solicitor or to delay his consultation with a solicitor, consideration should be given to introducing approval and enforcement mechanisms which are more stringent so that the rights of the person could be protected while national security is safeguarded. For instance, (a) decision to impose restrictions on consultation with a solicitor should be limited to grave circumstances (e.g. when national security is endangered or bodily injuries are sustained by any person; when recovery of benefits derived from a person's criminal act is hindered; or when the course of justice is undermined or perverted); (b) application should be made to the magistrate; (c) restrictions imposed should be lifted as soon as police officers no longer have reasons to believe that the above circumstances exist. ● Restrictions on a suspect's right to consult a solicitor should be subject to time limit. Reference can be made to the arrangements in the UK. Restrictions on consultation with a solicitor should be in effect within 48 hours from the time of the arrest and only when the suspect is under police custody. ● Detainees alleged to have violated the national security law or Article 23 of the Basic Law should be prohibited from requesting a solicitor's presence during statement-taking. ● A suspect should have the right to seek legal consultation in private. ● Barring a defendant's access to legal representatives would undermine his right of defence, which is a violation of the spirit of the rule of law. ● A foreign lawyers association believes that the authorities must ensure

	the right of suspects to promptly meet with lawyers of their choice and the right of lawyers to consult with their clients without interference. ● A local legal group expressed its support for law enforcement agencies to have the right to apply to the court for preventing or delaying a detainee from consulting with any attorney through legal procedures on the premise of sufficient objective grounds and with caution. *Taking prevention and investigation measures* ● Reference should be made to the UK National Security Act 2023 to allow senior police officers in the Police Force to apply to a magistrate for an order to impose measures on an individual and specify the following requirements for the person on bail: (a) to reside at a specified residence during a specified period; (b) not to enter a specified area or place during a specified period; and (c) not to associate with specified persons by whatever means (or through any person) during a specified period. ● The following measures imposed on an individual are not recommended: (d) requirements for him to comply with directions given by a constable in respect of his movements; (e) not to hold any accounts without permission; (f) restrictions on the transfer of property to or by the individual and/or requirements in relation to the disclosure of property; (g) restrictions on the possession or use of electronic communication devices. ● While such restrictions are imposed to safeguard public security and social order, they should not infringe on the legitimate rights of individuals. ● Persons on bail should be required to wear ankle bracelets in addition to surrendering their travel documents to prevent bail jumping and absconding. ● A legal scholar believes that Hong Kong does not need to introduce restrictive measures against people who have not been arrested for suspected crimes, because Article 43 of the HKNSL and its Implementation Rules have given the police broad powers to exercise against persons who have not yet been arrested (such as restricting departure, freezing property, requirement answers to questions and submission of information, conducting secret surveillance, etc.). ● The legal professions generally agree that it is necessary to ensure that law enforcement agencies, when handling cases of crimes endangering national security, have sufficient time to conduct all necessary

	preliminary investigations on the arrested person and the case, and to prevent any situation that may undermine the investigation work, and to prevent the arrested person from further posing national security risks. Some opinions pointed out the need to balance the law enforcement powers to deal with cases of crimes endangering national security, and basic rights guaranteed by the Basic Law and the Hong Kong Bill of Rights. Regarding suggestions on extending the detention period of the person being arrested, restricting consultation with lawyers and restrictive measures during investigations, appropriate conditions should be set, should generally be approved by the court, and the period subject to the measure should not be longer than necessary. HKSAR Government's response The HKSAR Government notes the above opinions and suggestions. Our suggestion is to introduce measures that can allow law enforcement agencies to have sufficient time to investigate complex crimes endangering national security, and can prevent tip-offs and other situations that could damage the investigation and prevent persons on bail from further endangering national security. Since the implementation of the HKNSL, the relevant departments have acquired certain experience in the investigation, enforcement, prosecution and trial of cases concerning offences endangering of national security and the handling of matters relating to the safeguarding of national security. We will explore ways to improve other matters relating to the legal system and enforcement mechanisms for the safeguarding of national security. We have to ensure that the government bodies of the HKSAR for safeguarding national security can operate effectively and perform their duties in accordance with the law, and that cases concerning offences endangering national security are handled in a fair and timely manner. Hence, we are considering to improve areas including enforcement powers and procedural matters for safeguarding national security. In so far as a measure can effectively prevent, suppress and impose punishment for any act or activity endangering national security, and suits the actual situation of the HKSAR, we will take it into serious consideration. Relevant restrictions on suspects of offences endangering national security will only be imposed under reasonable, legitimate and necessary circumstances. As for measures which restrict personal freedom, we will consider the requirement of seeking approval from the court before implementing the measures, and providing for a mechanism where an arrested person can apply to the court for an appeal against the

