

立法會
Legislative Council

LC Paper No. CB(2)661/15-16
(These minutes have been seen
by the Administration)

Ref : CB2/BC/1/14

Bills Committee on
Interception of Communications and Surveillance (Amendment) Bill 2015

Minutes of meeting
held on Tuesday, 15 December 2015, at 2:30 pm
in Conference Room 2 of the Legislative Council Complex

- Members present** : Hon IP Kwok-him, GBS, JP (Chairman)
Hon James TO Kun-sun
Hon CHAN Kam-lam, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Cyd HO Sau-lan, JP
Hon CHAN Kin-por, BBS, JP
Hon WONG Kwok-kin, SBS
Hon Paul TSE Wai-chun, JP
Hon WONG Yuk-man
Hon Claudia MO
Hon NG Leung-sing, SBS, JP
Hon Frankie YICK Chi-ming, JP
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK, JP
Hon KWOK Wai-keung
Hon Dennis KWOK
Hon SIN Chung-kai, SBS, JP
Dr Hon Elizabeth QUAT, JP
Dr Hon CHIANG Lai-wan, JP
Hon CHUNG Kwok-pan
Hon Christopher CHUNG Shu-kun, BBS, MH, JP
Hon Tony TSE Wai-chuen, BBS
- Members absent** : Hon YIU Si-wing, BBS (Deputy Chairman)
Hon LEUNG Che-cheung, BBS, MH, JP

**Public Officers : Item I
attending**

Ms Mimi LEE Mei-mei, JP
Deputy Secretary for Security 1

Mr Andrew TSANG Yue-tung
Principal Assistant Secretary for Security E

Mr CHIU Man-hin
Assistant Secretary for Security E2

Mr Godfrey KAN Ka-fai
Senior Assistant Solicitor General
Department of Justice

Ms Monica LAW Man-yuen
Senior Assistant Law Draftsman (II)2
Department of Justice

**Clerk in : Miss Betty MA
attendance Chief Council Secretary (2) 1**

**Staff in : Mr Timothy TSO
attendance Senior Assistant Legal Adviser 1**

Mr Raymond LAM
Senior Council Secretary (2) 7

Miss Lulu YEUNG
Clerical Assistant (2) 1

I. Meeting with the Administration

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

2. Members requested the Administration to -

- (a) confirm whether a reviewing officer who was of the opinion under section 57 of the Interception of Communications and Surveillance Ordinance ("ICSO") (Cap. 589) that the ground

for discontinuance of a prescribed authorization existed had to give instructions in writing to the officer-in-charge of the covert operation concerned to discontinue the operation;

- (b) explain, in relation to section 58(1) of ICSO, whether "arrests" outside the territory of Hong Kong included the imposition of compulsory measures by Mainland law enforcement agencies as well as investigation at a specified place and at a specified time by the Central Commission for Discipline Inspection of the Communist Party of China; and
- (c) explain whether information subject to legal professional privilege covered legal advice provided by a lawyer of other jurisdictions and whether law enforcement agencies would report to panel judges any change in circumstances involving the likelihood of obtaining any legal advice provided by a lawyer of other jurisdictions.

II. Any other business

- 3. Members agreed that the next meeting would be held on 4 January 2016 at 2:30 pm to continue discussion with the Administration.
- 4. There being no other business, the meeting ended at 4:28 pm.

Council Business Division 2
Legislative Council Secretariat
14 January 2016

**Proceedings of meeting of the Bills Committee on
Interception of Communications and Surveillance (Amendment) Bill 2015
held on Tuesday, 15 December 2015, at 2:30 pm
in Conference Room 2 of the Legislative Council Complex**

| Time marker | Speaker(s) | Subject(s) | Action Required |
|--------------------|---|---|------------------------|
| 000000 - 000648 | Chairman | Opening remarks | |
| 000649 - 002413 | Chairman Admin Mr James TO Mr SIN Chung-kai Ms Claudia MO | <p>Discussion of paragraphs 43 to 44 of the Annex to the Administration's response to issues raised at the Bills Committee meetings on 6, 12, 23 October and 2 November 2015 as well as letter dated 4 November 2015 from Mr James TO (LC Paper No. CB(2)214/15-16(01)).</p> <p>Concerns of Mr James TO, Mr SIN Chung-kai and Ms Claudia MO regarding whether the scope of the term "cause" in section 57(1) of the Interception of Communications and Surveillance Ordinance ("ICSO") (Cap. 589) covered the meaning of "order".</p> <p>Administration's response that the term "cause" carried a much broader meaning than "order".</p> <p>Mr James TO's question about the Administration's position regarding his proposed amendment of the term "cause" in section 57(1) of ICSO as "order and cause".</p> <p>Administration's response that the term "cause" reflected sufficiently and holistically the obligations imposed on the reviewing officer to inform the officer-in-charge of the covert operation to make arrangements to discontinue the covert operation concerned. The Administration did not consider it necessary to amend the term.</p> <p>Mr James TO's concern and the Administration's response regarding whether a reviewing officer who was of the opinion that the ground for discontinuance of a prescribed authorization existed had to give instructions in writing to the officer-in-charge of the covert operation concerned to discontinue the operation.</p> | |

