



**HKU**  
**LAW**

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# An Overview of the National Security Law from NGOs' Perspective

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# Today's Webinar

1. Overview of the [National Security Law](#)
2. Implications for Fundraising, Advocacy, International Connections, and Service Delivery

# Overview of the NSL

- NSL is a national law applied directly to HK, but also designed for HK
- As a national law, it is superior to local laws (NSL 62)
- Power of final interpretation lies with NPCSC but HK courts can also interpret it by applying common law principles (NSL 65)

# Overview of the NSL

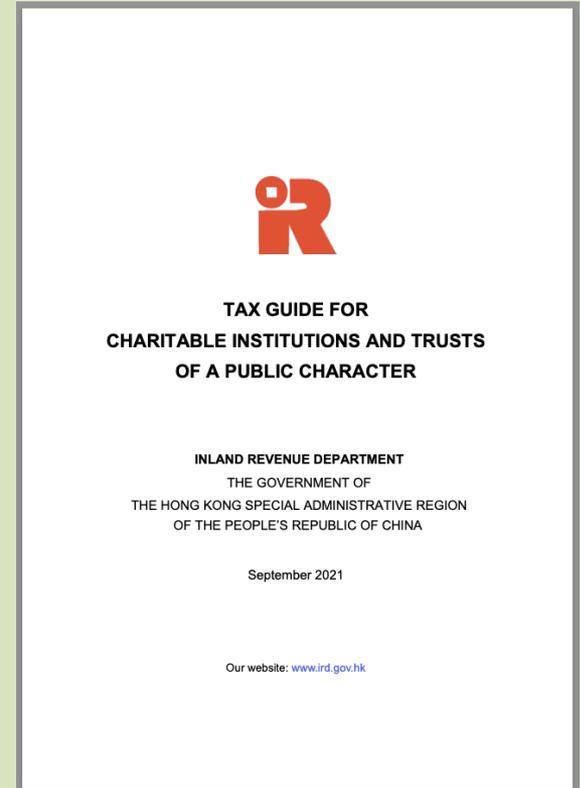
- Purpose not only to safeguard NS, but also to maintain 'one country, two systems' principle (NSL 1)
- Prevention of NS offences as important as suppression and punishment (NSL 1)
- Human rights and rule of law values to be maintained (NSL 1, 2, 4, 5, 42, 50, 58)

# Overview of the NSL

- Common responsibility of all HK people to safeguard the sovereignty, unification and territorial integrity of the PRC (NSL 6)
- NGOs mentioned in NSL 9 and 54
  - **Art 9:** HKSARG strengthen public communication, guidance, supervision and regulation over matters concerning NS including those relating to... **social organisations...**
  - **Art 54:** Mainland Office, Min of Foreign Affairs & HKSARG strengthen the management of and services for organs of foreign countries and international organisations in the Region, as well as **non-governmental organisations** and news agencies of foreign countries...

# Overview of the NSL

- **Tax Status Implications:** If a charity's contravention of its charitable objects would fundamentally change its charitable status, the Dept may w/d the recognition of tax exempt status and apply tax assessment
- E.g. "takes part in acts or activities which are unlawful or contrary to the interests of national security, or uses its resources to support or promote such acts or activities"  
=> will not be regarded as a genuine charity



# Overview of the NSL

- NSL has 66 articles
- FOUR MAIN CRIMINAL OFFENCES:
  - (1) SECESSION (Arts 20-21) 分裂國家罪
  - (2) SUBVERSION (Arts 22-23) 顛覆國家政權罪
  - (3) TERRORIST ACTIVITIES (Arts 24-27) 恐怖活動罪
  - (4) COLLUSION (Art 29) 勾結外國或者境外勢力危害國家安全罪

# Overview of the NSL

## Secession (NSL 20)

- Have view to commit secession or undermining national unification
- (1) Separating** HKSAR or any other part of PRC from PRC
- (2) Altering** by unlawful means the legal status of the HKSAR or any other part of the PRC
- (3) Surrendering** the HKSAR or any other part of the PRC to a foreign country
- No need for force, threat of force or other unlawful means

# Overview of the NSL

## Subversion (NSL 22)

- Use **force, threat of force or other unlawful means**
  - Have view to subvert State power
- (1) **Overthrow** or undermine PRC basic system
  - (2) **Overthrowing** body of central power of the PRC or HKSAR
  - (3) **Seriously interfering in, disrupting, or undermining** the performance of duties and functions by central power of PRC or HKSAR
  - (4) **Attacking or damaging the premises and facilities** of HKSAR body of power rendering it incapable of performing normal duties and functions

