

香港特別行政區政府
保安局



The Government of the
Hong Kong Special Administrative Region
Security Bureau

香港添馬添美道 2 號

2 Tim Mei Avenue, Tamar, Hong Kong

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來函檔號 Your Ref.:

電話號碼 TEL. NO.: 2810 2433

傳真號碼 FAX. NO.: 2877 0636

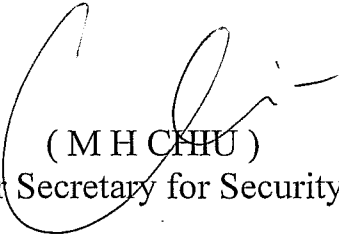
25 September 2015

Miss Betty MA
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Miss MA,

In relation to the issues raised by Members of the Bills Committee on Interception of Communications and Surveillance (Amendment) Bill 2015 at the meeting on 14 July 2015, the Government's response is at Annex.

Yours sincerely,


(M H CHIU)
for Secretary for Security

Encl (4 pages)

c.c.

Department of Justice

(Attn: Mr Godfrey KAN, Senior Assistant Solicitor General
Ms Monica LAW, Senior Assistant Law Draftsman)

**Interception of Communications
and Surveillance (Amendment) Bill 2015
("the Bill")**

**Response to issues raised
at the Bills Committee's meeting held on 14 July 2015**

(I) Clause-by-clause Examination

Section 2: Interpretation

- *To review the drafting of the Chinese version of the proposed new paragraph (b) in clause 3(1), (2), (3) and (4) of the Bill to enhance clarity.*

In view of Members' comments, we have reconsidered the Chinese text of the proposed paragraph (b) of the definition of "device retrieval warrant" and the Chinese texts of similar provisions in clause 3 of the Bill. Both the English text and the Chinese text of the relevant provisions have been carefully compared to see if there is any possible discrepancy between the two texts. We are of the view that both texts effectively convey the same meaning. In particular, we consider that the expressions "被局部撤銷的器材取出手令", "被局部撤銷的緊急授權", "被局部撤銷的行政授權" and "被局部撤銷的法官授權" in the Chinese text have adequately reflected the meanings of their equivalent expressions in the English text, namely "a device retrieval warrant that has been partially revoked", "an emergency authorization that has been partially revoked", "an executive authorization that has been partially revoked" and "a judge's authorization that has been partially revoked". As such, we do not consider it necessary to make any change to the Chinese texts of the proposed paragraph (b).

(II) Other Matters

- *To provide information on the range of time for the destruction of intercept products of different LEAs and to advise whether different LEAs had adopted different policies regarding the range of time; if so, the reasons for that.*

2. As explained in the Administration's response in follow-up with the meeting on 29 June 2015 ("Last Response"), the originals of intercept products are normally destroyed by the specified law enforcement agencies ("LEAs") within one month from interception. All LEAs concerned adopt the same practice in this respect.

- *To advise how LEAs and the Commissioner will handle the communications intercepted which are of a language that they are not proficient in and explain how a third party who is neither a law enforcement officer nor an officer designated by the Commissioner can be authorised to provide translation services.*

3. As pointed out in the Last Response, the actual monitoring in interception operations is done by dedicated units of LEAs. LEAs have put in place a mechanism and relevant arrangements for handling different operational scenarios, including the encounter of a language that they are not proficient in. Under section 40 of the Interpretation and General Clauses Ordinance (Cap. 1) ("IGCO"), where any Ordinance confers upon any person power to do or enforce the doing of any act or thing, all such powers shall be deemed to be also conferred as are reasonably necessary to enable the person to do or enforce the doing of the act or thing. Under section 4 of the Interception of Communications and Surveillance Ordinance ("ICSO"), no public officer shall, directly or indirectly (whether through any other person or otherwise), carry out any interception unless the interception is carried out pursuant to a prescribed authorization. Section 30 of the ICSO also provides that a prescribed authorization also authorizes the undertaking of conduct that is necessary for and incidental to the carrying out of what is authorized to be carried out under the authorization, including the provision of assistance for the execution of the authorization. Hence, a law enforcement officer may listen to or monitor the contents of an intercepted communication himself or with the assistance of a translator who is not an officer of the LEA provided that it is done in accordance with the terms and conditions of the prescribed authorization.