| Time marker | Speaker(s) | Subject(s) | Action Required |
|------------------------|--|--|---------------------|
| | | <p>The Administration was requested to confirm whether a reviewing officer who was of the opinion under section 57 of ICSO that the ground for discontinuance of a prescribed authorization existed had to give instructions in writing to the officer-in-charge of the covert operation concerned to discontinue the operation.</p> | <p>Admin</p> |
| <p>002414 - 010941</p> | <p>Chairman Admin Mr James TO SALA1 Mr Dennis KWOK Ms Claudia MO</p> | <p>Discussion of paragraphs 45 to 47 of the Annex to the Administration's paper.</p> <p>Concerns of Mr James TO and views of SALA1 regarding whether section 58 of ICSO was applicable to arrests outside the territory of Hong Kong.</p> <p>Concerns of Mr James TO, Ms Claudia MO and the Administration's response regarding whether "arrests" outside the territory of Hong Kong included being detained for investigation at a specified place and at a specified time by the Mainland authorities such as Central Commission for Discipline Inspection of the Communist Party of China.</p> <p>Concerns of Mr Dennis KWOK, Mr James TO and Ms Claudia MO and the Administration's response regarding whether information subject to legal professional privilege ("LPP") covered the seeking of legal advice from a lawyer of other jurisdictions.</p> <p>Mr James TO's views that the coverage of section 58 of ICSO should be expanded to cover scenarios other than arrest, such as search operations carried out by law enforcement officers at the office or home of the subject of interception or covert surveillance.</p> <p>Administration's response that -</p> <p>(a) the Administration considered it appropriate to adopt "arrest" as a milestone stage at which law enforcement agencies ("LEAs") should be required to make a report to the panel judge on the likelihood of obtaining LPP information. However, there are procedures to be</p> | |

| Time marker | Speaker(s) | Subject(s) | Action Required |
|-------------|------------|---|---------------------|
| | | <p>followed at different stages of an operation that provides safeguards for LPP information in scenarios other than arrest;</p> <p>(b) Mr TO's proposal represented a major departure from the legislative intent of section 58 of ICSO;</p> <p>(c) when making an application for a prescribed authorization, an LEA applicant was already required to assess the likelihood of obtaining LPP information. If there was subsequently a material change in circumstances resulting in a heightened likelihood of obtaining LPP information, the LEA concerned had to report this assessment to the relevant authority so that the latter could consider whether the prescribed authorization should be revoked or allowed to continue, and in the latter case, whether any additional conditions or new conditions should be imposed; and</p> <p>(d) the proposed section 58A would require LEAs to report any material change in circumstances, including any heightened likelihood of obtaining LPP information, even though the subject was not arrested.</p> <p>The Administration was requested to -</p> <p>(a) explain, in relation to section 58(1) of ICSO, whether "arrests" outside the territory of Hong Kong included being detained for investigation at a specified place and at a specified time by Mainland authorities such as the Central Commission for Discipline Inspection of the Communist Party of China; and</p> <p>(b) explain whether information subject to LPP covered legal advice provided by a lawyer of other jurisdictions and whether LEAs would report to panel judges any change in circumstances involving the likelihood of obtaining any legal advice provided by a lawyer of other jurisdictions.</p> | <p>Admin</p> |

| Time marker | Speaker(s) | Subject(s) | Action Required |
|--------------------|--|---|------------------------|
| 010942 - 012628 | Chairman Admin Mr Dennis KWOK Mr James TO | <p>Discussion of the Administration's response to Committee stage amendments ("CSAs") proposed by Mr Dennis KWOK (Appendix (II)(a) to LC Paper No. CB(2)443/15-16(01)).</p> <p>Administration's explanation of its response to CSAs proposed by Mr Dennis KWOK that -</p> <p>(a) the CSAs proposed by Mr Dennis KWOK were related to applications for a court order under section 103 of the Criminal Procedure Ordinance (Cap. 221) to obtain information or data held by a telecommunications service provider or any other person. The operation to be authorized would become overt when the order was granted by a magistrate or Court of First Instance. Such operation was by nature different from covert operations regulated by ICSO;</p> <p>(b) in examining whether a Member's proposed CSAs were within the scope of a bill, the Administration was advised to look at the long title of the bill, the explanatory memorandum, the Legislative Council Brief on the bill and contents of the bill; and</p> <p>(c) while the view of the Department of Justice was being sought on whether Mr Dennis KWOK's proposed CSAs were within the scope of the Bill, the Administration considered Mr Dennis KWOK's proposed CSAs unnecessary.</p> <p>Mr Dennis KWOK's question regarding whether a court warrant was required for LEAs when obtaining information stored in the servers of Internet service providers ("ISPs").</p> <p>Administration's response that the arrangements for LEAs applying for court warrants to obtain documents or information from ISPs were substantially the same as those for applying for court warrants to obtain documents or information from other organizations and individuals.</p> | |

