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China Passes Controversial Hong Kong National Security Law

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On June 30, the National People's Congress of the People's Republic of China (the "**NPC**") unanimously passed the *Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region* (the "**Hong Kong National Security Law**" or "**Law**"), which became effective at 23:00 Beijing time on the same day. The Law was first introduced on May 28, 2020 via a unanimous resolution of the NPC. It was then drafted behind closed doors by the NPC's standing committee, bypassing Hong Kong's legislature via a rarely-used constitutional backdoor under the Basic Law of the Hong Kong Special Administration Region (the "**Basic Law**"). Its full text was released by state media for the first time after its adoption on June 30.

The Law created the National Security Committee and such committee met on July 6, 2020 to adopt 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 Administration Region* (the "**Implementation Rules**") and the *Operating Principles and Guidelines for Application for Authorization to Conduct Interception and Covert Surveillance* (the "**Operating Principles**"). Both the Implementation Rules and the Operating Principles became effective on July 7, 2020.

The Law contains 6 chapters and 66 articles and dramatically broadens the Chinese central government's powers to investigate, prosecute and punish suspected crimes threatening "national security" in the Hong Kong Special Administrative Region ("**HKSAR**") and overseas. Key takeaways are as follows:

1. Four Criminal Offenses:

First, the Law created four broad and vaguely-defined criminal offences which carry severe penalties of up to life-imprisonment, namely:

- **Secession:** A person who organizes, plans, commits or participates in any acts, whether or not by force or threat of force, with a view to committing secession or undermining national unification, to (i) separate HKSAR or any other part of the People's Republic of China ("**PRC**") from the PRC; (ii) alter by unlawful means the legal status of the HKSAR or of any other part of the PRC; or (iii) surrender the HKSAR or any other part of the PRC to a foreign country.

A person who incites, assists in, abets or provides pecuniary or other financial assistance or property for the commission by other persons of this Secession offence shall also be guilty of an offence.

- **Subversion:** A person who organizes, plans, commits or participates in any act, by force or threat of force or other unlawful means, with a view to subverting the PRC's power, to (i) overthrow or undermine the basic system of the PRC established by the Constitution of the PRC; (ii) overthrow the government of the PRC or the government of the HKSAR; (iii) seriously interfere in, disrupt, or undermine the performance of duties and functions in accordance with the law by the government of the PRC or the government of the HKSAR; or (iv) attack or damage the premises and facilities used by the government of the HKSAR to perform its duties and functions, rendering it incapable of performing its normal duties and functions.

A person who incites, assists in, abets or provides pecuniary or other financial assistance or property for the commission by other persons of this Subversion offence shall be guilty of an offence.

- **Terrorist Activities:** A person who organizes, plans, commits, participates in or threatens to commit any of the following terrorist activities, causing or intended to cause grave harm to the society with a view to coerce the PRC government, the HKSAR government or an international organization or intimidating the public in order to pursue political agenda: (i) serious violence against a person or persons; (ii) explosion, arson, or dissemination of poisonous or radioactive substances, pathogens of infectious diseases or other substances; (iii) sabotage of means of transport, transport facilities, electric power or gas facilities, or other combustible or explosible facilities; (iv) serious interruption or sabotage of electronic control systems for providing and managing public services such as water, electric power, gas, transport, telecommunications and the internet; or (v) other dangerous activities which seriously jeopardize public health, safety or security ("**Terrorist Activities**").

A person who provides support, assistance or facility, such as training, weapons, information, funds, supplies, labor, transport, technologies or venues to a terrorist organization or a terrorist, or for the commission of a Terrorist Activity; or manufactures or illegally possesses substances such as explosive, poisonous or radioactive substances and pathogens of infectious diseases or uses other means to prepare for the commission of a Terrorist Activity, shall be guilty of this offence.

A person who advocates terrorism or incites the commission of a Terrorist Activity shall be guilty of this offence.

- **Collusion with a Foreign Country or with external Elements to Endanger National Security.** A person who steals, spies, obtains with payment, or unlawfully provides state secrets or intelligence concerning national security to a foreign country or an institution, organization or individual outside the PRC, HKSAR and Macao shall be guilty of this offence. A person who requests a foreign country or an institution, organization or individual outside the PRC, HKSAR and Macao, or conspires with a foreign country or an institution, organization or individual outside the PRC, HKSAR and Macao, or directly or indirectly receives instructions, control, funding or other kinds of support from a foreign country or an institution, organization or individual outside the PRC, HKSAR and Macao, to (i) wage a war against the PRC, or use or threaten to use force to seriously undermine the sovereignty, unification and territorial integrity of the PRC; (ii) seriously disrupt the formulation and implementation of laws or policies by the Government of the HKSAR or the PRC, which is likely to cause serious consequences; (iii) rig or undermine an election in the HKSAR, which is likely to cause serious consequences; (iv) impose sanctions or blockade, or engage in other hostile activities against the HKSAR or the PRC; or (v) provoke, by unlawful means, hatred among Hong Kong residents towards the PRC government or the HKSAR government, which is likely to cause serious consequences, shall be guilty of this offence. The institution, organization and individual outside the PRC, HKSAR and Macao referred to hereto shall also be convicted and punished for the same offence.