4. As for the Commissioner, although he would be able to require LEAs to provide protected products under the revised section 53(1)(a), section 59(1)(b) provides that protected products should be protected against unauthorized or accidental access, processing or other use. As indicated by the former Commissioner, Mr WOO Kwok-hing, although the Commissioner would have the power to check the intercept and surveillance products, the products would continue to be kept and preserved in LEAs' premises in order to minimise the security risk. Examination of such products, if required by the Commissioner, will be carried out at LEAs' premises. Paragraph 144 of the Code of Practice requires LEAs to provide as much assistance to the Commissioner as possible. As such, where so required by the Commissioner, LEAs could arrange for such translation services as are necessary for the performance of his functions in a manner that is similar to that explained in paragraph 3 above.

- ***To request LEAs to maintain statistics for the coming three months on the respective numbers of approved and rejected applications for search warrants to obtain information from Internet service providers (“ISPs”) and provide such statistics to the Bills Committee and to convey this request to LEAs.***

5. Applications for court warrants to obtain documents or information from any organisations and individuals is part of LEAs' routine work and does not fall within the scope of the ICSO or the Bill.

6. In the investigation of crime, LEAs have regard to the circumstances of each case and adopt various ways to collect evidence and conduct investigations. This involves different procedures, such as reaching different persons in anticipation of obtaining information relevant to a case, interviews with witnesses and statement-taking, etc. Where there is such a need, LEAs may apply to the Court in accordance with the relevant laws for a search warrant authorizing the search of any premises and the seizure of documents and materials found in the premises. The Court which is independent of the Executive is the authority for considering such applications and issuing the search warrants sought by LEAs. LEAs have to observe stringent requirements when applying for search warrants. Apart from completing an “Information for Search Warrant” form and a “Search Warrant” form, LEAs are required to swear an oath before the magistrate to confirm that there are reasons to suspect that items of value to an investigation are being kept in a building or a place. In addition, LEAs have to clearly set out the justifications for applying for a search warrant as well as the scope of the search warrant being sought when making an application, which shall include the offences involved in the case, locations of the premises and so on. At the same time, LEAs have to answer any questions raised by the Magistrates who may impose conditions

when issuing a warrant. Once issued, the search warrant shall be sealed by the Court and the relevant particulars will be put on record. LEAs will then have to act in strict compliance with the search warrant, including any conditions imposed by the magistrate.

7. Regarding the execution of a search warrant, LEAs generally have to produce the warrant to the occupier of the premises and, where necessary, a copy of the search warrant shall also be made available. Even though the application itself is unknown to the occupier, the operation authorized by the warrant will become overt soon after the warrant is issued by the magistrate. In any related prosecution, the search warrant will generally be disclosed by the prosecution. If the defence considers that there is any impropriety in the issue of the warrant, he may apply to the court to have the evidence obtained under the warrant excluded from the trial, or, if the impropriety is serious enough, to have the proceedings permanently stayed.

8. The arrangements for LEAs applying for court warrants to obtain documents or information from ISPs are substantially the same as those for applying for court warrants to obtain documents or information from other persons. LEAs do not maintain statistical figures on obtaining documents or information from any organisations, individuals or specific industries through application for court warrants.

9. Given the huge volume of cases handled daily by LEAs and the great variety in the nature and means of investigation, we understand LEAs' practical difficulties in maintaining statistical figures on each and every procedure taken in crime investigations, and to do so would make a disproportionate impact on their limited resources. That being the case, after discussion with LEAs concerned, we do not consider it feasible to devote part of the already limited resources to the compilation of the subject statistics.

**Security Bureau
September 2015**