| Time marker | Speaker(s) | Subject(s) | Action Required |
|-----------------|---|--|-----------------|
| 012629 - 015251 | Chairman Mr James TO Admin Ms Claudia MO | <p>Discussion of the Administration's response to Mr James TO's proposed CSAs to clause 3 (paragraphs 7 to 10 of Appendix (II)(b) to LC Paper No. CB(2)443/15-16(01)).</p> <p>Mr James TO's view that the requirements for the granting of a prescribed authorization under ICSO were more stringent than those of a search warrant because -</p> <ul style="list-style-type: none"> (a) an application to a panel judge for a prescribed authorization under ICSO could only be made with strong justifications and where other less intrusive means of investigation were considered not available or inappropriate; and (b) an application for a search warrant was determined by a magistrate whereas an application for a prescribed authorization was determined by a panel judge who was a judge of the High Court and more experienced than a magistrate. <p>Administration's response that -</p> <ul style="list-style-type: none"> (a) as explained in the Administration's response to issues raised at the meetings on 9 April and 2 May 2015 (LC Paper No. CB(2)1391/14-15(01)), LEAs had to observe stringent requirements when applying for search warrants from magistrates. Apart from providing justifications, LEAs were required to take an oath before the magistrate; (b) the Administration had full confidence in all levels of judges and judicial officers in discharging their respective duties; and (c) the execution of a search warrant was an operation conducted in an overt manner, which was different from a covert operation under ICSO. <p>Ms Claudia MO's view that the Administration should provide under ICSO a safety net similar to that provided under the</p> | |

| Time marker | Speaker(s) | Subject(s) | Action Required |
|-----------------|----------------------------------|--|-----------------|
| | | <p>CSAs to the Copyright (Amendment) Bill 2014.</p> <p>Administration's response that the Copyright (Amendment) Bill 2014 was unrelated to ICSO, which regulated interception and covert surveillance conducted by LEAs.</p> <p>Concerns of Mr James TO and Ms Claudia MO regarding whether an application for prescribed authorization could be made under ICSO for the investigation of obtaining access to computer with criminal or dishonest intent.</p> <p>Administration's response that -</p> <p>(a) ICSO was applicable to interception and covert surveillance operations in relation to serious crime punishable by an imprisonment term of not less than seven years and three years respectively; and</p> <p>(b) the offence of obtaining access to computer with criminal or dishonest intent under section 161 of the Crimes Ordinance (Cap. 200) was punishable by an imprisonment term of five years.</p> | |
| 015252 - 015813 | Chairman Mr James TO Admin | <p>Discussion of the Administration's response to Mr James TO's proposed CSAs to clause 19 (paragraphs 11 to 14 of Appendix (II)(b) to LC Paper No. CB(2)443/15-16(01)).</p> <p>Mr James TO's view that the imposition of criminal sanctions for destruction of protected product required to be provided to the Commissioner of Interception of Communications and Surveillance ("the Commissioner") for his checking would serve as an effective deterrent against non-compliance with the ICSO requirements.</p> <p>Administration's response that -</p> <p>(a) law enforcement officers were already under a statutory duty to comply with the relevant requirements, and their compliance with ICSO and the Code of Practice was subject to very stringent oversight by the Commissioner;</p> | |

| Time marker | Speaker(s) | Subject(s) | Action Required |
|--------------------|-------------------------|---|------------------------|
| | | <p>(b) officers in default were subject to disciplinary actions. In very serious cases with wilful intent, an officer might even be prosecuted for the common law offence of misconduct in public office; and</p> <p>(c) as ICSO did not provide for any criminal sanctions, Mr James TO's proposal to introduce criminal sanctions into ICSO, if implemented, would represent a major departure from the existing regulatory regime.</p> | |
| 015814 - 015940 | Chairman Mr James TO | Date of next meeting | |

Council Business Division 2
Legislative Council Secretariat
14 January 2016