

The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region gazetted and takes immediate effect (with photos)

The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (the National Security Law) was gazetted for promulgation today (June 30) and took effect at 11pm the same day.

The Standing Committee of the National People's Congress (NPCSC) today passed the National Security Law and listed the legislation in Annex III to the Basic Law after consulting the NPCSC's Committee for the Basic Law of the Hong Kong Special Administrative Region (HKSAR) and the HKSAR Government as required under Article 18 of the Basic Law. The National Security Law was enacted according to the Constitution of the People's Republic of China, the Basic Law and the "Decision of the National People's Congress on Establishing and Improving the Legal System and Enforcement Mechanisms for Safeguarding National Security in the Hong Kong Special Administrative Region" (the Decision). The National Security Law would be applied by promulgation in the HKSAR in accordance with the Decision. The Chief Executive, Mrs Carrie Lam, signed the promulgation and the National Security Law took effect upon gazettal tonight (June 30).

With 66 articles, the National Security Law has six chapters, namely the 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 Central People's Government (CPG) in the HKSAR; and supplementary provisions. As stated in the summary of the explanatory statement of the draft law submitted to a session of the NPCSC released earlier, the provisions of the National Security Law fully reflect the following principles:

(1) the CPG has an overarching responsibility for national security affairs relating to the HKSAR, while the HKSAR bears the constitutional duty of safeguarding national security;

(2) in safeguarding national security, the HKSAR shall uphold the principle of the rule of law;

(3) the HKSAR shall establish and improve relevant institutions and their duties in safeguarding national security;

(4) stipulations are made on what constitutes four categories of crimes

that endanger national security and their corresponding penalties;

(5) stipulations are made in relation to jurisdiction of cases, application of laws and procedures; and

(6) the CPG shall establish an office for safeguarding national security in the HKSAR.

The purposes of the National Security Law are to prevent, curb and punish crimes, namely acts of secession, subversion of state power, terrorist activities, and collusion with foreign or external forces to endanger national security; maintain prosperity and stability of the HKSAR; and protect the lawful rights and interests of HKSAR residents.

In discharging its duty in safeguarding national security, the HKSAR shall:

- fully enforce the National Security Law and the laws in force in the HKSAR concerning the prevention of, suppression of, and imposition of punishments for acts and activities endangering national security;
- strengthen its work on safeguarding national security and prevention of terrorist activities¹⁴;
- take necessary measures to strengthen public communication, guidance, supervision and regulation over matters concerning national security, including those relating to schools, social organisations, the media and the internet¹⁴ and
- complete as early as possible legislation for safeguarding national security as stipulated in the Basic Law and shall refine relevant laws.

The Chief Executive shall submit an annual report to the CPG on the performance of duties of the HKSAR in safeguarding national security.

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The National Security Law clearly stipulates that the principle of the rule of law shall be adhered to, including that conviction and sentencing of crimes should be well defined in the law, presumption of innocence, no one shall be liable to be tried again for an offence for which he or she has already been convicted or acquitted in judicial proceedings, and protection of the rights of the suspect, etc. It has no retrospective effect and the stipulated offences are only applicable to acts after the commencement of the law.

In addition, the National Security Law clearly stipulates that the HKSAR shall protect 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.

It is stipulated in the National Security Law that a Committee for Safeguarding National Security of the HKSAR chaired by the Chief Executive will be established to take up national security affairs and bear the major responsibility for safeguarding national security. It will be under the

supervision of and be accountable to the CPG. Members of the Committee include: the Chief Secretary for Administration, Financial Secretary, Secretary for Justice, Secretary for Security, Commissioner of Police, the head of the department for safeguarding national security of the Hong Kong Police Force established under Article 16 of the National Security Law, Director of Immigration, Commissioner of Customs and Excise, and the Director of the Chief Executive's Office. The Secretariat under the Committee is to be headed by the Secretary General, who shall be appointed by the CPG upon nomination by the Chief Executive.

The duties of the Committee for Safeguarding National Security of the HKSAR are to analyse and assess developments in relation to safeguarding national security in HKSAR, make work plans and formulate policies, advance the development of the legal system and enforcement mechanisms, and co-ordinate major work and significant operations. The Committee shall be free from any interference in performing its duties and information relating to its work shall not be disclosed to the public. Decisions made by the Committee shall not be amenable to judicial review.

