



| Brief |

Article 23 and Risks to Foreign Nationals in Hong Kong

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Classification: TLP:CLEAR

Criticality: HIGH

Intelligence Requirements: Geopolitical, Cyber, Regulatory

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Scope Note

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Brief | Article 23 and Risks to Foreign Nationals in Hong Kong

› Key Findings

- Article 23, an updated Hong Kong-specific national security law, went into effect on March 23, 2024.
- A previous version of the law that brought Hong Kong's legal system in line with mainland China's prompted mass protests in 2019 and 2020.
- The updated version expands the list of crimes to include accessing data that was previously legally permissible and increases the punishment for offenders. The broad and vague wording of Article 23 could see it applied to a wide range of data types, like financial and economic growth figures that firms consider necessary for operations.
- Western firms that have used Hong Kong to access the Chinese market for years will likely experience a more difficult operating environment and a heightened risk of arrest for their employees.

Details

On March 19, 2024, the Hong Kong Legislative Council (LegCo) unanimously approved a new national security law known as Article 23, effective March 23. The bill is a Hong Kong-specific update to the 2020 National Security Law, although it contains similar language to updates made in 2023 to the mainland China Foreign Relations Law and Anti-Espionage Act.

Like those amendments, Article 23 introduces new, more severe penalties for criminal offenses deemed harmful to (Hong Kong's) national security and, in some cases, revises the definitions of those offenses. According to legal professionals, elements of the revised penalties are broad, loosely defined, and vague.¹

The legislation expands the scope of what is considered national security to also include major policy decisions and economic data—and obtaining it could now be considered “espionage” and “the unlawful acquisition of state secrets.” This will likely impact the ability of foreign firms to do business in Hong Kong, because access to data that was previously lawful is now considered illegal.²

- China's Vice Premier, Ding Xuexiang, said firms found to be “working for foreign forces”³ would be targeted—something Western businesses fear could apply to them for simply accessing data on Hong Kong’s economy and sharing it across the company.
- The legislation also expands the scope of what can be defined as a political crime to also include insurrection, treason, sabotage, and espionage.⁴ This is a further attack on dissent in Hong Kong and is likely aimed at quelling physical protests and online criticism of China.

¹

[hXXps://www.scmp.com/news/hong-kong/politics/article/3254522/chinese-vice-premier-ding-xuexiang-calls-swift-article-23-legislation-says-it-will-make-hong-kong](https://www.scmp.com/news/hong-kong/politics/article/3254522/chinese-vice-premier-ding-xuexiang-calls-swift-article-23-legislation-says-it-will-make-hong-kong)

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[hXXps://www.amnesty.org/en/latest/news/2024/03/what-is-hong-kongs-article-23-law-10-things-you-need-to-know/](https://www.amnesty.org/en/latest/news/2024/03/what-is-hong-kongs-article-23-law-10-things-you-need-to-know/)

³ [hXXps://www.bbc.com/news/world-asia-china-68508694](https://www.bbc.com/news/world-asia-china-68508694)

⁴

[hXXps://www.rfi.fr/en/international-news/20240325-hong-kong-justice-chief-warns-online-criticism-could-break-new-law](https://www.rfi.fr/en/international-news/20240325-hong-kong-justice-chief-warns-online-criticism-could-break-new-law)

While the laws on dissent are primarily aimed at Hong Kongers, they could also be applied to foreigners living in Hong Kong. More likely, they would be applied to Hong Kongers working for international organizations.

