

**For discussion  
on 8 June 2026**

**Legislative Council Panel on Security  
and Panel on Administration of Justice and Legal Services**

**Making of Subsidiary Legislation  
for Safeguarding National Security**

**Purpose**

This paper aims to brief Members on the proposal of the Government of the Hong Kong Special Administrative Region (“HKSAR Government”) to make subsidiary legislation under section 110 of the Safeguarding National Security Ordinance (“SNSO”) in order to state clearly the classification mechanism under the Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (“HKNSL”) and the SNSO for “other offences endangering national security under the law of the HKSAR”.

**Introduction**

2. On 30 June 2020, the Standing Committee of the National People’s Congress adopted the HKNSL, to be promulgated and implemented by the HKSAR locally, ending the HKSAR’s prolonged history of being “defenceless” in terms of safeguarding national security. With the commencement of the SNSO on 23 March 2024, the HKSAR has fulfilled its constitutional responsibility and historic mission of legislating for Article 23 of the Basic Law.

3. The HKNSL, the SNSO and other laws of the HKSAR on safeguarding national security are compatible and complementary to each other, thereby ensuring the effective protection of national security in the HKSAR. Meanwhile, the HKSAR has the constitutional responsibility to continue to improve the legal system and enforcement mechanisms for safeguarding national security, so as to continue to prevent, suppress and punish acts and activities endangering national security effectively.

4. To fulfil the abovementioned constitutional responsibility, the HKSAR Government has been continuously reviewing the current legal system and enforcement mechanisms of the HKSAR. Should there be any area for improvement or any need to clearly provide for a mechanism, the HKSAR Government will introduce legislative proposals in a timely manner. Upon review, the HKSAR Government considers it necessary to state clearly the classification mechanism under the HKNSL and the SNSO for “other offences endangering national security under the law of the HKSAR” by way of subsidiary legislation, in order to better carry into effect the provisions applicable to offences endangering national security in the HKNSL and the SNSO.

***Meaning of “offence endangering national security” under the HKNSL and the SNSO***

5. At the time of its enactment, the HKNSL provided for offences directed at four types of acts and activities endangering national security which were the most serious, the most prominent and the most urgently called for being prohibited in Hong Kong. Meanwhile, the HKNSL provided that the executive authorities, legislature and judiciary of the HKSAR shall effectively prevent, suppress and impose punishment for any act or activity endangering national security in accordance with the HKNSL and other relevant laws<sup>1</sup>. The legislative intent of the HKNSL is that “offences endangering national security” include the four types of offences under the HKNSL as well as other offences endangering national security under the law of the HKSAR. Case law of the Court of Final Appeal (“CFA”)<sup>2</sup> has also affirmed that “offences endangering national security” referred to in the HKNSL include other offences of that nature under other laws.

6. To reflect the above intent of the HKNSL, section 7 of the SNSO has stipulated the meaning of “offence endangering national security” referred to in local legislation of the HKSAR:

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<sup>1</sup> See Article 3 of the HKNSL.

<sup>2</sup> See *HKSAR v Lai Chee Ying* (2021) 24 HKCFAR 33 and *HKSAR v Ng Hau Yi Sidney* (2021) 24 HKCFAR 417.

## **“Meaning of offence endangering national security**

To avoid doubt, in this Ordinance or any other Ordinance, a reference to an offence endangering national security includes—

- (a) the four types of offences under the [HKNSL] (which are the offence of secession, the offence of subversion, the offence of terrorist activities and the offence of collusion with a foreign country or with external elements to endanger national security (a translation of “分裂國家罪、顛覆國家政權罪、恐怖活動罪及勾結外國或者境外勢力危害國家安全罪”));
- (b) the offences under 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 [‘Implementation Rules’] (a translation of “《中華人民共和國香港特別行政區維護國家安全法第四十三條實施細則》”);
- (c) the offences under this Ordinance [i.e. the SNSO]; and
- (d) other offences endangering national security under the law of the HKSAR.”

7. Paragraph 1 of Article 41 of the HKNSL provides that: “This Law and the laws of the Hong Kong Special Administrative Region 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 Region exercises jurisdiction.” If a case is a “case concerning offence endangering national security” or an offence is an “offence endangering national security”, the procedures stipulated in Chapter IV of the HKNSL for handling cases concerning offence endangering national security, and the provisions applicable to offences endangering national security in the SNSO and other local legislation (hereinafter collectively referred to as “provisions relating to national security offences”), shall all apply to such case and offence.

8. Taking into account the legislative intent of the HKNSL, the relevant case law of the CFA and section 7 of the SNSO, if an offence involved in a case is not one which is stipulated in the HKNSL, the

Implementation Rules or the SNSO, but the facts and circumstances of the case show that the criminal act concerned is in the nature of endangering national security, then the case shall be a “case concerning offence endangering national security”, and the offence shall be one of “other offences endangering national security under the law of the HKSAR” under section 7(d) of the SNSO.

