

NATIONAL SECURITY LAW

Are the concerns substantiated?



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ARE THE CONCERNS SUBSTANTIATED?

The Hong Kong National Security Law (**HKNSL**) is certainly one of the hot topics in the business circle recently. When you are having lunch or dinner in restaurants, you will hear people discussing about their business under the newly passed HKNSL. They raise questions such as: whether their business will be frozen or seized without reasons; whether they will be arrested and detained indefinitely without reasons; can the police search their homes and offices without search warrants; will they commit an offence under the HKNSL, if they open and manage an investment account for someone who turns out to be an offender under the HKNSL; and so forth. There are many similar questions asked by the business people. For lawyers, they sometimes may not appreciate why the business people are so concerned about the HKNSL. But their concerns are apparently real, whether or not these are driven by their delusion, rightly or wrongly, about China. A short answer to these questions is "No". If one carries on his business properly, without improper ulterior motives or objectives, one should not be worry about the HKNSL. This answer may sound unhelpful, but it's true.

National security law is not unique to China. The HKNSL focuses on the prohibition of secession, subversion, terrorism and collusion with foreign forces. Although we have not carried out a survey, we believe that most of the countries have similar laws one way or the other. As an illustration, under the U.S. law:

- 1 Title 18 U.S. Code Chapter 115 prohibits treason, sedition and subversive activities;
- 2 Foreign Intelligence Surveillance Act establishes procedures for physical and electronic surveillance and collection of foreign intelligence information between foreign powers and their agents suspected of espionage or terrorism. The U.S. President may authorize, through the Attorney General, electronic surveillance without a court order for a year;
- 3 Foreign Agents Registration Act requires agents representing the interests of foreign powers in a political or quasi-political capacity to disclose their relationship with the foreign government and information about related activities and finances;
- 4 Foreign Missions Act regulates the foreign missions' activities for the purposes of protecting the national security interests of the U.S.A.;
- 5 Holding Foreign Companies Accountable Act requires companies publicly listed on the U.S. stock exchanges to declare that they are not owned or controlled by any foreign government; and so forth.

In the U.K., they have the Treason Felony Act, Official Secrets Act, Security Service Act, Terrorism Act, Terrorism Prevention and Investigation Measures Act, Anti-terrorism Crime and Security Act, Incitement to Disaffection Act and so forth.

In Canada, the relevant provisions relating to national security are set out in the National Security Act, Criminal Code, Access to Information Act, Secure Air Travel Act, Canada Elections Act, Canadian Security Intelligence Service Act and so forth.

In Australia, the national security provisions are set out in the National Security Law Amendment (Espionage and Foreign Interference) Act, Criminal Code Act, Crimes Act, Foreign Influence Transparency Scheme Act and so forth.

As it can be seen from the above, national security law is common amongst many countries. If one can carry on business without problems in the U.S.A., U.K., Canada and Australia, there is no reason why one needs to worry about the HKNSL.

Since the HKNSL was enacted by the Chinese legislature, in order to alleviate people's concerns, it has been set out clearly in the HKNSL that:

- 1 No institution, organization or individual shall contravene Articles 1 and 12 of the Basic Law of Hong Kong. Article 1 states that Hong Kong is an inalienable part of the PRC. Article 12 states that Hong Kong shall enjoy a high degree of autonomy.
- 2 Human rights, such as freedom of speech, of the press, of publication, of association, of assembly, of procession and demonstration, enjoyed under the relevant provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights shall be respected and protected.
- 3 The provisions of the HKNSL shall be enforced in accordance with the principles of the rule of law.
- 4 A person shall be presumed innocent until he is convicted by the Court.
- 5 No one shall be tried twice for the same offence.

6 The HKNSL shall apply only to offences committed after it becomes effective. The provisions have no retrospective effect.

Since the HKNSL has just come into force recently, its effects are yet to be seen. However, one may take a look at Macao. The Macao Government passed its national security law in 2009. To date, Las Vegas Sands, MGM Resorts and Wynn Resorts, all of them are U.S.-based, continue to run their casinos and related business in Macao without any problem. This demonstrates that if people run their business properly, without any improper ulterior motives or objectives, there is nothing for them to worry about the HKNSL.

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