- The bill extends extraterritorial reach to Hong Kongers abroad and has partial retroactive applicability to possible crimes that occurred before the new law commenced.⁵

Article 23 was not expected to go into effect until mid-April 2024, and pushing up its start date may have been a deliberate attempt to nullify international objections in the days leading up to its enactment. The lengthy lead-up to the 2020 law being implemented likely contributed to the flight of Western capital from Hong Kong ahead of time. Nevertheless, the legislation was widely condemned as antidemocratic by the international community.⁶

History and Protests

Mainland China has been seeking to impose variations of the law on Hong Kong for years. Each time, such efforts have been met with fierce protests by opponents who fear doing so would bring Hong Kong's legal system closer to the one in mainland China (known locally as the "one country, two systems" policy).⁷ Mainland China's efforts to bring Hong Kong under its legal orbit have escalated since the United Kingdom's (UK) 1997 handover of Hong Kong to China.

- In 2003, the Hong Kong government attempted to pass its first national security law but scrapped it after approximately 500,000 people gathered to demonstrate against it.⁸
- In 2019, the administration of then-Hong Kong Chief Executive Carrie Lam attempted to push forward an extradition bill, which led to the largest protests in Hong Kong history and caused the government to once again withdraw the bill.⁹ However, the violence and instability that stemmed from the 2019 demonstrations

⁵[hXXps://www.amnesty\[.\]org/en/latest/news/2024/03/what-is-hong-kongs-article-23-law-10-things-you-need-to-know/](https://www.amnesty.org/en/latest/news/2024/03/what-is-hong-kongs-article-23-law-10-things-you-need-to-know/)

⁶ [hXXps://www.gov\[.\]uk/government/news/uk-statement-on-hong-kong-national-security-proposals](https://www.gov[.]uk/government/news/uk-statement-on-hong-kong-national-security-proposals)

⁷ [hXXps://www.legalhub\[.\]gov\[.\]hk/details.php?a=10&v=-one-country-two-systems-and-the-basic-law](https://www.legalhub[.]gov[.]hk/details.php?a=10&v=-one-country-two-systems-and-the-basic-law)

⁸[hXXps://www.pbs\[.\]org/newshour/world/how-hong-kongs-new-security-law-could-impact-different-communities](https://www.pbs[.]org/newshour/world/how-hong-kongs-new-security-law-could-impact-different-communities)

⁹ [hXXps://www.amnesty\[.\]org/en/latest/news/2019/09/hong-kong-protests-explained/](https://www.amnesty.org/en/latest/news/2019/09/hong-kong-protests-explained/)

caused the Chinese central government to impose the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (HKSAR),¹⁰ a mainland China-dictated national security law similar to the National Security Law of March 2024, that went into effect in mid-2020.

- In the aftermath of the 2019 demonstrations, authorities have imposed harsh prison sentences on protest leaders, effectively reducing the pro-democracy protest movement to small, one-off gatherings that are quickly disbanded. On February 27, 2024, three members of the activist group League of Social Democrats assembled in front of the Hong Kong government headquarters.¹¹

Following the enactment of HSKAR, the Chinese government imposed other electoral changes in 2021 and 2023 meant to ensure that only "patriots" (those committed to the one nation, two systems policy) can govern Hong Kong. One example of these changes is that the number of directly elected seats in the 470-seat district council has dropped from 452 to 88. Over 360 of the other seats are now either indirectly appointed by the Chief Executive or by the Electoral College of Three Committees, a selectively elected body that has been criticized for its composition favoring pro-China politicians.¹²

While localized protests are highly likely in the upcoming days (especially in Western countries), widespread demonstrations in Hong Kong itself are improbable due to the local government's crackdown on dissent following the large protests of 2019.

International Reaction

The West will almost certainly condemn the national security law and the Hong Kong LegCo, claiming the process of adopting the law was rushed and the language is a cause for concern. It is also likely that the United States and/or the European Union could sanction key Hong Kong electoral stakeholders involved in the process.

- However, the more impactful consequences will be for the Hong Kong economy and for businesses operating in Hong Kong.