	restrictions imposed on him. We will consider, with reference to the National Security Act 2023 of the UK, to empower a magistrate to authorize the police to extend the period of detention of an arrested person without charge, with the period of extension not causing the total period of detention of the arrested person to exceed 14 days after the expiry of the period of 48 hours after the person's arrest. We will consider, with reference to the National Security Act 2023 of the UK, to empower a magistrate to authorise the police to impose the following restrictions on the relevant persons. We will consider, with reference the National Security Act 2023 of the UK, to empower a magistrate to make an order (movement restriction order) directing that a person on bail must comply with certain requirements, for example, the person on bail must reside in a specified place during the specified period, or the person on bail must not enter a specified area during the specified period. The following measures are not recommended: (a) requirements for him to comply with directions given by a constable in respect of his movements; (b) not to hold any accounts without permission; (c) restrictions on the transfer of property to or by the individual and/or requirements in relation to the disclosure of property; (d) restrictions on the possession or use of electronic communication devices. We will consider to introduce an offence of "No prejudicing of investigation of offences endangering national security", providing that a person commits an offence if the person knows or suspects that an investigation of an offence endangering national security is being conducted and does an act that prejudices the investigation under that clause.
B	**Suspects absconding overseas** <u>Summary of Views</u> Some responses specifically expressed support for the use of methods such as revoking professional qualifications and "evoking passports to prevent persons involved in the case from absconding. Others expressed opinions and suggestions on the crime of harbouring fugitives and how to ensuring

	freedom of speech is not restricted. The details are summarised as follows: ● Measures proposed to prevent persons related to the case from absconding, such as passport revocation, are supported. ● Pursuit and extradition of abscondees should be stepped up to ensure bringing them to justice and the just application of law. ● There is a need to introduce specific arrangements to address offences of harbouring or concealing fugitive offenders. Such acts should include: provision of funds or accommodation to abscondees, assistance in handling funds or real estates of abscondees, or joint investment or venture with abscondees. ● Legislation for revoking the professional qualifications held by abscondees should be introduced to uphold judicial independence and authority, safeguard the professional ethics and conduct of professionals, and safeguard the public interest. ● A foreign lawyers' association stated that in 2023, two lawyers who were absconding overseas were placed on wanted with reward notice based on the overly vague provisions of the National Security Law, which interfered with their right to freedom of speech. It is hoped that the relevant authorities could ensure that the National Security Law would not restrict freedom of speech and that the lawyers using peaceful means to make political and legal speech will not be subject to criminal prosecution or other sanctions. <u>HKSAR Government's response</u> The HKSAR Government notes the above opinions and suggestions. Our proposal is to prescribe measures that can respond to, combat, deter and prevent absconding behavior, and encourage absconding persons to return to Hong Kong to face law enforcement and judicial proceedings. We will define clearly in the proposed Ordinance the scope of application of the measures to procure the absconded persons' return to Hong Kong. For example, there must be an arrest warrant issued by the court against the absconded person, and he/she has been remaining at large for a specified period of time. We will consider to empower the Secretary for Security to specify a person who is charged with an offence endangering national security and has absconded for more than 6 months if the conditions under that clause are met, so as to enable the Secretary for Security to apply the following measures, one of the directions is prohibit a person from making available

	any funds to a absconder, or dealing with any funds of a absconder.
C	**Procedural matters** Summary of Views Some responses specifically expressed support for **eliminating procedures** in cases involving national security, while others expressed opinions and suggestions on document translation requirements, primary investigations, video and audio recording, etc. Details are summarised as follows: ● It is suggested that certain judicial procedures for cases concerning national security should be eliminated. Judges should seek ways to bring cases concerning national security to trial expeditiously, consistently with the interests of justice. The courts should set and enforce strict timetables. ● It is suggested that: (1) the procedures to prevent the abuse of bail application by defendants in national security cases should be established; (2) the requirement of time limit should be set to facilitate early submission for trial; (3) the requirement to provide translations of documents should be waived; and (4) the requirement of ● Regarding the proposal to remove the restrictions on reports of the date of committal proceedings, prior to the removal, the court should consider whether such removal would be contrary to the interests of national security. ● It is suggested that after committal, the accused should not apply for discharge without a hearing. ● In many cases, the defendants in national security cases abused the processes of the court. For instance, the defendants repeatedly applied to the court for bail every eight days without any new evidence. Some court procedures lacked flexibility such as the requirement of certified bilingual translations of court documents. It was hoped that during the legislative exercise of Article 23, the HKSAR Government could consider enhancing the process of scheduling cases concerning national security for trial, so that such cases could be expeditiously scheduled and handled in a timely manner. ● It is suggested that all trials for the defendants in national security law cases could be video and audio recorded by the Judiciary. ● The procedural matters for national security cases should be further