The Committee for Safeguarding National Security of the HKSAR shall have a National Security Advisor, who shall be designated by the CPG. The National Security Adviser shall sit in on meetings of the Committee and provide advice on relevant matters.

As the principal enforcement authorities of the National Security Law, the Hong Kong Police Force and the Department of Justice of the HKSAR Government will set up dedicated divisions to handle national security affairs. The Financial Secretary shall, upon approval of the Chief Executive, appropriate from the general revenue a special fund to meet the expenditure for safeguarding national security and approve the establishment of relevant posts, which are not subject to any restrictions in the relevant provisions of existing laws. The Financial Secretary shall submit an annual report on the control and management of the fund for this purpose to the Legislative Council.

Except under circumstances specified, the HKSAR shall have jurisdiction over cases 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.

In handling national security cases, the department responsible for safeguarding national security under the Hong Kong Police Force may take measures that it is allowed to take in investigating serious crimes under the laws in force in the HKSAR or other stipulated measures under the National Security Law, including to carry out interception of communication and covert surveillance upon approval of the Chief Executive on a person who is suspected, on reasonable grounds, of having involved in the commission of an offence endangering national security, search of premises, requiring relevant organisations or individuals to answer questions and provide or delete information, etc. Under the National Security Law, the Committee for Safeguarding National Security of the HKSAR shall be authorised to make relevant implementation rules for the purpose of applying the above measures.

A dedicated department under the Department of Justice is responsible for the prosecution of national security offences. Without the written consent of the Secretary for Justice, prosecution of a national security case shall not be instituted. The Secretary for Justice may, for such reasons as protecting national secrets, issue certification to direct that the relevant case shall be tried without a jury. Where a case is to be tried in the Court of First Instance without a jury, a Court consisting of three judges should be constituted.

Judges designated from courts at all levels are responsible for hearing cases involving offences endangering national security. Unless national secrets are involved, the trial shall be held in open court and all judgements be announced to the public. The "designated judges" are to be designated from judges of courts at all levels by the Chief Executive after consultation with the Committee for Safeguarding National Security of the HKSAR and the Chief Justice.

Specified circumstances refer to any one of the following three kinds of situations that has been reported by the HKSAR Government or the Office for Safeguarding National Security of the CPG in the HKSAR to the CPG for approval:

(1) the case is complex due to the involvement of a foreign country or external elements, thus making it difficult for the HKSAR to exercise jurisdiction over the case;

(2) a serious situation occurs where the HKSAR Government is unable to effectively enforce the National Security Law; or

(3) a major and imminent threat to national security has occurred.

In the above situations, the Office for Safeguarding National Security of the CPG in the HKSAR shall exercise jurisdiction over cases under the National Security Law.

Apart from handling cases concerning offence endangering national security in accordance with the law in extremely limited situations, the Office for Safeguarding National Security of the CPG in the HKSAR shall be responsible for overseeing, guiding, coordinating with and providing support to the HKSAR in the performance of its duties for safeguarding national security, including analyzing and assessing developments and sharing of intelligence. The National Security Law clearly stipulates that the staff of the Office shall abide by national laws as well as the laws of the HKSAR, and shall be subject to the supervision of the national supervisory authorities. The Office shall be funded by the CPG.

A Government spokesman said, "the purpose of the legislation is to effectively prevent, curb and punish crimes, namely acts of secession, subversion of state power, terrorist activities, and collusion with foreign or external forces to endanger national security. It only targets an extremely small minority of offenders while the life and property as well as various legitimate basic rights and freedoms enjoyed by the overwhelming majority of citizens will be protected. There is nothing for Hong Kong citizens to worry about in exercising these legitimate rights.

"In order for the HKSAR Government to effectively discharge its duty in safeguarding national security, the Police and the Department of Justice have earlier made preparations for the establishment of dedicated units. As the National Security Law has come into effect, the Police will establish a dedicated National Security Department on July 1 to handle the relevant work," the spokesman added.

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The Committee for Safeguarding National Security of the HKSAR chaired by the Chief Executive will be set up as soon as possible to take up the major responsibility of safeguarding national security.

