For information
19 April 2006 **SB Ref: ICSB 5/06**

Bills Committee on Interception of Communications and Surveillance Bill

Response to issues raised at the meetings of 3, 6 and 12 April 2006

Introduction

This paper sets out the Administration's response to a number of issues raised at the Bills Committee meetings on 3, 6 and 12 April 2006.

Response to issues raised

Issue 1 : Public Security

- ***To explain the difference between "public security" and "public safety".***

2. "Public safety" (variously rendered as "公眾安全", "公共安全" or "公共安寧" in Chinese) is not a concept used in our Bill. However, it is a term referred to in a number of provisions of the International Covenant on Civil and Political Rights (ICCPR) as one of the permissible grounds for restricting the exercise of rights and freedoms. There is no single authoritative interpretation of the term, but reference may be drawn from the literature on ICCPR.

3. For example, in Manfred Nowak's *UN Covenant on Civil and Political Rights – CCPR Commentary* (1993), when commenting on the permissible restrictions on the freedom of association and trade unions on the ground of public safety, it was pointed out that "*the protected public safety interest …… refers to those threats to the security of persons (i.e., their lives, physical integrity or health) or things that do not assume the proportions of a threat to the State.*"

4. The term "public safety" refers generally to protection against

dangers or threats to the security or safety of persons (i.e. their lives, physical integrity or health) or things. For example, ensuring the safety of building works is a public safety issue; so is the prevention of landslides.

5. The term "public security"（公共安全）used in the Bill corresponds to that used in Article 30 of the Basic Law[1]. Although the Chinese wording of this term may be the same as that for the term "public safety" in some instances, it necessarily has a broader meaning than that of the term "public safety". "Public security" refers generally to the collective security of a community, and not the safety of individuals per se. For example, terrorism is a public security issue.

- ***To advise what acts would threaten the public security of Hong Kong but would not be a crime in Hong Kong, and whether all of them warrant interception / covert surveillance; if not, how the threshold should be determined.***

6. The question turns on the interpretation of the term "public security". As the Administration has previously explained, there are difficulties in giving this and similar terms an exhaustive definition. This view is shared by some other jurisdictions. In his book *National Security and the European Convention on Human Rights* (2000), Iain Cameron has pointed out that "*[The European Commission and Court of Human Rights] are reluctant to give abstract definitions of Convention terms, and this has also been the case with national security. Indeed, the Commission has expressed the view that national security cannot be defined exhaustively.*[2]"

7. Nonetheless, some overseas studies regarding the coverage of the term national security may be instructive. For example, a report of the European Committee on Crime Problems[3] provides some useful pointers on the general coverage of the term "security". It lists some examples of threats to national security recognized by the European

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[1] Article 30 of the Basic Law reads, inter alia, that "…except that the relevant authorities may inspect communication in accordance with legal procedures to meet the needs of ***public security*** or of investigation into criminal offences" (emphasis added). The corresponding Chinese version is "除因***公共安全***和追查刑事犯罪的需要，由有關機關依照法律程序對通訊進行檢查外…".

[2] *Esbester v. UK,* No. 18601/91, 18 EHRR CD 72 (1993). In this case, the European Commission of Human Rights stated that the term "national security" is not amenable to exhaustive definition.

[3] CDPC(2003)09 Addendum IV, Strasbourg, 4 July 2003.

Court of Human Rights and these include espionage, terrorism and incitement to / approval of terrorism. The report also considers that the following matters may be considered threats to national security : external threats to the economic well-being of the state; money laundering on a scale likely to undermine the banking and monetary system; interference with electronic data relating to defence, foreign affairs or other matters affecting the vital interests of the State; and organized crime on a scale that may affect the security or well-being of the public or a substantial section of it. More importantly, the report emphasizes that these are only examples and not an exhaustive list. It also notes that what amounts to threats to national security will change from time to time and will vary from country to country.

8. Some sample cases involving threats to public security which may not necessarily be a crime in Hong Kong are at **Annex A**. Given the need to protect the source of intelligence and other sensitive details, the description is necessarily broad-brushed. Nonetheless, we believe that these examples should provide some indication of some of the issues that may be involved.

9. The Senior Assistant Legal Adviser to the Bills Committee has asked whether the Administration considers the drafting approach in the definition of "terrorist act" in the United Nations (Anti-Terrorism Measures) Ordinance would assist the concern of Members for a clear definition of the term "public security". Given that "public security" is necessarily wider in scope than "terrorist act", however, we do not consider that the latter definition, whether in substance or approach, would be an ideal reference.

10. The Administration remains of the view that a legally exact positive definition of the term "public security" would be very difficult. However, we are working actively to see if we could come up with an exclusion provision for the term in the Bill to make clear that the public security ground would not be used for political purposes, nor for suppressing the guaranteed right to freedom of expression or peaceful advocacy or the other rights guaranteed under Article 27 of the Basic Law[4].