	enhanced to safeguard the defendants' legitimate rights and the rights in judicial proceedings; and the professionalism and impartiality of the court should be strengthened in dealing with cases concerning national security. ● The Article 23 legislation should adhere to the principle of "One Country, Two Systems", with principles and practices of the common law being applied throughout the entire legislation for adduction of the common law case law. ● The court should continue to handle related cases in an open and fair manner upon the legislation of Article 23 in the future. ● In the event of conviction, the right of appeal on ground of violation of procedural fairness should be reserved. ● The legislative intent was to establish a clear legal framework to deal with offences concerning national security. It would help ensure fair trial and operation of legal proceedings. ● Section 4 of the prevailing Crimes Ordinance (Cap. 200) provides that "the procedure on trials for treason or misprision of treason shall be the same as the procedure on trials for murder". It is suggested that section 4 of the Crimes Ordinance (Cap. 200) be repealed and not be included in the proposed Bill. ● Consequential amendments should be made respectively to Part I of the Second Schedule to the Magistrates Ordinance (Cap. 227) and Part III of the Second Schedule to the Magistrates Ordinance (Cap. 227) by repealing items 4 and 5 and adding "an offence endangering national security" to item 2, so that the Secretary for Justice can exercise his discretion to arrange cases of endangering national security to be tried before such courts as he thinks fit. ● A person who has committed an offence endangering national security cannot be released on bail under any circumstances until he has completed his sentence. Acts of absconding may occur if bail is granted. ● National security covers an extensive scope. One of the important issues for consideration is that in effecting law enforcement and making judicial judgement, mutual legal assistance may be sought from China, which has a different judicial system in terms of the domestic law. ● If the offence is a continuous one and extends beyond the enactment

	of Article 23, criminal liability should be pursued with retrospective ● Persons who have contravened Article 23 will be deprived of political rights (e.g. the right to vote and stand for election, etc.) as a punishment. ● In view of the national security elements of Article 23, the investigation and trial of all relevant crimes should not engage members of the judiciary or legal representation with foreign nationality. ● It is suggested that a catch-all clause be included, i.e. the Ordinance shall prevail in case of any consistency between the local legislation and the Ordinance. ● It is suggested that a juvenile court for national security and a juvenile court specially for handling offences related to Article 23 legislation be set up with reference to the existing juvenile court in Hong Kong, aiming to specially handle national security offences involving young persons and children under the age of 18. ● It is suggested that a national security discretion scheme be set up with reference to the existing Police Superintendents' Discretion Scheme. ● It is suggested that the mechanism for certifying whether an act involves national security or State secrets under the HK National Security Law be adopted in the course of enacting Article 23 to ensure uniformity and gravity of the two sets of law, thereby avoiding conflicts in application. ● If the relevant conduct is a continued conduct from before the Ordinance comes into effect, the court must consider the conduct before and after the Ordinance comes into effect as evidence, and the court should also consider relevant evidence as the sentencing criterion. ● A local legal group expressed support for the Article 23 legislation to improve the litigation process. The judge will lead and monitor the progress of the case, and determine whether certain procedures can be reduced or modified, so that national security cases can be heard in a timely manner while maintaining a fair trial, in order to effectively prevent, stop and punish crimes endangering national security while avoiding delays and waste of judicial resources. ● Some legal profession groups believe that the consent of the Secretary for Justice should be required before prosecution can be initiated on

	the newly proposed offences. HKSAR Government's response The HKSAR Government notes the above opinions and suggestions. We will consider improving criminal procedures for cases related to crimes against national security. Although criminal procedural matters have already been provided for under certain local laws of the HKSAR, as far as the procedural matters of cases concerning offence endangering national security are concerned, the provisions under the local laws should be convergent with the relevant requirements of the HKNSL, and should be improved as appropriate in order to meet the said requirements. One of our key considerations is to meet the goal for cases concerning national security to be handled in a timely manner on the premise of maintaining fair trials. Article 11(2) of the Hong Kong Bill of Rights provides that a person charged with a criminal offence shall be entitled to, among other things, a guarantee to be tried without undue delay. It is therefore in the interest of the defendants of cases concerning national security to have their cases handled in a fair and timely manner by improving the procedural matters.
D	**Arrangements on the serving of sentences of convicted persons** Summary of Views Some responses expressed support in particular for tightening the **release threshold for prisoners convicted of crimes endangering national security.** Others expressed opinions and suggestions on commutation arrangements, release thresholds, updates of prisoners, etc. Details are summarised as follows: ● Regarding prisoners who have served their sentences, the threshold for eligibility for release under the Prison Rules (Cap. 234A), the Post-Release Supervision of Prisoners Ordinance (Cap. 475) and the Long-term Prison Sentences Review Ordinance (Cap. 524) should be tightened for prisoners convicted of offence endangering national security such that they may only be granted release under the condition that the relevant authority is satisfied that they no longer pose threats to national security. ● With reference to the relevant court verdicts passed in Hong Kong and overseas, a legal professional body agrees that paragraph 9.22 of the consultation paper (on the recommendation about early release of

