

## **NOTE FOR ESTABLISHMENT SUBCOMMITTEE OF FINANCE COMMITTEE**

### **Supplementary Information on Financial and Staffing Arrangements for the Implementation of the Interception of Communications and Surveillance Bill**

#### **PURPOSE**

In considering EC(2006-07)9 on the staffing proposals for the Judiciary and the new Secretariat for the Commissioner on Interception of Communications and Surveillance at the Establishment Subcommittee on 14 June 2006, Members asked the Administration to provide more details on the financial and staffing arrangements for implementing the new regime for the regulation of interception of communications and covert surveillance under the Interception of Communications and Surveillance Bill (the Bill), i.e. –

- (a) whether additional resources would be provided to the Judiciary to implement the new regime;
- (b) how the resources would be deployed to the Judiciary; and
- (c) whether the Secretariat of the Commissioner for Interception of Communications and Surveillance (the Commissioner) would be part of the Judiciary.

#### **BACKGROUND**

2. As explained in paper EC(2006-07)9, the implementation of the new regime entails additional manpower in the Judiciary as well as the establishment of a secretariat, with 17 civil service posts, for the Commissioner who will be appointed as the independent oversight authority.

3. In this regard, the Administration has proposed to create two posts of Judge of the Court of First Instance (CFI) of the High Court in the Judiciary to cover the impact on judicial resources arising from (i) the appointment of three to

six Panel Judges for considering applications for judge's authorisation and (ii) the appointment of the Commissioner (if a serving judge is appointed) as the oversight authority under the new regime. Three additional non-directorate posts of supporting staff will also be created in the Judiciary to support the Panel Judges.

#### **ADDITIONAL RESOURCES FOR THE JUDICIARY**

4. To cope with the impact on existing judicial resources arising from the implementation of the new regime, the Administration has proposed to create under the establishment of Head 80 – Judiciary two additional posts of CFI Judge and three non-directorate posts of supporting staff for the Panel Judges. The Administration will provide additional provision under Head 80 for funding the above posts. The Judiciary considers this acceptable.

#### **FLEXIBILITY IN RESOURCE DEPLOYMENT FOR JUDICIARY**

5. As explained in EC(2006-07)9, one of the two proposed CFI Judge posts is to meet the additional resources demand of the Judiciary in the event that a serving judge is appointed the Commissioner. Following consultation with the Judiciary, the Administration considers that putting this additional post and the related financial provision under Head 80 – the Judiciary has the advantage of providing the Judiciary with maximum flexibility in the deployment of resources. If the first Commissioner is a retired judge, the additional post under the Judiciary will be left unfilled temporarily, and appropriate virement will be made to the Secretariat to pay for the remuneration and other related expenses of the Commissioner. If, following the appointment of serving judge(s) as the Commissioner, a retired judge is appointed the Commissioner in future, given the security of tenure of serving judges, it would not be possible for the Judiciary to delete or freeze the CFI Judge post correspondingly. In such instances, the Judiciary will retain the post for normal judicial work. It is expected that, as and when this situation arises, the Judiciary would have the benefit of experience of the operation of the new regime, and would, having regard to the caseload of the Panel Judges, make appropriate virement to the Secretariat to pay for the Commissioner's remuneration and other related expenses.

#### **COMMISSIONER AS AN INDEPENDENT OVERSIGHT AUTHORITY**

6. It is also relevant to note that although the Commissioner could be a serving judge, he/she would not operate as part of the Judiciary in carrying out his/her function under the new regime and would not be regarded as a court or a member of a court. In response to the Bills Committee's suggestion, the Administration has consulted the Judiciary, who has agreed not to assign the Commissioner (if he/she is a serving judge) to hear any cases during the term of his/her appointment as Commissioner.

7. In terms of organisation, the Secretariat for the Commissioner would **not** be part of the Judiciary but would operate independently and be accountable to the Commissioner. To enhance the independence of the Secretariat, a new Head of Expenditure is proposed to be created for the Secretariat with its Secretary (a Principal Executive Officer), being the most senior civil servant within the establishment, as the controlling officer. All these arrangements will help ensure that the Commissioner is organisationally and functionally separate from other parts of the Administration as well as the Judiciary. We consider that this is conducive to instilling public confidence in the work of the Commissioner.

#### **ADDITIONAL FUNDING FOR 2006-07 AND BEYOND**

8. We have not made provision in the 2006-07 Estimates to meet the costs for implementing the new regime, as our current legislative proposals were not finalised at the time of preparing the 2006-07 draft Estimates. Subject to Members' approval of our proposals, we shall seek to change the 2006-07 Estimates under delegated authority, as appropriate, to provide the necessary funding to the Secretariat as well as the Judiciary to cope with the requirements for the remaining period of 2006-07. The full-year requirements of the Secretariat and the Judiciary will be reflected in the draft Estimates for 2007-08 and beyond to meet the long-term resource requirements of the new regime.

#### **CONCLUSION**

9. The proposed financial and staffing arrangements would provide the Judiciary with sufficient necessary resources to cope with the impact of the additional responsibilities arising from the implementation of the new regime under the Bill, and allow the Judiciary to have maximum flexibility in resources deployment. They would facilitate the smooth implementation of the new regime without affecting normal judicial work. They will in no way affect the independence of the Judiciary.

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