

**立法會**  
**Legislative Council**

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(These minutes have been seen by  
the Administration)

**Bills Committee on  
Interception of Communications and Surveillance Bill**

**Minutes of meeting  
held on Thursday, 1 June 2006, at 2:30 pm  
in the Chamber of the Legislative Council Building**

- Members present** :
- Hon Miriam LAU Kin-ye, GBS, JP (Chairman)
  - Hon LAU Kong-wah, JP (Deputy Chairman)
  - Hon LEE Cheuk-yan
  - Hon Martin LEE Chu-ming, SC, JP
  - Dr Hon David LI Kwok-po, GBS, JP
  - Hon Margaret NG
  - Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
  - Hon James TO Kun-sun
  - Hon CHAN Kam-lam, SBS, JP
  - Hon SIN Chung-kai, JP
  - Dr Hon Philip WONG Yu-hong, GBS
  - Hon Jasper TSANG Yok-sing, GBS, JP
  - Hon Howard YOUNG, SBS, JP
  - Hon Tommy CHEUNG Yu-yan, JP
  - Hon Audrey EU Yuet-mee, SC, JP
  - Hon Vincent FANG Kang, JP
  - Hon LI Kwok-ying, MH
  - Hon Jeffrey LAM Kin-fung, SBS, JP
  - Hon Andrew LEUNG Kwan-yuen, SBS, JP
  - Hon LEUNG Kwok-hung
  - Hon CHEUNG Hok-ming, SBS, JP
  - Hon WONG Ting-kwong, BBS
  - Hon Ronny TONG Ka-wah, SC

- Members absent** :
- Hon Albert HO Chun-yan
  - Dr Hon LUI Ming-wah, SBS, JP
  - Hon Bernard CHAN, JP

Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP  
Hon Emily LAU Wai-hing, JP  
Hon Timothy FOK Tsun-ting, GBS, JP  
Dr Hon Joseph LEE Kok-long  
Hon Daniel LAM Wai-keung, BBS, JP  
Hon Alan LEONG Kah-kit, SC  
Hon CHIM Pui-chung  
Hon Patrick LAU Sau-shing, SBS, JP

**Public Officers :** Mr Stanley YING  
**attending** Permanent Secretary for Security

Miss S H CHEUNG  
Deputy Secretary for Security

Mrs Apollonia LIU  
Principal Assistant Secretary for Security

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

Ms Sherman CHAN  
Senior Assistant Law Draftsman

Ms Frances HUI  
Senior Government Counsel

**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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## **I. Meeting with the Administration**

The Bills Committee deliberated (index of proceedings attached at **Annex**).

2. The Bills Committee requested the Administration –

Definition of “premises”

- (a) to explain whether an authorisation for surveillance would cover authorisation for the use of surveillance devices outside the territory of Hong Kong and the use of such devices within Hong Kong on targets outside Hong Kong;

Definition of “public place”

- (b) to consider amending “to the extent that they are intended” in the definition of “public place” along the lines of “used or intended for use” or “for the purpose of”;

Definition of “serious crime”

- (c) to provide a list of offences with a maximum penalty of over three years and below seven years of imprisonment;

Definition of “surveillance device”

- (d) consider providing in the Bill that a regulation made under clause 62 in respect of the inclusion of new types of surveillance devices was subject to positive vetting by the Legislative Council;
- (e) to consider whether sub-clause (c) in the definition of “surveillance device” should be set out in a separate provision in the Bill;
- (f) to consider excluding surveillance devices involving the implantation or swallowing of such devices into a human body from the Bill;

Definition of “transmitted”

- (g) to consider whether there was a need for the definition of “transmitted”;

Definition of “Type 2 surveillance”

- (h) to consider substituting “to the extent that” with “which” in the definition of “Type 2 surveillance” and amending sub-clause (a)(i) in the same definition along the lines of -

“(i) who –

(A) is a person privy to the conversation or the activity; or

(B) is a person who is expected to be able to hear the conversation or to see the activity; or”;