	offenders) is mostly likely compliant with the Basic Law and the Hong Kong Bill of Rights Ordinance. It fully supports the Government's proposed legislation of Article 23 with the above recommendation included. ● Regarding the arrangement that remission should be applicable to cases involving national security, when considering the provision of remission under the relevant legislation, it is necessary and imperative to ensure that the remission will not pose threats to national security. ● It is suggested that the threshold for eligibility for early release should be tightened. The relevant authority must be satisfied, through prolonged observation of the words and deeds of the prisoner concerned during his or her imprisonment and regular contact with the prisoner, that his or her release will not pose additional risks to national security and public order before considering his or her early release. ● Relevant legal requirements and risk assessment mechanism should be enhanced to ensure the legality and impartiality of the release. ● Post-release supervision and management should be strengthened to ensure public safety and national security. ● The thresholds for eligibility for parole and remission should be tightened. Remission should not be granted to prisoners convicted of offence endangering national security. Such prisoners should not be granted remission or early release unless there are sufficient grounds to believe that they will not endanger national security or will no longer pose risks of national security. ● There is a view in favour of following the threshold for eligibility for parole stipulated in the Terrorist Offenders (Restriction of Early Release) Act 2020 of the UK to ensure that the relevant authority must be satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined before an early release may be granted to the prisoner. ● Prisoners convicted of offence endangering national security should be imprisoned separately and the relevant authority should keep a detailed record of the persons they have been in contact with in the institutions, so as to prevent these prisoners from spreading messages which endanger national security therein. ● Arrangements should be clearly spelt out regarding the grant of leave of absence for prisoners convicted of offence endangering national security to attend a funeral or a wedding, as well as matters relating to

	deaths in custody, legacy management, and visits by families and friends. Their deaths in custody should be avoided as this may arouse international criticism. ● Sentence reductions can encourage prisoners to renew their services and we believe that they should be maintained. <u>HKSAR Government's response</u> The HKSAR Government notes the above opinions and suggestions. We will actively consider amending the Prison Rules (Cap. 234, sub. leg. A), the Supervision of Prisoners Ordinance (Cap. 475) and the Long-term Imprisonment Sentences Review Ordinance (Cap. 524) to tighten the threshold for prisoners to obtain early release As mentioned in the Consultation Document, there have been cases in which prisoners convicted of offences endangering national security absconded when they were on parole and under supervision and continued to engage in acts endangering national security. This arrangement will not change the sentences imposed by the court on persons who have committed offences endangering national security. As such, it is not a question of whether this will in effect increase the sentences.
E	**Protecting persons handling cases or work involving national security** <u>Summary of Views</u> Some of the responses specifically expressed support for the formulation of measures to impose higher penalties on **acts of doxxing (whether intentional or unintentional) and harassment of public officials who handle national security matters**. Others responded with opinions on what harassment is, the scope of targets, procedural laws, etc. Suggestions, details are summarised as follows: ● It is highly agreed that there is a need to formulate legislative measures to protect the safety of persons handling national security cases, as well as the safety of their family members, so as to enable them to handle or participate in cases concerning national security and other work for safeguarding national security without worries, thereby buttressing and strengthening the enforcement forces for safeguarding national security. ● The current Personal Data (Privacy) Ordinance (PDPO) was amended in 2021 to empower the Privacy Commissioner for Personal Data to serve cessation notices, carry out criminal investigations and institute

	prosecutions. Notwithstanding this, the amendment can only reflect problems at the level of personal data disclosure, but not adequately reflect those at the level of endangering national security regarding the deliberate intimidation against public officers. It is suggested that if "doxxing" acts are involved in the cases of endangering national security, more severe sentences should be imposed. ● The penalties for criminalising "doxxing" under the PDPO cannot reflect the seriousness of "doxxing" against persons engaging in national security cases or work. Consideration should again be given to the introduction of new offences and the relevant penalties should be heavier than those under the current PDPO. ● In view that there is currently no specific law prohibiting acts of harassment, it is necessary for the HKSAR Government to formulate measures to provide proper protection for persons involved in the handling of national security cases and their family members. ● It is suggested that the legislation for Article 23 of the Basic Law should provide for criminal penalties against acts of threatening any public officers, judges, barristers or solicitors, police officers and judicial officers handling cases involving national security, as well as informers and witnesses of national security cases. ● It is suggested that there is a need to formulate deterrent measures by imposing heavier penalties for acts of doxxing (whether intentionally or unintentionally) and harassment against public officers handling national security cases, so as to provide better protection for the safety of the relevant officers and their family members. ● It is suggested that "acts of harassment" may include but not limited to tracking, noise disturbance, doxxing and any acts, by electronic means or otherwise, causing excessive mental stress to the persons being harassed. ● With regard to doxxing issues concerning persons handling cases or work involving national security, our judgement and handling have to be reasonable, having due regard to national security, duties of the persons concerned and the legal framework. ● In defining persons handling cases and work involving national security, apart from public officers, legal officers handling the cases, informers and witnesses of the cases, as well as their immediate family members should also be included. ● Regarding the signing of documents, whether consideration can be