¹⁰ [hXXps://www.mayerbrown\[.\]com/en/insights/publications/2020/07/hksar-national-security-law](https://www.mayerbrown.com/en/insights/publications/2020/07/hksar-national-security-law)

¹¹ [hXXps://www.scmp.com/news/hong-kong/politics/article/3256279/hong-kongs-article-23-law-citys-last-2-opposition-parties-vow-carry-amid-uncertain-political-climate](https://www.scmp.com/news/hong-kong/politics/article/3256279/hong-kongs-article-23-law-citys-last-2-opposition-parties-vow-carry-amid-uncertain-political-climate)

¹² [hXXps://www.bbc.com/news/world-asia-57236775](https://www.bbc.com/news/world-asia-57236775)

For years, Hong Kong has used its relatively free and open legal system to attract Western financial and legal firms that are eager for access to the Chinese consumer base but concerned about the legal and political risks of operating in mainland China. While Hong Kong remains the Asian base for most Western financial institutions, since the 2019 protests, many firms have been reducing staff and seeking alternative Asian locations.¹³

- Hong Kong has been slowly losing its preferential status among Western financial firms, a trend that looks set to continue with an updated and stricter National Security Law.
- The exodus has been aided by the wider U.S.-China geopolitical disputes and harsh COVID-19 restrictions in Hong Kong, which were closer to those in mainland China than they were to other international financial hubs.

Economic Outcomes

Since the 2019 protests and the implementation of HKSAR in 2020, Hong Kong's economy has struggled. Declining business activity by foreign firms, which is a reflection of the lack of confidence in the Hong Kong economy, is arguably the biggest contributor.

- In 2023, the Heng Seng (the Hong Kong stock market) dropped by 16 percent, while the U.S. equivalent, the S&P, increased by around 20 percent, as did most other stock indexes. The Heng Seng dropped another 2 percent within hours of Article 23 being proposed in late January 2024. Hang Seng has dropped 40 percent since 2019.¹⁴
- Initial public offerings (IPOs) listed in Hong Kong dropped by 56 percent in 2023. The amount of money pushed into China-focused funds, which are a form of foreign investment primarily based in Hong Kong, dropped by 80 percent between 2021 and 2023.¹⁵

¹³ [hXXps://www.bbc\[.\]com/news/world-asia-china-68636561](https://www.bbc.com/news/world-asia-china-68636561)

¹⁴ *Ibid.*

¹⁵ [hXXps://www.bloomberg\[.\]com/news/features/2024-03-24/hong-kong-bankers-with-china-expertise-face-grim-reality-after-layoffs-cuts](https://www.bloomberg.com/news/features/2024-03-24/hong-kong-bankers-with-china-expertise-face-grim-reality-after-layoffs-cuts)

- In December 2023, Moody's Investors Service, a credit rating agency, lowered its outlook for Hong Kong due to the economic slowdown in Hong Kong and the dim prospects for growth because of the reduced political and legal autonomy there.¹⁶

Taken together, Hong Kong's role as a premier financial services hub is diminishing, and the number of financial services positions there is likely to continue dropping.

Cyber Risk

No cyber campaigns have been identified as of the time of writing. However, there is recent evidence emerging that China did retaliate against Western interests that opposed the 2020 version of the law.

- On March 25, 2024, the UK publicly accused China of launching cyberattacks against UK voters and UK politicians dating back to 2021.
- In August 2021, Chinese state-sponsored entities reportedly hacked the UK's Electoral Commission, gaining access to 40 million voters' personal details. The attack was not publicly disclosed until 2022.¹⁷ The attacks came after the UK initiated a special five-year visa process for Hong Kongers to live in the UK that paves the way for UK citizenship. The visa was announced in response to mainland China imposing its 2020 National Security Law on Hong Kong.¹⁸
- Cyberattacks by Chinese-backed threat actors during the period shortly after the 2019 protest movement are likely underreported; there were likely more victims beyond those just identified in March 2024.

