

立法會
Legislative Council

LC Paper No. CB(2)582/11-12

Ref : CB2/PL/SE

Paper for the House Committee meeting on 16 December 2011

**Priority allocation of a debate slot
to the Chairman of the Panel on Security**

Purpose

This paper seeks the agreement of the House Committee to allocate a debate slot under Rule 14A(h) of the House Rules ("HR") to Hon James TO, Chairman of the Panel on Security ("the Panel"), for moving a motion for debate on the Annual Report 2010 to the Chief Executive by the Commissioner on Interception of Communications and Surveillance ("the Annual Report") at the Council meeting of 18 January 2012.

The Annual Report

2. The Interception of Communications and Surveillance Ordinance (Cap. 589) ("the Ordinance"), which came into force on 9 August 2006, provides for a statutory regime for the conduct of interception of communications and covert surveillance by the law enforcement agencies ("LEAs"). The Commissioner on Interception of Communications and Surveillance ("the Commissioner"), appointed by the Chief Executive ("CE") on the recommendation of the Chief Justice pursuant to section 39 of the Ordinance, is responsible for overseeing the compliance by LEAs with the relevant requirements of the Ordinance.

3. Under section 49 of the Ordinance, the Commissioner shall, for each report period, submit a report to CE, who shall cause a copy of the report to be laid on the table of the Legislative Council ("LegCo"). On 30 June 2011, the Commissioner submitted the Annual Report to CE and the Annual Report was laid on the table of LegCo on 30 November 2011.

Recommendation to amend the Ordinance

4. At its meetings on 5 and 6 December 2011, the Panel discussed the results of the Administration's study of matters raised in the Annual Report. Members note that 1 490 prescribed authorizations have been issued in 2010 and LEAs have reported seven cases of non-compliance or irregularities to the Commissioner in the same year. The numbers of reported non-compliance cases are five, four and 12 in 2007, 2008 and 2009 respectively. Members also note that a number of recommendations made by the Commissioner since 2007 relating to the practice and procedures of LEAs have been implemented by the Administration through revision of the Code of Practice issued by the Secretary for Security to LEAs or amendment of the relevant forms used by LEAs. However, members are concerned that although the recommendation to amend the Ordinance to expressly authorize the Commissioner and his staff to examine and listen to interception products, and to inspect and listen to products of covert surveillance as and when necessary has been made by the Commissioner since 2009 and members have called on the Administration to adopt the proposal for two years, no action has been taken by the Administration to implement the recommendation. Members share the Commissioner's concern that as most cases of non-compliance or irregularity have been reported by LEAs on a voluntary basis, expressly providing the Commissioner or his staff with the power to listen to interception products will enable the discovery of contravention of the Ordinance by LEAs and provide the necessary deterrence against any malpractice or concealment by LEAs. Members call on the Administration to introduce amendments to the Ordinance as soon as possible and examine how the Commissioner's request for listening to interception products could be addressed in the interim.

5. While the Administration has no objection in principle to the Commissioner's proposal of empowering him to listen to interception products, members note that such power is not granted to similar supervisory authorities in other common law jurisdictions. Members further note that the Administration is currently undertaking a comprehensive review of the Ordinance and consultation is being made with key stakeholders, including the legal professional bodies and panel judges. The Administration will consider the recommendation in the context of the review. The Administration has undertaken to report to the Panel on its proposals to amend the Ordinance in the first half of 2012 after the review.

Proposed motion debate

6. Although the Panel has scheduled to further discuss the results of the Administration's study of matters raised in the Annual Report at its next regular meeting on 3 January 2012, members of the Panel consider that in view of the wide public concern about the Annual Report, an opportunity should be provided for all LegCo Members to express their views on it and for the Administration to provide its response. The Panel has agreed that the approval of the House Committee should be sought for priority allocation of a debate slot to its Panel Chairman for moving a motion at a Council meeting for debate on the Annual Report. Members have also agreed that the motion debate should be held at a Council meeting after they have received the Administration's written response to their questions raised at the Panel meetings. As the requisite information is expected to be received before the next regular Panel meeting on 3 January 2012, the Panel proposes that the motion debate be held at the Council meeting of 18 January 2012.

7. Under HR 14A(h), committees and subcommittees of the Council may make a request for priority allocation of debate slots and such request shall be put forward to the House Committee for consideration on a case-by-case basis. Should the House Committee accede to such a request, the debate slot shall not be counted as the mover's own slot.

8. Pursuant to HR 14A(h), the Panel seeks the agreement of the House Committee for priority allocation of a debate slot to its Chairman for moving a motion for debate on the Annual Report at the Council meeting of 18 January 2012. The wording of the motion is in the **Appendix**.

Advice sought

9. The agreement of the House Committee is sought for the Panel's request in paragraph 8 above.

2012 年 1 月 18 日(星期三)
立法會會議席上

涂謹申議員就
"有關截取通訊及監察事務專員向行政長官
提交的 2010 年周年報告"
動議的議案

議案措辭

"本會察悉截取通訊及監察事務專員向行政長官提交的 2010 年
周年報告。"

(Translation)

**Motion on
"Annual Report 2010 to the Chief Executive by the Commissioner on
Interception of Communications and Surveillance"
to be moved by Hon James TO
at the Legislative Council meeting
of Wednesday, 18 January 2012**

Wording of the Motion

"That this Council notes the Annual Report 2010 to the Chief Executive by
the Commissioner on Interception of Communications and Surveillance."