	given to dispensing with the signature part so as to minimise the possibility of disclosure of the identities of the officers concerned, thereby preventing the occurrence of or reducing the probability and likelihood of doxxing or harassment as far as possible (or making it more difficult to commit doxxing or harassment acts). ● Support introducing an offence to prevent investigators from being doxxed or harassed. The security of the personal data of public officers should be strengthened in various government departments or public bodies or medical institutions, in order to prevent people from requesting information from these departments and searching for investigators' background information for illegal attempts. ● Doxxers who make public the information of anonymous national security officers deserve more severe punishment because such act is a blatant contempt of the law. Article 23 of the Basic Law must fully protect any public officers handling cases concerning national security or other work for safeguarding national security, as well as barristers or solicitors, informers and witnesses of national security cases, from being subject to unnecessary harassment or harm. ● It is mentioned in Chapter 9 of the Consultation Document that for the offences on unlawful disclosure of the personal data of any persons handling cases or work involving national security as well as those offences on unlawful harassment of any persons handling cases or work involving national security, including judges, lawyers, enforcement officers and their family members, additional safeguarding measures should be in place for their protection, such as not requiring them to disclose their identities when handling cases or work involving national security. ● To maintain the course of public justice and parity between the defendant and the prosecution, the new measures should protect all officers of the opposing parties. Providing unilateral protection would create one-sided advantages, which is undesirable. Justice and parity can only be buttressed and strengthened when all officers can undergo the judicial proceedings without worries. ● If the procedural law cannot keep up with the newly enacted laws, there will be loopholes in the implementation of the new laws. <u>HKSAR Government's response</u> The HKSAR Government notes the above opinions and suggestions. We will look at developing appropriate measures to protect those working

	on cases or work involving national security.
F	**Other views on improving the legal system and enforcement mechanism for safeguarding national security** Summary of Views Part of the responses specifically provided opinions and suggestions on **other matters related to improving the legal system and enforcement mechanisms for safeguarding national security** (including the establishment of subsidiary legislation/administrative orders, the legal status of proposed regulations, responsibilities for safeguarding national security, etc.). The details are summarised as follows: *Making subsidiary legislation / executive orders* ● It is suggested amending the subsidiary legislation relating to national security by "negative vetting". ● For any additions or amendments to Article 23 of the Basic Law after its legislation, there should be room for accelerating the amendment, enactment and implementation of such additions or amendments under specific circumstances. ● When necessary, reference can be made to Section 2 of the Emergency Regulations Ordinance, i.e. "On any occasion which the Chief Executive in Council may consider to be an occasion of emergency or national security danger, the Chief Executive in Council may make any regulations whatsoever which he may consider desirable in the interest of national security". ● It is suggested that reference can be made to the United States that in enacting local legislation, the Chief Executive may issue an executive order in respect of matters on safeguarding national security to any departments, authorities or public servants of the HKSAR Government out of the need to safeguard national security. Civil servants in all departments and of all ranks should absolutely obey and strictly enforce all directives and orders issued by the Chief Executive of the HKSAR Government for safeguarding national security. ● A legal group suggested that the Chief Executive, after consulting the NSC, could use the "enactment first and review later" approach to amend national security-related subsidiary legislation. *Legal status of the proposed Ordinance* ● It should be stipulated in the proposed legislation that if the legislation in question contradicts the decision made before or after by the NPC

	or its Standing Committee on national security matters, the court should rule that such a decision applies when interpreting the proposed legislation. The purpose is to ensure that the national security standards of the HKSAR Government are well-aligned with those of the Central Government and provincial or municipal Governments on the Mainland. *Responsibility for safeguarding national security* ● Officials and civil servants in all departments and of all ranks should undertake the duties of safeguarding national security. This is also an integral part of the routine duties of officials and civil servants in all departments and of all ranks. Such duties and missions should be fully and accurately set out in the relevant legislative provisions. ● It should be stipulated in the legislation that officials and civil servants in all departments and of all ranks as well as all public officers should spare no effort to afford all reasonable facilities and assistance on matters on safeguarding national security. In particular, they should co-operate with any departments, authorities and officers responsible for the tasks of safeguarding national security in the HKSAR in a timely manner. ● It is stated in paragraph 2.28 of the Consultation Document that one of the purposes for the formulation of a new legislation is to fully implement the constitutional duty and obligation as stipulated under the 5.28 Decision and the HKNSL. Despite the fact that an interpretation in respect of the HKNSL has been made by the NPC in December 2022, it has not been realised in local legislation. Can the Government explicitly incorporate such a requirement into the new legislation to ensure that all persons, when making any decisions in the discharge of duties, respect the judgments and decisions of the Committee for Safeguarding National Security of the HKSAR and implement them in accordance with the law? ● In discharging duties or exercising powers, all public officers (including but not limited to those of the government departments) should take national security into consideration and give priority consideration to this factor. If the decision to be made or the duty to be discharged may compromise national security, the public officer should make the corresponding decision to safeguard national security and ensure that the decision made or the duty discharged is in compliance with the HKNSL. ● Public officers (including but not limited to judges), Law Society of Hong Kong and Hong Kong Bar Association should be required to

