

**Comparison of provisions governing interception of  
messages/communications under the Telecommunications Ordinance (Cap. 106)  
and the Interception of Communications Ordinance (Cap. 532)**

Topic	Section 33 of the Telecommunications Ordinance (TO)	Interception of Communications Ordinance (IOCO) <sup>1</sup>
Authority authorizing interception	The power to authorize interception of messages is vested in the Chief Executive ("CE") or any public officer authorized in that behalf by the CE.	Interception of communications can only be authorized under a court order made by a judge of the High Court upon application by senior officers of certain departments <sup>2</sup> or investigating officers authorized by the Commissioner of the Independent Commission Against Corruption.
Grounds for authorizing interception	The CE may make an order of interception when he considers that the public interest <sup>3</sup> so requires.	Section 4(2) of the IOCO provides that an order shall not be made unless it is necessary for the purpose of preventing or detecting a serious crime or in the interest of the security of Hong Kong. Section 4(3) further provides four matters which the judge is required to determine in deciding whether it is necessary to make an order of interception, namely -

<sup>1</sup> The IOCO, which repeals section 33 of the TO, was enacted in June 1997 but has not yet been brought into operation.

<sup>2</sup> Section 5 of the IOCO provides that the application can only be made by police officers of or above the level of superintendent, senior officers of the Customs and Excise Service, senior officers of the Immigration Department and senior officers of the Correctional Services Department.

<sup>3</sup> The term "public interest" is not defined in the TO, nor is there much case law in Hong Kong explaining what is meant by "public interest". According to some English cases, "public interest" is not to be confused with what interests the public and public opinion (*British Steel Corporation v Granada Television* [1981] 1 All ER 417 at 455, HL, per Lord Wilberforce). While there is no clear definition on "public interest", it was held that whether a particular thing is in the public interest is a question of the times and is a question of fact (*Postmaster General v Pearce* (1923), reported in [1968] 2 QB 463 at 465). It is to be decided in the light of all the circumstances and conditions as they exist at the present notwithstanding that they would probably not have been specifically envisaged by the legislature when an enactment was passed (*Cartwright v Post Office* [1968] 2 QB 439).

Topic	Section 33 of the Telecommunications Ordinance (TO)	Interception of Communications Ordinance (IOCO)
		<p>(a) whether there are reasonable grounds to believe that an offence is being committed, has been committed or is about to be committed;</p> <p>(b) whether there are reasonable grounds to believe that information concerning the offence referred to in paragraph (a) above will be obtained through the interception sought;</p> <p>(c) whether all other methods of investigation have been tried and have failed, or unlikely to succeed; and</p> <p>(d) whether there is good reason to believe that the interception sought will result in a conviction.</p>
Types of messages/communications that may be intercepted	Messages or class of messages brought for transmission, or transmitted or received or being transmitted, by telecommunication may be intercepted.	Communications in the course of transmission by post or by means of a telecommunication system may be intercepted.
Scope of interception order	No restriction is imposed on the scope of an order of interception. There are no provisions providing for matters such as the offence or offences in respect of which messages may be intercepted, the method of interception used, etc.	Section 6(1) of the IOCO sets out what are to be specified in the court order, including matters like the offence or offences in respect of which communications may be intercepted, the name and address of the person whose communications are to be intercepted, and the type of communication that may be intercepted and the method of interception used.
Safeguards for intercepted materials	There is no provision on whether the information intercepted pursuant to an order of interception made under section 33 of the TO can be disclosed to other people.	<p>Sections 6, 8 and 9 of the IOCO impose restrictions on the disclosure of the intercepted communications.</p> <p>(a) Section 6(1) provides that a court order authorizing the interception of communications shall specify, among others, the person(s) to whom the intercepted material may be disclosed to.</p>

Topic	Section 33 of the Telecommunications Ordinance (TO)	Interception of Communications Ordinance (IOCO)
		<p>(b) Under section 6(2), a judge shall only authorize that the intercepted materials be disclosed to those other law enforcement officers who are involved in the investigation of the offence or offence(s) in respect of which communications may be intercepted.</p> <p>(c) Section 8 imposes a duty on an officer authorized by a court order to intercept a postal communication or telecommunication communication to make arrangements to ensure that the extent to which the intercepted material is disclosed and the number of persons to whom disclosure is made are limited to the minimum that is necessary for the purpose of preventing or detecting a serious crime or in the interest of the security of Hong Kong. Moreover, the relevant authorized officer is required to ensure that the intercepted material is destroyed as soon as its retention is not necessary for any of the above purposes.</p> <p>(d) Section 9(4) prohibits a person who is authorized under a court order to intercept a communication to disclose the intercepted material to any other person or persons save for those allowed by the court.</p>
Duration and renewal of interception order	There is no provision providing for the duration of an order of interception.	Section 6(1)(g) of the IOCO provides that the duration for which the interception is authorized must be specified in the court order. Section 6(4) further provides that the authorization under a court order to intercept a communication is valid only for as long as it is necessary to achieve the purpose of interception or, in any event, for a period not exceeding 90 days unless the order is renewed.

Topic	Section 33 of the Telecommunications Ordinance (TO)	Interception of Communications Ordinance (IOCO)
Disposal of intercepted material	There is no provision governing the disposal of intercepted material.	Section 7 of the IOCO provides that where a court order authorizing interception has been terminated by the judge or has expired and has not been renewed, all intercepted materials obtained under the court order shall be placed in a packet and sealed by the authorized officer, and that packet shall be kept away from public access. Where no charge is laid against the person named in the court order within 90 days of the termination of a court order, the court may under specified circumstances order the intercepted materials in the sealed packet to be destroyed.
Remedies	No judicial or administrative remedies are provided for an individual who suffers damage by reason of an interception which had been improperly authorized.	Section 10 of the IOCO provides that the court may upon application of an aggrieved person, grant the aggrieved person remedial relief when certain criteria are met. However, remedial relief will not be available if the interception is ordered by the court under the IOCO.
Providing information to the Legislative Council (LegCo)	There is no provision similar to section 11 of the IOCO under the TO <sup>4</sup> .	Section 11 of the IOCO confers a statutory power on the LegCo to require the Secretary for Security to provide various types of information relating to interception of communications <sup>5</sup> .

Prepared by  
 Legal Service Division  
 Legislative Council Secretariat  
 16 July 2004

<sup>4</sup> Although the LegCo's power to require information relating to interception of messages is not expressly provided in the TO, the LegCo may request the Government to provide such information in exercising its powers and functions under Article 73 of the Basic Law. Under Article 73 of the Basic Law, the powers and functions exercised by the LegCo include the raising of questions on the work of the government and debating any issue concerning public interests.

<sup>5</sup> Such information include the number of interceptions authorized and denied, the nature and location of the facilities from which and the place where the communications have been intercepted, the major offences for which interception has been used as an investigatory method and the number of persons arrested and convicted as a result of interceptions.