

**EXTRACT**

**立法會**  
***Legislative Council***

Ref : CB2/PL/SE/1

LC Paper No. CB(2) 2276/03-04

(These minutes have been seen by the  
Administration)

**Panel on Security**

**Minutes of meeting held on Friday, 2 April 2004  
at 4:30 pm in Conference Room A of the Legislative Council Building**

**Members present** : Hon James TO Kun-sun (Chairman)  
Hon WONG Yung-kan (Deputy Chairman)  
Hon Albert HO Chun-yan  
Dr Hon LUI Ming-wah, JP  
Hon Margaret NG  
Hon LAU Kong-wah, JP  
Hon Ambrose LAU Hon-chuen, GBS, JP  
Hon Michael MAK Kwok-fung  
Hon IP Kwok-him, JP  
Hon Audrey EU Yuet-mee, SC, JP

**Members absent** : Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP  
Hon CHEUNG Man-kwong  
Hon Andrew WONG Wang-fat, JP  
Hon Howard YOUNG, SBS, JP

**Public Officers attending** : Item III

Mrs Margaret CHAN  
Principal Assistant Secretary for Security (A)

Mr K W LEUNG  
Assistant Commissioner (Boundary and Ports) (Atg)  
Customs and Excise Department

Item IV

Ms Winnie NG  
Principal Assistant Secretary for Security (E)

Mr Victor LO  
Assistant Commissioner of Police (Crime)

Mr Danny CHEUNG  
Superintendent (Criminal Records Bureau)  
Hong Kong Police Force

Item V

Miss CHEUNG Siu-hing  
Deputy Secretary for Security 1

Mr Hubert LAW  
Assistant Secretary for Security (E)2

Mr Ian WINGFIELD  
Law Officer (International Law)  
Department of Justice

Item VI

Miss CHEUNG Siu-hing  
Deputy Secretary for Security 1

Miss Rosalind CHEUNG  
Assistant Secretary for Security (E)3

**Clerk in** : Mrs Sharon TONG  
**attendance** Chief Council Secretary (2)1

**Staff in** : Mr LEE Yu-sung  
**attendance** Senior Assistant Legal Adviser 1

Mr Raymond LAM  
Senior Council Secretary (2)5

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**V. Progress of review of the Interception of Communications Ordinance**  
(LC Paper No. CB(2)1873/03-04(04))

24. At the invitation of the Chairman, DS for S1 briefed members on the review undertaken by the Administration on interception of communications. She first outlined the existing legal provisions, and then elaborated on the Administration's paper. She also provided the following supplementary information -

- (a) the inter-departmental working group formed to review interception of communications comprised representatives from the Security Bureau, the Police, the Department of Justice and the Independent Commission Against Corruption;
- (b) the working group would study the following issues and related matters -
  - (i) existing legislation relating to interception of communications;
  - (ii) relevant legislation and practices in other jurisdictions and the latest developments especially after the "911" incident; and
  - (iii) the regulatory regime.

25. DS for S1 said that the working group had admittedly taken longer than expected in proceeding with its work. This was due to the fact that the work involved much complex information which required considerable time to collate and analyze. Overseas developments in the past few years also had to be taken into account. In addition, the Security Bureau had had to accord priority to other more pressing work. DS for S1 added that the working group would endeavor to balance all relevant considerations, for example, the need to increase transparency and accountability, protection of privacy, and ensuring the confidentiality and effectiveness of law enforcement. She said that upon the working group's completion of the review, the Administration would consult the public before implementing any recommendations.

26. Mr Albert HO said that in the United Kingdom (UK), the Queen did not have the power to withhold implementation of a piece of legislation passed by the parliament. He asked whether the Chief Executive (CE) was default of his constitutional duty to defer indefinitely the implementation of the Interception of Communications Ordinance (IOCO) which had been passed by the Legislative Council (LegCo) in 1997 and signed by the then Governor.

27. DS for S1 responded that the Administration had no intention to defer

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indefinitely the implementation of IOCO. It was conducting a comprehensive review, having regard to overseas experience and the concerns of different parties, on the relevant issues which were complicated and had long-term implications. She said that the public officer concerned had the discretion to decide when a piece of legislation should be implemented, having regard to whether it was in the interest of the public to do so.