	accord top priority to national security. ● A public officer who intentionally or recklessly disregards national security in the discharge of his/her duties or in the exercise of his/her powers, thereby prejudicing national security, should be deemed to have committed misconduct in public office. ● It is imperative that education and training for public officers should be enhanced to raise their awareness of national security and the rule of law, so that they have a clear understanding of their duties and obligations, and abide by the laws and regulations with a sense of self-awareness. ● A public officer who intentionally disregards national security in the discharge of his/her duties or in the exercise of his/her discretionary powers, thereby sabotaging, prejudicing or endangering national security, should be deemed to have committed misconduct in public office. ● If the offender is a public officer or an administrator of a related organization, the Secretary for Security must order the deduction of his post-conviction and post-employment benefits (including pension, mandatory provident fund or provident fund, etc.) and the transfer of public funds. When making relevant deductions, the starting point must be all deductions to be taken, and then the factors and proportions that may not be deducted shall be considered. *Others* ● An ongoing assessment mechanism should be in place to monitor the enforcement of the legislation and its effectiveness. Amendments should be made as and when necessary. ● Guidelines and examples should be provided in respect of law enforcement under Article 23 of the Basic Law. ● It is suggested that the Government may consider providing practical guidelines for enterprises' reference. ● Two biggest concerns of Hong Kong citizens about the legislation of Article 23 are the content of its provisions and the means to prevent possible abuse. This is especially true when certain individuals with ulterior motives may generalise the provisions and exploit them for their personal objectives...It is suggested that relevant definitions should be set out in respect of such acts of abuse with penalties laid down for enhancing public confidence in the legislation.

	● Checks and balances on power and a monitoring mechanism should be in place when legislating for Article 23, including the establishment of an independent checking and complaints-handling institution. ● A sound and robust reporting mechanism should be established to encourage the public to actively participate in supervision as a concerted effort to maintain national security. ● In the five years following the implementation of the "Law on Safeguarding National Security in Hong Kong", the Government should conduct dedicated enforcement audits and reviews to plug any loopholes, and, if necessary, propose legislative amendments to the Legislative Council. <u>HKSAR Government's response</u> The HKSAR Government notes the above opinions and suggestions. We will consider the relevant suggestions.
III. Other views	
	<u>Summary of Views</u> Some responses provided opinions and suggestions on **other matters related to the legislation of Article 23 of the Basic Law**. Details are summarised as follows: *Requirements for implementing national security education* ● There is nothing about "crystallisation" of Article 9 and Article 10 of the HKNSL in the Consultation Document, and thus the important role of national security education has not been highlighted. ● Legislation of Article 23 and national education are important measures that complement each other. Implementation of Article 23 will facilitate the pursuit of an institutional reform of education in Hong Kong. It is therefore necessary to take the public consultation exercise on the legislation of Article 23 as a national security curriculum for promotion to the entire community. ● School sponsoring bodies can play an active role in taking forward the legislation of Article 23 of the Basic Law to enhance public understanding and awareness of national security, thereby promoting stability and prosperity of Hong Kong. ● Schools should share the social responsibility by strengthening education on the Constitution, the Basic Law and national security on an ongoing basis, while teachers should offer guidance to students in

	understanding the significance and necessity of the legislation of Article 23 by providing common knowledge on social issues and examples of court cases. Schools are obliged to offer courses for highlighting the importance of national security. It is believed that the Bureau will provide genuine cases and mock scenarios for teachers' reference in a timely manner. Relevant topics will also be introduced in teachers' professional training courses. ● It is suggested that education for raising the new generation's awareness of national security is of paramount importance. It is therefore necessary to make more publicity efforts in national security. On the basis of school-wide education and publicity, and, according to students' characteristics and schools' teaching plans, schools should inculcate knowledge on national security to students on all fronts. ● The Government must do its work well in national security education and patriotic education, so that Hong Kong citizens will develop the self-awareness in proactively safeguarding sovereignty, security and development interests of our country. ● The Government should incorporate the legislation of Article 23 into school curriculum, enhance civic education and legal education, and cultivate students' understanding of and respect for the rule of law and basic rights. ● The Education Bureau and youth organisations should join hands to offer online education and counselling services as soon as possible. ● In order to reduce the unnecessary fear of young people about the Article 23 legislation, specific examples can be provided so that they can better understand the boundaries of the law. These examples can cover different situations to help young people grasp the scope of the legislation. ● Basic Law and national security topics should be incorporated into senior secondary curriculum as compulsory subjects by means of classroom activities and teaching materials. Visits to the Police College and training academies of other disciplined services should be arranged for primary school students, while staff members of disciplined services may be invited to schools for talks and seminars. The purpose is to enhance students' understanding of various disciplined services as well as the tasks for safeguarding national security and their effectiveness. ● It is hoped that the HKSAR Government, underpinned by Article 23 of the Basic Law, will be able to smoothly pursue the follow-up local