2. Jurisdiction, Long-Arm Statutes and Extradition:

This Hong Kong National Security Law will apply to (i) offences which are committed in the HKSAR by any person; (ii) offences committed on board a vessel or aircraft registered in the HKSAR (e.g., Hong Kong flagged ships or Cathay Pacific planes); (iii) any person who is a permanent resident of the HKSAR or an incorporated or unincorporated body set up in the HKSAR regardless of whether the offense was committed in or outside of the HKSAR; and (iv) offenses committed against the HKSAR from outside of the HKSAR by non-permanent residents of the HKSAR.

The HKSAR will generally have jurisdiction over cases under the Law. However, the PRC central government can assert complete jurisdiction under the three scenarios in Article 55 – (i) in cases involving foreign forces; (ii) serious situations that the Hong Kong government cannot handle effectively; and (iii) when national security faces a major threat. Under these exceptions, NSO (defined below) will conduct the investigation of the case, the China Supreme People's Procuratorate will designate a prosecuting body to prosecute it, and the Supreme People's Court will designate a court to adjudicate it. Though the Law does not explicitly introduce an extradition provision, this provision likely means that the PRC central government is able to extradite suspects to mainland China for trial.

3. National Security Committee and National Security Office

A new national security committee ("**Committee**") will be established, comprised of HKSAR government officials and an advisor appointed by the PRC central government. The Committee will formulate policies for national security, as well as advance the development of the legal system and enforcement mechanisms of the Law. Information relating to the work of the Committee is not subject to public disclosure. Decisions made by the Committee are also not subject to judicial review.

In addition, the PRC central government will also establish its own law enforcement presence in the HKSAR – the National Security Office ("**NSO**"). The NSO's duties and functions include providing opinions and making proposals on important policies for national security, overseeing the HKSAR government's implementation of relevant policies, collection of intelligence and handling of national security cases. The NSO's actions are not subject to judicial review, and actions taken by the NSO's personnel in enforcement of the Law are not subject to Hong Kong law.

4. Judges and Trials

The chief executive of Hong Kong is authorized to select judges and magistrates from all levels of Hong Kong's courts to handle cases concerning offenses under the Law for an appointment term of one year. Trials pursuant to the Law will be conducted in an open court, provided however, that when cases involve state secrets or public order requiring confidential treatment, the trial will be closed to the public but the verdict and judgements would be made public.

5. Expanded Police and Prosecutorial Power

Both the Police Force and the Department of Justice of the HKSAR shall establish special departments or specialized prosecution divisions to enact and prosecute offenses under the Law. Article 43 of the Law further grants police officers a broad range of powers to take “various measures” to investigate national security crimes, including intercepting communications, covert surveillance, and requesting information from service providers and from overseas political organizations and authorities. The Implementation Rules further (i) impose obligations on anyone who knows or suspects that any property is property related to an offence endangering national security to make certain disclosures to the police; and (ii) require relevant electronic message publisher, platform service provider, hosting service provider and/or network service provider to remove certain messages, restrict or cease access by any person to the message or restrict or cease access by any person to the platform.

6. Oversight of Foreign NGOs and News Organization

Article 54 of the Law provides that the government entities, including the NSO, will take necessary measures to strengthen the management of foreign NGOs and news organization in Hong Kong.

7. Interpretation

The power to interpret this Hong Kong National Security Law rests with the Standing Committee of the National People’s Congress of the PRC.

Before the adoption of the Law, the Trump administration had vowed “strong actions” if Beijing didn’t reverse course. The US had already imposed visa restrictions on Chinese officials and halted exports of defense and sensitive technologies to Hong Kong. On July 1, the US House of Representatives passed by unanimous consent a bill imposing sanctions on banks that do business with Chinese officials involved with eroding the city’s autonomy, following a similar Senate bill passed last week. Meanwhile, the U.K. also stated that the passage of the Hong Kong National Security Law is a clear and serious breach of the 1985 Sino-British joint declaration - a legally binding agreement to preserve Hong Kong’s “high degree of autonomy” for 50 years after China assumed sovereignty in 1997 and opened a path for 40% of the Hong Kong residents to obtain U.K. citizenship. Canada announced on July 3, 2020, that it would suspend its extradition treaty with Hong Kong in the wake of the Law. Australia also announced on July 9, 2020, that it has taken steps to suspend the country’s extradition agreement with Hong Kong and will offer visas to those who feel threatened by the Law. The European Union is also expected to announce policy action in response to the passage of this law and the situation is quite fluid.

Given this Law’s broad reach, serious consequences and relatively vague standards, it can create high levels of uncertainty for multinational companies operating in Hong Kong on how they will need to act to comply with the Law. We hope that further clarifying regulations will be forthcoming soon so as to create a more stable operating environment.



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[Is There a Law in China Similar to the US Defense Production Act?](#), May 8, 2020

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