- (i) to consider prohibiting the use of optical surveillance device on targets in bathrooms or changing rooms;

Clause 2(2)

- (j) to consider improving the drafting of clause 2(2) in respect of “in relation to any activity”;

Clause 2(4)

- (k) to explain the difference between the covert surveillance of electronic mails and their interception;
- (l) to consider the need for clause 2(4)(b); and

Others

- (m) to advise whether the more stringent authorisation would be required when more than one type of authorisation was required;

3. The Bills Committee requested Senior Assistant Legal Adviser 1 to find out if there were examples in local legislation where the drafting was similar to that in sub-clause (c) of the definition of “surveillance device”.

**II. Date of next meeting**

4. The Bills Committee noted that the next meeting had been scheduled for Friday, 2 June 2006 at 8:30 am to continue discussion with the Administration.

5. The meeting ended at 6:30 pm.

**Proceedings of meeting of the  
Bills Committee on  
Interception of Communications and Surveillance Bill  
on Thursday, 1 June 2006, at 2:30 pm  
in the Chamber of the Legislative Council Building**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
000000 – 000343	Chairman	Opening remarks	
000344 – 001807	Admin Chairman Hon James TO	Examination of the definition of “premises” and “prescribed authorization” in clause 2; meaning of the term “conveyance” in the definition; whether an authorisation for surveillance would cover authorization for the use of surveillance devices outside the territory of Hong Kong and the use of such devices within Hong Kong on targets outside Hong Kong	<b>Admin to explain whether an authorisation for surveillance would cover authorisation for the use of surveillance devices outside the territory of Hong Kong and the use of such devices within Hong Kong on targets outside Hong Kong</b>
001808 – 002003	Chairman Admin Hon James TO Hon Margaret NG	Examination of the definition of “protected product” in clause 2; whether transcribed product was a type of protected product	
002004 – 003922	Chairman Admin Hon Margaret NG Hon Ronny TONG Hon James TO Hon LI Kwok-ying	Examination of the definition of “public place” and “relevant authority” in clause 2; whether there was a need to amend “to the extent that they are intended” in the definition of “public place”; meaning of premises in the definition of “public place”	<b>Admin to consider amending “to the extent that they are intended” in the definition of “public place” along the lines of “used or intended for use” or “for the purpose of”</b>
003923 – 004103	Chairman Hon James TO Admin	Examination of the definition of “relevant purpose” and “relevant requirement” in clause 2	

Time marker	Speaker	Subject(s)	Action Required
004104 – 005438	Chairman Hon Margaret NG Hon Ronny TONG Hon James TO Admin	Examination of the definition of “serious crime” in clause 2; threshold for “serious crime”; whether offences under the Public Order Ordinance, the Official Secrets Ordinance and political offences should be excluded from the definition of “serious crime”; list of offences with a maximum penalty of over three years and below seven years of imprisonment	<b>Admin to provide a list of offences with a maximum penalty of over three years and below seven years of imprisonment</b>
005439 – 012459	Chairman Admin Hon James TO Hon Margaret NG Hon Mrs Selina CHOW Hon Ronny TONG Hon Audrey EU SALA1	Examination of the definition of “surveillance device”; whether the regulation referred to in sub-clause (b) of the definition of “surveillance device” should be subject to positive vetting; whether sub-clause (c) in the definition of “surveillance device” should be set out in a separate provision in the Bill; whether there were examples in local legislation where the drafting was similar to that in sub-clause (c) of the definition of “surveillance device”	<b>Admin to consider providing in the Bill that a regulation made under clause 62 in respect of the inclusion of new types of surveillance devices was subject to positive vetting by the Legislative Council; to consider whether sub-clause (c) in the definition of “surveillance device” should be set out in a separate provision in the Bill; SALA1 to identify local legislation with provisions similar to that in sub-clause (c) of the definition of “surveillance device”</b>

