

**For discussion  
on 2 April 2004**

**Legislative Council Panel on Security**  
**Review on Interception of Communications**

**Purpose**

This paper briefs Members on the review currently undertaken by the Administration on interception of communications.

**Background**

2. Interception of communications is currently regulated under the Telecommunications Ordinance (Cap 106) and Post Office Ordinance (Cap 98). Under section 33 of the Telecommunications Ordinance, the Chief Executive may, if he considers that the public interest so requires, order that any message brought for transmission shall not be transmitted, or any message brought for transmission, or transmitted or being transmitted, shall be intercepted or disclosed to the Government. Under section 13 of the Post Office Ordinance, the Chief Secretary may grant a warrant authorizing the Postmaster General to open and delay any postal packet.

3. In 1997, the then Legislative Council passed a private Member's bill which was subsequently enacted as the Interception of Communications Ordinance (IOCO). The IOCO was drawn up without prior consultation with the law enforcement agencies and passed without scrutiny by a Bills Committee. In view of the difficulties that the Ordinance would pose to law enforcement, the Chief Executive in Council decided on 8 July 1997 that it should not be brought into operation pending a review<sup>1</sup>.

4. In late 1999, the Administration set up an inter-departmental working group to undertake a comprehensive review of the existing law, regulatory regime and related matters in relation to interception of communications.

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<sup>1</sup> Section 1(2) of the IOCO provides that the Ordinance shall come into operation on a day to be appointed by the Chief Executive by notice in the Gazette.

## Considerations

5. In undertaking the comprehensive review, the working group has been taking into account a number of matters including those described in the ensuing paragraphs –

- (a) Report by the Law Reform Commission (LRC) – In December 1996, the LRC published a report entitled “*Privacy: Regulating the Interception of Communications*”. The report contains recommendations on a regulatory framework, the need for a supervisory authority and related matters on interception of communications.
- (b) White Bill on Interception of Communications – In February 1997, the Government published a White Bill entitled “*Interception of Communications Bill*” for a one-month consultation. All the views expressed in submissions made during the consultation period are being taken into consideration in the course of the review.
- (c) IOCO – After enactment of the IOCO, the Administration has undertaken a careful assessment of its implications. The Administration considers that implementation of the Ordinance in its current form will pose serious operational difficulties to law enforcement agencies and will be prejudicial to the security of Hong Kong.
- (d) Overseas practices and latest developments – As part of the review, the working group examines the relevant legislation and regulatory framework in other jurisdictions. We note that a diversity of models are adopted by various overseas authorities and each has to be fully analysed having regard to our local circumstances, developments and needs. In addition, after the “911” incident some overseas countries including the UK and US have introduced legislative amendments in this area. This is an important and significant development which the working group is examining.

## Way Forward

6. The review is still ongoing, and has taken longer than anticipated due to a number of factors. First, the review covers highly technical matters. The rapid development of communications technologies over the past decade or so has added to

the complexity of the task. During the review we also need to take into full account the significant legislative amendments that have been introduced in other jurisdictions since the “911” incident. Moreover, the Security Bureau has had to give a higher priority to other matters in 2002 and 2003, including the implementation of the requirements imposed by the United Nations Security Council resolution on combating terrorism.

7. The Administration will continue to carry out the review, having regard to the considerations set out in paragraph 5 above. The Administration will consult the public on the results of its review in due course.

**Security Bureau**  
**March 2004**