# Overview of the NSL

## Secession & Subversion

- Those who **organize, plan, or participate** in the relevant acts are also liable (NSL 20 & 22)
- Those who **incite, assist in, abets or provide pecuniary or other financial assistance or property** for the commission by other persons of the offence are also liable for a lesser offence (NSL 21 & 23)

# Overview of the NSL

## 3. Terrorist Activities (NSL 24-26)

- (1) **Organises, plans, commits, participates** in or threatens to commit a terrorist activity (1-5 listed) causing or intending to cause grave harm to society with a view to coercing CPG, HKSARG or an int'l organisation or intimidating the public in order to pursue political agenda
- (2) **Organises, takes charge of or participates** in terrorist organisation
- (3) **Provides support, assistance or facility** (training, weapons, information, funds, supplies, labour, transport, technologies or venues) to a terrorist organisation or a terrorist or for commission of a terrorist activity

# Overview of the NSL

## 3. Terrorist Activities (NSL 26-27)

(4) **Manufactures or illegally possesses substances** (e.g. explosives...), or **uses other means**, to **prepare** for the commission of a terrorist activity

(5) **Advocates terrorism** or **incites** the commission of a terrorist activity

# Overview of the NSL

## 4. Collusion (NSL 29)

- (1) Steals, spies, obtains with payment or unlawfully provides State secrets or intelligence** concerning NS for a foreign country or external element
- (2) Requests or conspires** with a foreign country or external element to commit a prohibited act
- (3) Receives instructions, control, funding or other support** from a foreign country or external element to commit a prohibited act

# Overview of the NSL

## 4. Collusion (prohibited acts)

- (i) Waging a war against PRC or using/threatening to use force to seriously undermine the sovereignty, unification and territorial integrity of the PRC
- (ii) Seriously disrupting the formulation and implementation of laws or policies of the HKSARG or CPG, which is likely to cause serious consequences
- (iii) Rigging or undermining a HKSAR election, which is likely to have serious consequences
- (iv) Imposing sanctions or blockade, or engaging in other hostile activities against the HKSAR or PRC, or
- (v) Provoking by unlawful means hatred among HK residents towards the CPG or the HKSARG, which is likely to cause serious consequences.

# Overview of the NSL

- Police Powers: [Implementation Rules](#) has 100+ pages of powers for new NS police dept (7 Schedules of powers)
  - “foreign agent” (Sch 5):
    - person carries on activities in HK
    - subsidized or funded by a foreign gov’t or foreign political org (incl accepting monetary or non-monetary rewards)
    - carries on all or part of the person’s activities for the benefit of a foreign gov’t or foreign political org
- Foreign agents have a duty to provide information to Police Commissioner if served with a notice

# Overview of the NSL

- Duty to Report (Sch 3)
  - Know or suspect property to be “offence related property” then must disclose to police
    - Property of a person who commits, or attempts to commit, an offence endangering national security
    - Property of a person who participates in or facilitates the commission of an offence endangering national security
    - Any property that is intended to be used or was used to finance or otherwise assist the commission of an offence endangering national security

# Overview of the NSL

## When is company or body liable?

- Common law principles: whether the directors and officers' knowledge and intention can be attributed to the company/body?
- If company/body guilty, then can be subject to unlimited fine, suspension, licence/permit revocation, and confiscation of property (NSL 31 & 32).
- Company/body registered in HK can commit NSL anywhere in the world (NSL 37)

# Implications

## Fundraising

- Collusion offence: are you receiving funding from a foreign country or “an institution, organization or individual outside the mainland, Hong Kong and Macao” to commit a prohibited act (e.g. disrupt implementation of laws or policies; affecting an election; have foreign country impose sanctions or engage in hostile activities; provoke hatred against governments)?
- Are you a “foreign agent” under the Implementation Rules?

# Implications

## Advocacy

- Incite offences?



Source: RTHK

- Advocating terrorism?



Source: RTHK

# Implications

## Advocacy

- Sedition?



Source: RTHK

# Implications

## International connection

- Collusion? Providing any sensitive information (e.g. State secret or intelligence concerning NS) to foreign country or external element?
- Has your external partner criticized HKSARG or CPG or otherwise provoked hatred against them? Called for sanctions or suspension of treaties/relations? Made statements re HK elections?
- Are you a 'foreign agent' by virtue of the int'l connection?

# Implications

## Service delivery

- Providing any funding/support to any organization that seeks to separate any part of China, e.g. a Taiwanese separatist organization? Qualify as a “terrorist organisation” (Art 25)?
- Providing any funding/support to persons wanted by HKSARG or CPG? Has proper due diligence been done on likely/possible use of funds? Clear limits been set on use of funds/support?
- Nature of service delivered? At all political or critical of HK or China?



***THANK YOU FOR YOU ATTENTION***

***Professor Simon NM Young***  
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***8 OCTOBER 2021***