

Law on Safeguarding National Security in Hong Kong

Overview

The 13th National People's Congress (NPC) decided in Beijing on May 28, 2020 to entrust 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 the Hong Kong Special Administrative Region (HKSAR) to safeguard national security. **The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region** (National Security Law) was **passed on June 30, 2020** for inclusion in Annex III to the Basic Law according to Article 18 of the Basic Law. The Law was promulgated and applied in Hong Kong on the same day.

The **HKSAR is an inalienable part of the People's Republic of China**. It is a local administrative region directly under the Central People's Government (CPG) and enjoys a high degree of autonomy. Safeguarding sovereignty, unification and territorial integrity of the People's Republic of China are the constitutional responsibilities of the HKSAR, the duty of the HKSAR Government, and also in the interests of all Hong Kong residents.

In view of the increasingly pronounced national security risks faced by the HKSAR, the **enactment of a national security law at the State level is both necessary and urgent** in order to plug the loophole in national security in Hong Kong. The enactment of the National Security Law is an important step to **improve the "One Country, Two Systems" regime** as well as to **restore stability** in Hong Kong society as soon as possible.

The National Security Law provides clear rules and legal basis for preventing, suppressing and imposing punishment for acts and activities endangering national security, and is conducive to safeguarding national security. The Law can promptly revert the chaotic situation and restore stability in Hong Kong, thereby **improving Hong Kong's business and investment environment**.

In accordance with Articles 9 and 10 of the National Security Law, the HKSAR Government will strengthen publicity and education to enhance Hong Kong people's understanding of national security and law-abiding awareness, and will make good use of the annual Constitution Day and National Security Education Day to conduct public education on a larger scale.

Background

- **Article 23 of the Basic Law** states 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 Region, and to prohibit political organisations or bodies of the Region from establishing ties with foreign political organisations or bodies. For various reasons, the HKSAR has still not enacted legislation on Article 23 since reunification. Hong Kong has long been "defenceless" in terms of safeguarding national security and hence facing considerable risks.
- Over the 10 months or so since June 2019, Hong Kong has been severely affected by **social unrest and violent protests** that have had negative impacts on the economy and stability of Hong Kong and posed a threat to national security, including calls for independence and revolution.
- Opposition forces and organisations advocating "**Hong Kong independence**", "**self-determination**", etc. have blatantly challenged the authority of the Central Authorities and the HKSAR Government, pleaded for interference in Hong Kong's affairs by foreign countries and external elements and even begged for sanctions against Hong Kong. External forces have intensified their interference in Hong Kong's internal affairs. These activities disregard the

interests of Hong Kong people and seriously jeopardise national sovereignty, security and development interests.

- The situation in Hong Kong has evolved to such a state that the **Central Authorities had no alternative but to step in** and take action.

The National Security Law

- The purposes of the National Security Law are to safeguard national security, prevent, suppress and impose punishment for the **offences of secession, subversion, organisation and perpetration of terrorist activities, and collusion with a foreign country or with external elements to endanger national security** in relation to the HKSAR; maintain prosperity and stability of the HKSAR; and protect the lawful rights and interests of HKSAR residents.
- The Law **only targets an extremely small minority of persons endangering national security** while the life and property of, as well as various lawful basic rights and freedoms enjoyed by the overwhelming majority of HKSAR residents are protected.
- With 66 articles, the Law has six chapters, namely **general principles; the duties and the Government bodies of the HKSAR for safeguarding national security; offences and penalties; jurisdiction, applicable law and procedure; office for safeguarding national security of the CPG in the HKSAR; and supplementary provisions.**
- The Law 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 that of conviction and sentencing in accordance with the law, presumption of innocence, the prohibition of double jeopardy, and protection of the rights of the suspect in judicial proceedings, etc. The offences created by the Law have no retrospective effect and are only applicable to acts after the commencement of the Law.
- The Law clearly stipulates that in safeguarding national security, the HKSAR shall **protect in accordance with the law Hong Kong people's rights and freedoms** under the Basic Law as well as the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong, including the freedoms of speech, of the press, of publication, of association, of assembly, of procession and of demonstration.
- The Law provides for the establishment of a **Committee for Safeguarding National Security of the HKSAR chaired by the Chief Executive**, which shall be responsible for affairs relating to, and assume primary responsibility for, safeguarding national security in the HKSAR. It is under the supervision of and accountable to the CPG. The Committee has a National Security Adviser, who is designated by the CPG.
- Except under the exceptional circumstances specified, **the HKSAR shall have jurisdiction** over cases concerning offences under the National Security Law. The National Security Law and the laws of the HKSAR shall apply to procedural matters, including those related to criminal investigation, prosecution, trial and execution of penalty.
- The judges responsible for handling cases concerning offences endangering national security are designated by the Chief Executive from judges of courts at different levels, and the Chief Executive may consult the Committee for Safeguarding National Security of the HKSAR and the Chief Justice of the Court of Final Appeal before making such designation. Unless when circumstances arise such as the trial involving State secrets or public order, the trial shall be **conducted in open court; and all judgments shall be delivered in open court.** The courts shall also ensure that the **cases are handled in a fair and timely manner.**
- As the principal authorities to enforce the National Security Law, the **Hong Kong Police Force** and the **Department of Justice** of the HKSAR Government have set up dedicated divisions to handle national security affairs.
- The Committee for Safeguarding National Security of the HKSAR held its first meeting on July 6, 2020 and **exercised the power under Article 43 of the National Security Law to make relevant "Implementation Rules" for law enforcement agencies to observe** when carrying out the specific measures, so as to improve the enforcement mechanisms for safeguarding national security in the HKSAR. The Implementation Rules for Article 43 took effect the following day.

- The State Council has established the **Office for Safeguarding National Security of the CPG in the HKSAR**, headed by Mr Zheng Yanxiong. Mr Luo Huining has been appointed by the State Council as **National Security Adviser** to the Committee for Safeguarding National Security of the HKSAR.
- The NPCSC interpretation on December 30, 2022 of Article 14 and Article 47 of the National Security Law establishes principles and is of great significance to the further improvement of the legal system and enforcement mechanisms to safeguard national security of the HKSAR and our motherland:
 - Under Article 14, the Committee **has the power to evaluate and decide on whether an issue concerning national security is involved.**
 - The courts of the HKSAR shall **request and 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 question as to "whether an overseas lawyer who is not qualified to practise generally in Hong Kong may act as the defence counsel or litigation agent in a case concerning national security offence" requires certification under Article 47 of the Hong Kong National Security Law **and a certificate should be obtained from the Chief Executive.**

Safeguarding National Security at the State Level

- **Different countries have legislation safeguarding national security**, covering the legal system and enforcement mechanisms in respect of national security. As in any other country, national security legislation falls within the purview of the State.
- National security is **outside the limits of the HKSAR's autonomy** and squarely under the purview of the Central Authorities. Whilst the Basic Law requires the HKSAR to enact national security laws, it does not preclude the Central Authorities from enacting laws on national security.
- The **NPC is the highest organ of state power**. According to the PRC Constitution, both the NPC and the NPCSC exercise the legislative power of the State.
- No country can or would turn a blind eye to **threats to national security** like the emergence of local terrorism and separatism seen in Hong Kong in 2019.

Useful Links

[Full text](#) of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region

[Booklet](#) on the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region

[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

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