	legislation work for rectification of problems in youth education and development as well as those issues arising from "anti-China and destabilising forces" in social movements. *Publicity and Promotion* ● Support is given to the HKSAR Government to set up a publicity team to effectively conduct explanatory and publicity work to all sectors in Hong Kong and the international community, as well as to establish a "Response and Rebuttal Team" for addressing various kinds of possible counter-propaganda activities like smear campaigns and dissemination of misleading information, so as to set the record straight in a timely manner. ● It is suggested that extensive publicity efforts covering various sectors should be stepped up, complemented by easy-to-follow publicity leaflets, illustrations and seminars, especially to teachers and students, so that young people will also understand the purpose of the legislation. ● It is suggested that more efforts should be made to strengthen communication with the public, the media, foreign chambers of commerce (such as the American Chamber of Commerce in Hong Kong, the French Chamber of Commerce and Industry in Hong Kong, the German Chamber of Commerce Hong Kong and other foreign chambers of commerce and their members), foreign consuls in Hong Kong, Hong Kong alumni associations of Mainland Chinese Universities, the Alumni Economic Promotional Association and the 300 000-strong alumni base as well as the middle-class people living in private housing through District Council members to garner support from various sectors of the community. ● All sectors of the community should be engaged and make utmost efforts in the publicity and explanatory work on the legislation of Article 23 with ingenuity and effective communication. In particular, members of the business sector should exercise their influence in their trades, while taking proactive steps to explain and brief foreign chambers of commerce and the international community on the content of the legislation. ● Publicity through Facebook, Instagram, Xiaohongshu, Douyin, etc. should be stepped up. ● Reliable statistics and facts should be cited to support one's views during discussions to develop a more convincing argument. Participation in various opinion polls to express one's stance of

	supporting the legislative work could help demonstrate the public's attitude towards legislation of Article 23. ● Article 23 has been enacted in the Macao SAR. It is worth highlighting to Hong Kong citizens the benefits brought by the legislation of Article 23 to the Macao SAR, so as to allay their fear of and dispel their misunderstandings to Article 23. ● It is imperative that Hong Kong citizens "learn, understand, abide by and safeguard the HKNSL". ● Requests should be made to the Government to explain to the public the scope covered by Article 23 to avoid any misunderstandings and unnecessary worries. It must be emphasised that those with no intent to endanger national security will not be affected under the new legislation. ● Efforts in publicity and education upon the passage of the law should be stepped up to enhance the national awareness as well as the rule of law awareness of the public. ● Activities such as community outreach and exhibitions in various districts in Hong Kong, complemented by technological aids like animations or pictures, should be arranged on a regular basis. ● The benefits to Hong Kong to be brought by the legislation of Article 23 should be fully explained to the public. For instance, more seminars may be held for the public to ask questions on the spot, so that they will better understand and grasp the importance of the legislation of Article 23 and the significance of national security. ● The community still needs time to grasp and digest the contents of the legislation. The Institute suggests that the Government should take the initiative to reach out to various stakeholders and exchange views with different sectors in a bid to garner their support for the legislative work. ● It is recommended to conduct promotional activities aimed at an international audience, with explanations and discussions in English. ● The government needs to actively engage young people and take the initiative to understand their concerns. At the same time, it needs to make good use of the media and tools that young people usually use, as well as the language that they can easily accept and understand, such as making good use of social media and "explanation for dummies", in order to let the younger generation understand the reasons for the

	legislation and its benefits. ● It is recommended that the government proactively contact international organizations that have foreign branches or have many exchanges and cooperation with foreign countries, including non-governmental organizations, religious institutions, and charitable organizations, and promote the law through their foreign contacts. ● It is recommended that the government consider using social media or communication platforms such as WeChat, WhatsApp, and lnstagram, and placing advertisements on web pages or platforms such as YouTube to introduce tips about Article 23 legislation. ● A local political party suggested that the government conduct more public education to clarify public misunderstandings. ● A local chamber of commerce suggested that the HKSAR Government should "promote more and explain more" to local citizens and business people at home and abroad. In particular, it should make good use of simple and easy-to-understand data or examples to prove that the legislation will not affect the legitimate lives of the public. ● A local chamber of commerce suggested that the HKSAR Government could publicize to the public that Article 23 of the Basic Law, like the HKNSL, sets a very high threshold for prosecution. The common law and the rule of law principles guaranteed by HKNSL continue to apply. ● A Hong Kong society suggested that the government take the initiative to contact different stakeholders, exchange views with different sectors, and win support for the legislative work from different sectors. ● A local law practitioner believes that it is necessary to strengthen the explanation and publicity work to foreign political and business circles to reduce their doubts and misunderstandings and promote the international community's support and cooperation for Hong Kong legislation. In addition, it is recommended to use more foreign examples to illustrate that Hong Kong is not the only place that implements national security laws, so as to relieve doubts from all sectors. It is also recommended to strengthen the explanation to the business community that the legislation is to create a better business environment and provide greater protection for the business community. *Training, management and exchanges of law enforcement personnel* ● Training and management of law enforcement officers should be