Risks to Foreign Nationals

China is a notoriously difficult market to operate in, which makes access to data an important tool for foreign businesses. Without access to data, businesses would be unlikely to make a profit and at a disadvantage compared to domestic competitors. For years, the separate legal environment of Hong Kong has given Western investors

¹⁶[hXXps://www.bloomberg\[.\]com/news/articles/2023-12-06/moody-s-cuts-outlook-on-chinese-banks-after-sovereign-downgrade](https://www.bloomberg.com/news/articles/2023-12-06/moody-s-cuts-outlook-on-chinese-banks-after-sovereign-downgrade)

¹⁷ [hXXps://www.independent\[.\]co\[.\]uk/news/uk/politics/china-cyber-attack-oliver-dowden-b2518043.html](https://www.independent.co.uk/news/uk/politics/china-cyber-attack-oliver-dowden-b2518043.html)

¹⁸ [hXXps://www.npr\[.\]org/2021/10/25/1048918729/the-u-k-is-welcoming-tens-of-thousands-from-hong-kong-on-a-new-path-to-citizenship](https://www.npr.org/2021/10/25/1048918729/the-u-k-is-welcoming-tens-of-thousands-from-hong-kong-on-a-new-path-to-citizenship)

confidence that they can access the Chinese market fairly and without the legal concerns they would have in China. The wording of Article 23 is remarkably similar to updates mainland China made to its Foreign Relations Law and Anti-Espionage law in mid-2023 regarding access to data, likely reducing any ambiguity for foreign investors.

The updated legal provisions could potentially reduce the profitability of operating in Hong Kong, where accessing data can now be considered espionage. The broad and vague wording of Article 23 could see it applied to a wide range of data types—including financial, demographic, economic, personal, or even data that China considers embarrassing, like slowing growth. The provisions also make it less safe for staff operating in the country, as they could be subject to arrest for business practices that were previously allowed.

The new laws make it more likely that there will be an increase in arbitrary detentions and retaliatory measures against Western business interests. Businesses involved in sectors that China considers sensitive, like financial research or technology manufacturing, are at the biggest risk. These sectors are key to the geopolitical disputes between the United States and China, and China is eager to keep data that could demonstrate its weakness or be used by adversaries within its borders.

| Appendix A: Traffic Light Protocol for Information Dissemination

	Red	Amber
WHEN SHOULD IT BE USED?	Sources may use TLP:RED when information cannot be effectively acted upon by additional parties and could lead to impacts on a party's privacy, reputation, or operations if misused.	Sources may use TLP:AMBER when information requires support to be effectively acted upon but carries risks to privacy, reputation, or operations if shared outside of the organizations involved.
HOW MAY IT BE SHARED?	Recipients may NOT share TLP:RED with any parties outside of the specific exchange, meeting, or conversation in which it is originally disclosed.	Recipients may ONLY share TLP:AMBER information with members of their own organization and its clients, but only on a need-to-know basis to protect their organization and its clients and prevent further harm. Note that TLP:AMBER+STRICT restricts sharing to the organization only.
	Green	Clear
WHEN SHOULD IT BE USED?	Sources may use TLP:GREEN when information is useful for the awareness of all participating organizations, as well as with peers within the broader community or sector.	Sources may use TLP:CLEAR when information carries minimal or no risk of misuse in accordance with applicable rules and procedures for public release.
HOW MAY IT BE SHARED?	Recipients may share TLP:GREEN information with peers and partner organizations within their sector or community but not via publicly accessible channels.	Recipients may share TLP:CLEAR information without restriction, subject to copyright controls.

| Appendix B: ZeroFox Intelligence Probability Scale

All ZeroFox intelligence products leverage probabilistic assessment language in analytic judgments. Qualitative statements used in these judgments refer to associated probability ranges, which state the likelihood of occurrence of an event or development. Ranges are used to avoid a false impression of accuracy. This scale is a standard that aligns with how readers should interpret such terms.

Almost No Chance	Very Unlikely	Unlikely	Roughly Even Chance	Likely	Very Likely	Almost Certain
1-5%	5-20%	20-45%	45-55%	55-80%	80-95%	95-99%