28. Law Officer (International Law) (LO(IL)) said that in the case of *R v Secretary of State for the Home Department, ex parte Fire Brigades Union and others* in the United Kingdom, the House of Lords held that the Home Secretary, who was the authority in that case to bring the legislation into effect, was under no legally enforceable duty to bring certain sections of the legislation concerned into force since he had a discretion to bring those provisions into effect when it was appropriate to do so. It was mentioned in the judgment of the House of Lords in the case that there were many pieces of legislation, some of which dated back to 1928, that had not been brought into operation and had not been repealed. There were also a number of statutory provisions both in UK and in Hong Kong that had not been brought into force. Miss Margaret NG requested the Administration to provide members with a copy of the case of *R v Secretary of State for the Home Department, ex parte Fire Brigades Union and others*.

(*Post-meeting note* : The information provided by the Administration on the case was circulated to members vide LC Paper No. CB(2)1987/03-04 on 13 April 2004.)

29. Mr Albert HO said that if the Administration considered it not in the interest of the public to implement a piece of legislation, it should have opposed the enactment of the legislation in the legislative process and sought to repeal the legislation after enactment.

30. DS for S1 responded that the former Secretary for Security had actually pointed out the problems associated with the relevant legislative proposal in the legislative process. The Administration had strongly opposed to the bill at the time.

31. The Chairman said that Article 64 of the Basic Law (BL64) provided that the Government of the Hong Kong Special Administrative Region (HKSARG) should implement laws passed by LegCo.

32. LO(IL) said that BL64 required that HKSARG should implement laws passed by LegCo and already in force. Thus, it referred to legislation that had been brought into force. The power to bring a piece of legislation into force was vested in CE.

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33. Mr Albert HO asked whether CE had a constitutional duty to bring a piece of legislation into effect within a reasonable period after it was passed by LegCo. He considered that indefinitely delaying the implementation of a piece of legislation would be no different from repealing the legislation.

34. LO(IL) responded that he did not consider that there was such a duty on the part of CE. He said that there was a duty to consider whether it was appropriate to bring a piece of legislation into effect and the power to bring it into effect was vested in the relevant public officer.

35. Miss Margaret NG disagreed with the views of LO(IL). She considered that the Administration should highlight the provisions in IOCO which were difficult to implement.

Adm 36. The Chairman said that the Administration should provide members with a list of problems associated with IOCO and advise members of the latest development of its work in addressing the problems. Miss Margaret NG added that the Administration should provide a progress report on its review of IOCO.

37. DS for S1 responded that the Administration was conducting a comprehensive review on the matter. Besides the provisions in IOCO, other related matters would also have to be examined. It would, therefore, be more meaningful for a holistic approach to be adopted. She stressed that members would be consulted on the proposed way forward after the review was completed.

Adm 38. The Chairman said that besides providing members with a list of problems associated with IOCO and a progress report, the Administration should inform members of the options being considered and the Administration's inclination on the way forward regarding interception of communications. DS for S1 reiterated that the Administration was currently conducting a comprehensive review and would consult members when the review was completed.

SALA1 39. Miss Margaret NG asked the Legal Service Division of the LegCo Secretariat to provide a paper on existing local legislation relating to interception of communications and a comparison of the effects between implementing and not implementing IOCO.

Clerk 40. The Chairman said that a research study on the regulation of interception of communications in overseas countries should be conducted by the Research and Library Services Division of the LegCo Secretariat. LO(IL) said that the Regulation of Investigatory Powers Act 2000 of UK might be a good starting point.

Adm 41. The Chairman requested the Administration to provide a paper on -  
(a) the scope of CE's discretion under BL64 and section 1(2) of IOCO in deciding whether and when IOCO should come into operation; and

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- (b) the criteria for determining whether and when IOCO should come into operation.

42. The Chairman asked whether the Administration could complete its review and issue a consultation paper in about a year's time.

43. DS for S1 responded that as time was needed for studying relevant overseas legislation and other related issues, she was not in a position to provide a definite timetable for completion of the review at this juncture.

44. The Chairman expressed strong dissatisfaction that the Administration was quick in seeking additional power but slow in the review of existing power. He suggested that the subject matter be followed up at the next meeting. He added that S for S should be invited to attend the meeting and explain to members the difficulties encountered in the review of IOCO and the timetable for completion of the review.

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Council Business Division 2  
Legislative Council Secretariat  
11 May 2004