	stepped up to enhance their enforcement standards and professional competence, thereby ensuring the legality and impartiality of their enforcement actions. The Security Bureau has been called upon to strengthen staff training and devote more resources for the effective implementation and enforcement of laws. ● It is suggested that co-operation and exchanges between the HKSAR Government and the Mainland authorities should be enhanced, particularly in the realm of national security. This would help augment Hong Kong's capability in facing national security challenges, and facilitate exchanges between the two places on the rule of law to jointly respond to various kinds of threats and challenges to national security. *Others* ● Paragraph 2.28 of the Consultation Document starts with "Upon consideration, it is considered that we…" Pronouns should be clear in the Consultation Document to avoid any misunderstandings. ● Any acts with intent to interfere in Hong Kong affairs and China's internal affairs go against the international law and the basic norms governing international relations. Such acts are therefore unacceptable. ● Local provisions for safeguarding national security have become "dormant". Objectively speaking, this has created a loophole or a gap in the laws for safeguarding national security in the HKSAR. ● Ongoing oversight and assessment should be conducted upon the implementation of Article 23 to ensure the fairness and transparency in the enforcement process. This will help uphold the rule of law and safeguard the lawful rights of citizens. ● The relevant authorities should identify ways to ease police-community tension to garner more public support for the governance of the HKSAR Government. ● All laws should be localised according to the common law. Extradition of offenders to the Mainland should be avoided as far as possible. ● In case there are no official organisations to verify and ascertain the professional identity of a journalist, anyone who claims himself or herself a journalist can cite press freedom or public interest as grounds for exemption or obstruction of effective law enforcement. It will be difficult for the Government to take regulatory actions against abuse

	and conduct inspections if identity verification is to be done by private organisations. ● Anyone who enters Hong Kong as a temporary or permanent resident must take an oath to love the Motherland and Hong Kong and support Article 23 of the HKNSL(sic) of the HKSAR Government. ● It is suggested that websites such as Facebook and Youtube should be removed from the Hong Kong market. ● Telegram, Signal and some encryption communication software have become a hotbed of crime, which have been utilised by offenders for co-ordination of activities, dissemination of seditious information and so forth. The use of such communication software in Hong Kong should be banned under Article 23. ● It is hoped that the court and the Government, upon identification of persons or organisations suspected of committing crimes endangering national security, would cite as many examples as possible to elaborate on their evil acts and intentions. This would enable Hong Kong citizens to better understand the HKNSL to avoid any potential violation. ● It is hoped that HKSAR would continue to enjoy freedom of religious belief. ● Coverage of the lawful use of unmanned aircrafts and other remote technologies in areas such as surveillance and data collection should be clearly stipulated. On another front, a permission and supervision mechanism for unmanned aircrafts to fly into any special airspace should be formulated to guard against their use in illegal activities. Inspections on the sale and ownership of unmanned aircrafts should also be strengthened, particularly on those capable of carrying advanced monitoring devices. ● Offences against fake news should be laid down to prevent dissemination of false and alarming information that causes panic among the public and creates social chaos. ● It is suggested that the application procedures for interception under the Interception of Communications and Surveillance Ordinance should be streamlined. The judge's authorisation should be replaced by approval of officials under the departments of the Committee for Safeguarding National Security of the HKSAR, such as officers of superintendent rank in the National Security Department under the Hong Kong Police Force, who should be authorised to conduct

	operations like interception, recording, etc. The scope of administration/law enforcement right ought to be slightly expanded in a bid to meet the actual needs. ● In view of the fact that "selective reporting", intentional or otherwise, by local and overseas media is highly detrimental to HKSAR's economy and reputation, by what means can this problem be resolved? ● It is suggested by the media that an organisation similar to a "Media Consultative Council/Board" in nature should be established for protection of their own interests, as they have worries that their reporting may be compromised due to the possible violation of laws pertaining to "State secrets". ● To safeguard and secure Hong Kong's resources against possible abuse, the Government should forbid those who have migrated and are staying overseas from obtaining benefits, such as prohibiting those who only return to Hong Kong for treatment of incurable diseases at public hospitals. ● Those who live in public housing should take an oath to support the Government as they are using taxpayers' money. Their public rental housing flats would be recovered if one resident in a single household commits any offences under Article 23. ● It is suggested by the media that an organisation similar to a "Media Consultative Council/Board" in nature should be established for protection of their own interests. ● Legislation should be made to curb any acts of abuse of one's professional position, such as revocation of the professional qualifications of a lawyer who commits such acts of abuse. ● The Social Welfare Department and other youth service organisations should step up efforts to cater to the mental health of young people. Support and counselling services should be provided to those who are emotionally disturbed, whereas positive education should be launched to dispel young people's doubts on the legislation of Article 23. ● A Hong Kong association believes that the government should strengthen supervision of new technologies and new media to prevent inappropriate materials from spreading easily. <u>HKSAR Government's response</u> The HKSAR Government notes the above opinions and suggestions. Matters that fall within the policy scope of other bureaux or departments

	will be referred to the relevant bureaux or departments for consideration.