

**For information
on 7 July 2006**

Legislative Council Panel on Security

**Subcommittee on Review of Existing Statutory Provisions
on Search and Seizure of Journalistic Material**

**Administration's response to the issues raised by Members
at the Subcommittee meeting on 4 May 2006**

Purpose

This paper provides supplementary information requested by Members at the Subcommittee meeting on 4 May 2006. The supplementary information requested is as follows –

- (a) details on the appeal channel provided for under section 31(b) of the Hong Kong Court of Final Appeal Ordinance (CFAO) (Cap. 484); and
- (b) promulgation details on the proposed arrangement of submitting applications to the court under Part XII of the Interpretation and General Clauses Ordinance (Cap. 1).

Section 31(b) of the CFAO

2. Section 31 of the CFAO reads –

“An appeal shall, at the discretion of the Court, lie to the Court in any criminal cause or matter, at the instance of any party to the proceedings, from -

- (a) any final decision of the Court of Appeal;*
- (b) any final decision of the Court of First Instance (not being a verdict or finding of a jury) from which no appeal lies to the Court of Appeal.”*

3. The Court of Appeal in the Sing Tao Daily case confirmed that an application for a search warrant was a criminal cause or mater. As such, section 31 of the CFAO applies.

4. Under section 31 of the CFAO an appeal to the Court of Final Appeal can only be initiated by a party to the proceedings from any final decision of the Court of Appeal or Court of First Instance from which no appeal lies to the Court of Appeal. A person from whom material is seized and who has made an application for return of the material under section 87 of Cap. 1 may be considered as a party to the proceedings, and as no appeal lies to the Court of Appeal, he may appeal under section 31(b) of the CFAO to the Court of Final Appeal. See the Court of Appeal comments in the Sing Tao Daily case at paras. 36(8) and (9).

Promulgation of the proposed arrangement

5. In the Administration's paper titled "*Review / Appeal Mechanism*" (LC Paper No. CB(2)1858/05-06(01)) dated 4 May 2006, we propose that in future, all applications under Part XII of Cap. 1 should be made to the District Court, unless the circumstances clearly warrant seeking a decision from a higher judicial authority, i.e. the Court of First Instance, at the outset. We will promulgate the details by way of a circular to all the law enforcement agencies involved. The main principles to be reflected in the circular are set out at the **Annex**. We shall arrange for posting of the information contained in the circular on the website of the Security Bureau for public information.

Security Bureau
Department of Justice
June 2006

**Protection of Journalistic Materials
Main Principles to be reflected in the Circular**

Tier One: production order, *inter partes* hearing, application to District Court

Tier One deals with general cases which are less serious and sensitive. An officer may apply for a production order, requiring the person who possesses the journalistic material to produce it or to give the officer access to it. An application for the order shall be made *inter partes*, i.e. with both sides present. The party from whom the journalistic material is required may make his case before the court before a decision is made as to whether the application should be approved. All applications made under Tier One shall be submitted to the DC.

Tier Two: (seize and seal) search warrant, *ex partes hearing*, application to District Court or Court of First Instance

2. Tier Two provides that an officer may make an *ex parte* application for a warrant authorizing him to enter premises and to search for or seize journalistic material. Such applications shall be made to the District Court. Any journalistic material seized pursuant to the warrant has to be sealed. The person from whom the material was seized may make an *inter partes* application for the return of the material. Unless the judge is satisfied that it would be in the public interest that the material be made use of by the authorities, he shall order it to be immediately returned to the person from whom it was seized.

3. Only in exceptional circumstances, e.g. where there is an imminent risk of serious harm to life and limb, or when it involves cases of utmost sensitivity where confidentiality is of grave importance in the interests of the investigation (for example, serious corruption allegations against very senior government servants holding very sensitive posts), an officer may apply to the Court of First Instance. The specific advice of Department of Justice (DoJ) should be sought if officers consider it necessary to submit a case to the Court of First Instance, and such application shall not be made unless it has been approved by directorate officers of the law enforcement agencies concerned and the Prosecution Division of the DoJ respectively. This is to ensure that the decisions are made at a high level and that grounds for resorting to this course of action

are thoroughly considered and fully justified.

Tier Three: (seize and read) search warrant, *ex partes hearing*, application to District Court or Court of First Instance

4. If the circumstances so warrant, an officer may go for Tier Three, i.e. to make an *ex parte* application for a warrant and for the immediate use of the journalistic material seized. Applications made under this Tier should be made to the District Court, unless requirements in paragraph 3 above are satisfied.