

## **Legislative Council Panel on Security**

### **Interception of Communications and Covert Surveillance**

#### **Proposed Integrity Checking on Panel Judges**

##### **Purpose**

In response to Members' request at the meeting on 2 March 2006, this paper sets out the Judiciary's position on the Administration's proposal to conduct integrity checking on panel judges authorising interception of communications and the more intrusive covert surveillance under the proposed legislative scheme on the subject ("the proposed scheme").

##### **Existing System of Integrity Checking on Judges and Judicial Officers**

2. All Judges and Judicial Officers ("JJOs") of various levels of courts, except those of the Court of Final Appeal ("CFA"), are subject to appointment checking. Such checking consists of Police criminal record checks and ICAC record checks prior to their appointment. This is carried out as part of the recruitment procedure before a prospective candidate is offered appointment as a JJO. Such checking is in line with the first level (i.e. the lowest level) of checking as set out at Annex A to the Administration's information paper for the Panel on 7 March 2006, entitled "Interception of Communications and Covert Surveillance: Pre-Appointment Checking" (LC Paper No. CB(2) 1331/05-06(02)) ("the Administration's 7.3.06 paper").

3. As for the Chief Justice and Permanent Judges of the CFA, they are subject to normal checking, i.e. the second level of checking as set out in the Administration's 7.3.06 paper. The rationale is that, the position of the Chief Justice, as the head of the Judiciary, involves regular access to information classified as confidential. In addition to the Chief Justice, Permanent Judges of the CFA are also subject to normal checking since they may act as the Chief Justice in the latter's absence.

## **The Administration's Proposal**

4. Under the proposed scheme, panel judges are appointed by the Chief Executive on the recommendation of the Chief Justice. The Administration's proposal is that before the appointment by the Chief Executive, the panel judges would undergo extended checking, i.e. the third level (i.e. the highest level) of checking as set out in the Administration's 7.3.06 paper, as they will have access to highly sensitive materials.

## **The Judiciary's Position**

5. Under the proposed scheme, the Chief Justice's recommendation of panel judges to the Chief Executive would only be based on professional criteria.

6. As regards the Administration's proposal to conduct extended checking on panel judges prior to their appointment by the Chief Executive on the recommendation of the Chief Justice, the Administration has given every assurance to the Judiciary that extended checking does not involve any political vetting. The Judiciary understands that the Administration's position is that any person with access to highly sensitive materials has to undergo extended checking. The Judiciary is in no position to comment on or question the Administration's position in relation to extended checking. In the circumstances, the Judiciary has not objected to the Administration's proposed extended checking of panel judges.

7. The Judiciary's position in paragraphs 5 and 6 above has been conveyed to the Administration. It is noted that the Administration has already incorporated the Judiciary's position in the Administration's 7.3.06 paper for the Panel meeting.

Judiciary Administration  
March 2006