



## INSIGHT: CHINA

# Hong Kong's New National Security Bill Sends Chill Through Local, International Communities



## THE TAKEAWAY

The Hong Kong government will move at “full speed” to pass the Safeguarding National Security Bill, also known as Article 23, which provides for lengthy or even lifetime prison sentences for offences considered to be treason, espionage, state secrets, sedition, and external interference.

Canada, the U.K., the U.S., and others have raised alarm about the new legislation, including its claim of extraterritorial jurisdiction and the vagueness with which these crimes are defined. Foreign diplomats and companies based in Hong Kong are concerned that their otherwise routine activities could become increasingly vulnerable to being considered criminal acts under the Bill.

## IN BRIEF

- Article 23 of the Basic Law, Hong Kong's mini constitution, stipulates that the city's government must legislate to protect the territory from national security threats. In 2003, a previous government introduced a National Security Bill, but put the process on hold after half a million residents took to the streets in [protest](#). Since becoming Hong Kong's current chief executive in July 2022, John Lee has vowed repeatedly to prioritize the legislation. His government says that enacting these laws will “[plug the gaps](#)” in the existing national security legislation, including the National Security Law (NSL) imposed

by Beijing in 2020. The NSL was imposed following Hong Kong's 2019 pro-democracy protests, which the governments in both Hong Kong and Beijing have described as a form of “[terrorism](#),” and [have suggested](#) that they were the result of foreign interference.

- The new legislation will have extraterritorial effect – that is, application beyond Hong Kong's borders. One Australia-based lawyer [explained](#): “No matter whether you are a Hong Kong citizen or foreigner, your behaviour overseas can be used as evidence of [a] crime when you return to Hong Kong.” Others have pointed out, however, that foreign governments are unlikely to enforce the legislation within their jurisdictions.
- The proposed legislation has been met with pushback by several Western governments. Canada was [mentioned](#) 24 times in the consultation document, which was compiled based on public input, alongside other common law jurisdictions like Australia, the U.K., and the U.S., as examples of countries that also “[safeguard their] national security.” Canada [submitted](#) a diplomatic note to the Hong Kong government, calling for it “to establish independent mechanisms to ensure transparency, proportionality and accountability” in laws related to state secrets and foreign interference. The diplomatic note, according to a Canadian spokesperson, also [raised concerns](#) about “inaccurate comparisons between Canadian law and the proposed new Hong Kong legislation.”

## IMPLICATIONS

- As some observers [have noted](#), “some of the provisions of the [new national security legislation] could focus more on overseas activists.” That includes former Hong Kongers who have sought asylum in Canada, the U.S., the U.K., and elsewhere and are lobbying these governments on issues related to human rights in Hong Kong. One U.S. diplomat noted that even educational exchanges between Hong Kong and foreign universities could be curtailed out of fear of running afoul of these new laws.
- The U.K. [warned](#) of the law’s ambiguous references to “external forces” and “foreign interference,” which could impede the normal diplomatic activities protected under the [Vienna Convention](#), which states that diplomats should be able to “conduct their duties without threat of influence by the host government.” These and other governments are [concerned](#), for example, that interactions between their consular staff and local organizations in Hong Kong could suddenly constitute acts of “foreign interference.” The U.S. also [expressed](#) concerns about the law’s potential expansiveness and that its vague provisions could be leveraged to constrict the free expression of American citizens. An EU spokesperson [echoed](#) these concerns, noting that the proposal has an even more restrictive tone than Beijing’s National Security Law.
- International firms in Hong Kong are concerned that the proposed legislation could curtail the collecting and sharing of information that is a normal part of their due diligence. They are especially concerned about the proposal’s provisions on state secrets,

which mirror the broad definitions of espionage in Beijing’s 2023 Counter-espionage Law, which sent a chill through the international business community. A number of foreign firms have already [withdrawn their operations from China](#) to avoid the possibility of being subjected to Beijing’s overzealous enforcement. With its vague and expansive definition of what could constitute a security violation, the new legislation in Hong Kong could also further undermine business confidence, putting it squarely at odds with the city’s top economic priority to retain and attract foreign businesses.

## WHAT’S NEXT

### 1. Bill to be passed “without delay”

The Hong Kong Legislative Council is fast-tracking the bill after passing its first and second readings on March 8. The city’s media have [reported](#) that the law may come into force as soon as mid-April 2024. There is a high likelihood that the legislation will pass without much challenge, given that [89 of the 90](#) lawmakers on the Legislative Council are pro-Beijing.

### 2. Exodus of businesses from Hong Kong could accelerate

When Beijing imposed the National Security Law in Hong Kong in 2020, it triggered a significant exodus of international companies. By 2022, the presence of U.S. firms in Hong Kong had [dropped](#) to its lowest level in nearly two decades. With a new domestic security law in sight, the prospect of another significant departure of businesses from the city is likely.