***Mechanism under the HKNSL and the SNSO for the Chief Executive to issue certificate in relation to question of whether national security is involved***

9. According to Article 47 of the HKNSL and section 115 of the SNSO<sup>3</sup>, the Chief Executive has the power to issue a certificate, which is binding on the courts, to certify whether an act or matter involves national security. To determine whether a criminal act is in the nature of endangering national security, one must determine whether such act involves national security. Therefore, the mechanism under the HKNSL and the SNSO for the Chief Executive to issue a certificate is a mechanism apt for classifying “other offences endangering national security under the law of the HKSAR” under section 7(d) of the SNSO.

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<sup>3</sup> Article 47 of the HKNSL provides that:

“The courts of the Hong Kong Special Administrative Region shall obtain a certificate from the Chief Executive to certify whether an act involves national security or whether the relevant evidence involves State secrets when such questions arise in the adjudication of a case. The certificate shall be binding on the courts.”

Section 115 of the SNSO provides that:

- “(1) Apart from in the circumstances mentioned in Article 47 of the HK National Security Law, the Chief Executive may also, in circumstances that the Chief Executive considers appropriate, issue a certificate to certify whether an act or matter involves national security or whether any material involves state secrets.
- (2) A certificate under subsection (1) —
- (a) may be issued whether or not any proceedings have been commenced; and
  - (b) may be issued by the Chief Executive on the Chief Executive’s own motion.
- (3) If a Court receives in any proceedings a certificate issued by the Chief Executive certifying a question under this section, the court is to be regarded as having obtained a certificate issued by the Chief Executive certifying the question under Article 47 of the HK National Security Law.”

**To state clearly the classification mechanism for “other offences endangering national security under the law of the HKSAR” by way of subsidiary legislation**

10. Section 110 of the SNSO empowers the Chief Executive in Council to make subsidiary legislation for the needs of safeguarding national security and the better carrying into effect of the HKNSL and its relevant interpretation<sup>4</sup>, as well as the SNSO. The purpose of making subsidiary legislation is to provide for the specific implementation details of the requirements under the HKNSL and the SNSO, including making provisions for procedural matters, so that the relevant legal provisions can be implemented more effectively and national security risks can be prevented and addressed in a timely manner.

11. Upon careful consideration, the HKSAR Government proposes making subsidiary legislation under section 110 of the SNSO to state clearly the classification mechanism under the HKNSL and the SNSO for “other offences endangering national security under the law of the HKSAR”:

- (1) If the Chief Executive issues a certificate under Article 47 of the HKNSL or section 115 of the SNSO to certify that the act concerned in a criminal offence case involves national security, then the case is a case concerning offence endangering national security mentioned in Article 41 of the HKNSL, and the offence being investigated, arrested or charged in respect of such act is an offence endangering national security under section 7(d) of the SNSO;
- (2) If a person is charged with any offence endangering national security, and is charged with or convicted of any alternative offence in respect of the same act in the same case, such alternative offence is also an offence endangering national security.

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<sup>4</sup> Interpretation by the Standing Committee of the National People’s Congress of Article 14 and Article 47 of the Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region.

## **Legislative timetable**

12. Making subsidiary legislation under section 110 of the SNSO to state clearly the classification mechanism under the HKNSL and the SNSO for “other offences endangering national security under the law of the HKSAR” is necessary for the needs of safeguarding national security, and the better carrying into effect of section 7(d) of the SNSO and the provisions relating to national security offences in the HKNSL and the SNSO. Amid the present complicated geopolitical landscape, national security risks still exist. Stating clearly the above mechanism by way of subsidiary legislation can improve the legal system and enforcement mechanisms for the HKSAR to safeguard national security. The HKSAR should complete the legislative process of the relevant subsidiary legislation as soon as possible, the earlier the better, in order to safeguard national security effectively. Upon receiving the views of the Members, the HKSAR Government will finalise the provisions of the subsidiary legislation proposed to be made under section 110 of the SNSO without delay. The subsidiary legislation will be published in the Gazette and tabled at the Legislative Council for negative vetting as soon as possible. Considering the necessity of making this subsidiary legislation for safeguarding national security effectively, the HKSAR Government proposes that the subsidiary legislation should come into operation on the day of gazettal.

## **Advice sought**

13. The proposal of making subsidiary legislation under section 110 of the SNSO aims to state clearly the classification mechanism under the HKNSL and the SNSO for “other offences endangering national security under the law of the HKSAR”, thereby refining details of relevant procedural matters for relevant cases and bringing greater certainty to the implementation of the provisions relating to national security offences under the HKNSL, the SNSO and other laws. The subsidiary legislation does not involve the creation of any new criminal offence, penalty or enforcement power. As always, regardless of whether it is a case in connection with an offence endangering national security or a case of other

nature that is being handled, all persons facing criminal charge will, as guaranteed by the Basic Law and the Hong Kong Bill of Rights Ordinance, continue to enjoy the right to a fair trial by the judiciary vested with independent judicial power. The HKSAR Government will ensure the effective delivery of explanatory work so that members of the public will understand the importance of the subsidiary legislation in safeguarding national security. Members are invited to comment on the above proposal of making subsidiary legislation for safeguarding national security.

**Security Bureau**  
**Department of Justice**  
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