Time marker	Speaker	Subject(s)	Action Required
012500 – 013801	Hon Margaret NG Hon LAU Kong-wah Hon CHAN Kam-lam Chairman Hon Mrs Selina CHOW Hon James TO Hon Ronny TONG	Progress of scrutiny of the Bill; whether there was a need to draw up contingency plans; review of the progress of scrutiny of the Bill at the meeting on 16 June 2006	
013802 – 014843	Hon James TO Chairman Admin	Type of authorisation required for interception involving the use of surveillance device	<b>Admin to advise whether the more stringent authorisation would be required when more than one type of authorisation was required</b>
014844 – 015447	Chairman Hon James TO Admin	Examination of the definition of “surveillance product” in clause 2; meaning of “material”, “obtained” and “copy” in the definition	
015448 – 020052	Chairman Hon James TO Admin	Examination of the definition of “telecommunications interception” in clause 2	
020053 – 020120	Chairman	Examination of the definition of “telecommunications service” and “telecommunications system” in clause 2	
020121 – 020815	Hon Ronny TONG Hon Mrs Selina CHOW Hon James TO Chairman Admin	Examination of the definition of “tracking device” in clause 2; reasons for including the term “electronic” in the definition	
Break			
021540 – 021949	Chairman Hon James TO Admin Hon Margaret NG Hon Mrs Selina CHOW	Meaning of “status of any object” in the definition of “tracking device”	

Time marker	Speaker	Subject(s)	Action Required
021950 – 022237	Hon Margaret NG Chairman	Examination of the definition of “transmitted” in clause 2	<b>Admin to consider whether there was a need for the definition of “transmitted”</b>
022238 – 022439	Hon LEUNG Kwok-hung Chairman	Whether there was a need to invite representatives from the Australian government to explain similar legislation in Australia	
022440 – 023334	Hon James TO Hon Mrs Selina CHOW Hon Howard YOUNG Chairman Admin	Meaning and scope of “status of any object” in the definition of “tracking device”	
023335 – 032249	Chairman Hon Margaret NG Hon James TO Hon LI Kwok-ying Hon Audrey EU Hon Ronny TONG Hon LEUNG Kwok-hung Admin	Examination of the definition of “Type 1 surveillance” and “Type 2 surveillance”; drafting of the definition of “Type 2 surveillance”; difference between the persons referred to sub-clause (a)(i)(A) and (B) of the definition of “Type 2 surveillance”; substituting “to the extent that” with “which” in the definition of “Type 2 surveillance” and amending sub-clause (a)(i) in the definition along the lines of “(i) who – (A) is a person privy to the conversation or the activity; or (B) is a person who is expected to be able to hear the conversation or to see the activity; or”; prohibiting the use of optical surveillance device on targets in bathrooms or changing rooms; excluding devices involving the implantation or swallowing of such devices into a human body from the Bill	<b>Admin to consider substituting “to the extent that” with “which” in the definition of “Type 2 surveillance” and simplifying the drafting of sub-clause (a)(i) in the same definition; to consider prohibiting the use of optical surveillance device on targets in bathrooms or changing rooms; to consider excluding surveillance devices involving the implantation or swallowing of such devices into a human body from the Bill</b>



<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
032250 – 033405	Chairman Admin Hon Margaret NG Hon LEUNG Kwok-hung Hon Ronny TONG	Examination of clause 2(2); meaning of “activity” in the definition; drafting of clause 2(2)	<b>Admin to consider improving the drafting of clause 2(2) in respect of “in relation to any activity”</b>
033406 – 033829	Chairman Admin Hon Ronny TONG	Examination of clause 2(3); examination of issues relating to legal professional privilege at a later stage	
033830 – 040320	Chairman Hon James TO Hon Margaret NG Hon Ronny TONG Hon LEUNG Kwok-hung Hon Margaret NG Admin	Examination of clause 2(4); difference between the covert surveillance of electronic mails and their interception; meaning of the term “transmitted” in clause 2(4)(a) and (b)	<b>Admin to explain the difference between the covert surveillance of electronic mails and their interception; to consider the need for clause 2(4)(b)</b>
040321 – 040350	Chairman	Date of next meeting	