

## HONG KONG: National Security Law raises operational security risks for business

- The new law formalizes a large role for mainland security organs in Hong Kong, raising corporate espionage and surveillance risks for businesses.
- Mainland officials will exercise direct control over national security policy and law enforcement in Hong Kong for the first time.
- NGOs and universities will likely face a crackdown on political activities and speech, while the impact on media and internet censorship is still uncertain.

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China's legislature approved the National Security Law (NSL) for Hong Kong on 30 June, and the law took effect immediately. Our [previous note](#) outlined the general contents of the law based on an official summary. The full text, which was released only after final passage, reveals additional details.

The legal text supports our [previous judgment](#) that the law targets political activism and protest activity, while seeking to avoid impacts on business. The law defines no new economic or business crimes. On the other hand, by significantly increasing and formalizing the presence of mainland security agencies in Hong Kong, the law raises the risk of surveillance and corporate espionage for businesses operating in the territory. Even before the NSL, many resident businesses and visiting foreign executives were already taking precautions in Hong Kong, but the new law eliminates any meaningful distinction between Hong Kong and mainland China for the purposes of operational security. Whatever precautions businesses take in mainland China – for example, ensuring that laptops and mobile devices do not contain sensitive, unencrypted data of interest to Chinese authorities – should now be extended to Hong Kong.

### Bodies not crimes

Much commentary has focused on the national security crimes defined in the law, but the most impactful provisions are the new administrative and enforcement bodies established by the law. These bodies place the mainland government fully in control of national security-related policy and law enforcement – under an expansive conception of "national security." Evidence from the mainland judicial system is clear that criminal definitions can be interpreted and stretched to criminalize a wide variety of behavior. In this context, the structure of the new bodies empowered to enforce the law and the authorities granted to those bodies are the most significant factors in assessing the law's impact.

The law establishes three new bodies in Hong Kong. The first is an Office for Safeguarding National Security, which will be a direct organ of the mainland government, likely staffed by the Ministry of State Security. At its discretion, this office can assert jurisdiction over any national security case, taking the case out of the hands of local courts. The office will operate under mainland criminal procedure, and suspects can be sent to the mainland for trial. The office can issue orders and decisions that carry the force of law and cannot be challenged. The NSL also specifies that committee personnel will operate outside the jurisdiction of Hong Kong law: Hong Kong police are explicitly forbidden from searching or detaining these personnel or their vehicles.

Second, the Hong Kong government will establish a Committee for Safeguarding National Security that maintains "primary responsibility" for national security. Though the committee will be chaired by the Hong Kong chief executive, a separate

provision of the law stipulates that the chief executive is "accountable" to the mainland government on national security issues. Moreover, the committee will also include a national security adviser appointed by the mainland government. In effect, therefore, the committee allows the mainland government to exercise strong control over the day-to-day policy and operations of the Hong Kong government on national security matters. The committee will operate in secret, and its decisions will not be subject to judicial review.

Third, the Hong Kong Police Force will establish a new department for safeguarding national security. The department will also operate in secret and is authorized to hire "qualified professionals and technical personnel" from outside Hong Kong. This provision will enable mainland police and security officials to operate within the local police force, in addition to through the Office for Safeguarding National Security.

### **Chilling effect**

The impact of the law depends partly on enforcement, but a chilling effect has become evident in recent days, suggesting that the threat of prosecution will have an impact even before the first charges are brought. In the days leading up to enactment, several political and activist groups formally disbanded. Some shopkeepers took down anti-government posters, and citizens deleted social media posts.

Among the criminal offenses defined in the law is colluding with foreign powers to induce hatred against the Hong Kong or mainland government. Zhang Xiaoming, executive deputy director of the Hong Kong and Macau Affairs Office, a mainland cabinet agency, said that Hong Kong citizens spreading rumors about police abuse may be violating the law. As an example, Zhang cited unsubstantiated but widely circulated rumors that police had beaten protestors to death inside the Prince Edward subway station during chaotic protests on 31 August 2019.

Still unclear is the extent to which the NSL will affect media, internet censorship, and civil society in Hong Kong. The law empowers the Hong Kong government to "take necessary measures" to strengthen regulation of schools, universities, NGOs, media, and the internet. Foreign-funded NGOs are likely to face a crackdown, media may become more cautious about political commentary, and outspoken professors may be silenced or fired. Chinese-style internet censorship appears unlikely but cannot be ruled out.

Police arrested at least 300 people protesting the new law on 1 July, of which nine were suspected of violating the new law. One of these nine was allegedly displaying a Hong Kong independence flag. In a sign of how the law will immediately empower police to crack down on protests, police deployed purple flags with text warning protestors that they are chanting slogans or displaying banners with messages that may violate the NSL's prohibitions against advocating secession or subversion.

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