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[4] Article 27 of the Basic Law reads – "Hong Kong residents shall have freedom of speech, of the press and of publication; freedom of association, of assembly, of procession and of demonstration; and the

11. On actual operation, unlike the situation in respect of criminal investigation, it is not possible to express in quantitative terms the threshold beyond which interception or covert surveillance operation for the purpose of protection of public security would be allowed under the Bill. However, in accordance with Clause 3 of the Bill, in his consideration of applications under this limb, the approving authority would have to apply the tests of proportionality and hence necessity in deciding whether the proposed operation (be that interception of communications or covert surveillance) is proportionate to the purpose sought to be furthered by carrying out the operation. The proportionality test requires the balancing of the immediacy and gravity of the threat to public security and the likely value and relevance of the information likely to be obtained against the intrusiveness of the operation; as well as considering whether the purpose can reasonably be furthered by other less intrusive means. We believe that with the full range of safeguards at every stage of the covert operations provided for under the Bill, there are sufficient guarantees under our proposed regime governing the applications for and granting of authorizations on public security grounds.

- ***To provide the number of cases of interception / covert surveillance, broken down by crime and public security, in past three years, and examples of issues involved in past public security cases.***

12. On 25 February 2006, we provided Members with the number of cases of interception of communications and covert surveillance in the last three months of 2005. We have also undertaken to count, assuming the implementation of the regime under the Bill, the number of cases for the three months starting 20 February 2006. We believe these should provide useful background information for the purpose of considering the Bill.

13. The provision of any further breakdowns of the numbers would need to be considered with great care in order not to inadvertently disclose the operational details and/or capabilities of the law enforcement agencies (LEAs) to the benefit of criminals. Balancing this against the need for increased transparency, we have already provided in the Bill that the Commissioner on Interception of Communications and Surveillance

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right and freedom to form and join trade unions, and to strike."

(the Commissioner) should in his annual report set out a list of information covering various issues such as the number of prescribed authorizations issued, the number of renewals, the number of applications refused, the major categories of offences and a summary of reviews ***by interception of communications and covert surveillance respectively***. (For details, please see clause 47 of the Bill.)

14. Given the sensitivity of public security cases, it would not be appropriate for the statistics to be subdivided into public security and criminal cases. We understand that comparable jurisdictions like the United Kingdom (UK) and Australia also do not disclose such breakdowns. In the United States (US), although there is a statutory requirement for the statistics to be published in respect of authorizations given by the judges of the Foreign Intelligence Surveillance Court (FISC), the statutory requirement in this aspect is not as comprehensive as what we propose to include in the Commissioner's report in the Bill, in the following ways –

- while we propose to report statistics on both judicially and executively authorized cases, the US statutory requirement under the Foreign Intelligence Surveillance Act (FISA) covers judicially authorized cases, and not executively authorized cases;

- there are no statutory requirements to publish statistics regarding authorizations under section 1802 of the FISA given by the President without court orders in respect of operations that are directed at communications between foreign powers;

- there are also no statutory requirements to publish statistics on interception of wire, oral and electronic communications involving a consenting party, which under US law does not require judicial authorization.

In addition, there are no statutory requirements in the US to differentiate between physical search and electronic surveillance for the statistics published in respect of the FISC.

15. Indeed, in the UK, the Interception of Communications Commissioner specifically pointed out in his 2004 Report that while there was no serious risk in the publication of the total number of

warrants issued by the Home Secretary (as the total included not only warrants issued in the interest of national security, but also for the prevention and detection of serious crime), he was of the view that the disclosure of the number of warrants issued by the Foreign Secretary and the Secretary of State for Northern Ireland (i.e. foreign intelligence and national security cases) would be prejudicial to the public interest. In particular, the Interception Commissioner pointed out that the views expressed in respect of the disclosure of number of warrants issued in the 1957 Report of the Committee of Privy Councillors appointed to inquire into the interception of communications ("the Birkett Report")[5] should still apply. The relevant paragraph of the Birkett Report is reproduced below –

> *"121. We are strongly of the opinion that it would be wrong for figures to be disclosed by the Secretary of State at regular or irregular intervals in the future. It would greatly aid the operation of agencies hostile to the State if they were able to estimate even approximately the extent of the interceptions of communications for security purposes."*

We believe that in Hong Kong's context, the general underlying principle of not disclosing the breakdown of the number of cases of interception / covert surveillance by crime and public security as outlined above also applies. In this regard, we note that in its recent report on the regulation of covert surveillance, the Hong Kong Law Reform Commission has also not recommended the provision of breakdowns in respect of the grounds for the issue of warrants in the annual reports to be furnished by the supervisory authority to the Legislative Council. The Commission envisages that the material contained in the annual reports will consist only of aggregate statistics and information.

16. The sample cases involving threats to public security are at **Annex A**.

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[5] The Privy Councillors were appointed on 29 June 1957 "to consider and report upon the exercise by the Secretary of State of the executive power to intercept communications and, in particular, under what authority, to what extent and for what purposes this power has been exercised and to what use information so obtained has been put; and to recommend whether, how and subject to what safeguards, this power should be exercised and in what circumstances information obtained by such means should be properly used or disclosed." Their report was presented to the UK Parliament by the Prime Minister in October 1957.

Issue 2 : To explain the meaning of the term "act judicially" as used in clause 4 of Schedule 2 of the Bill, and whether the corresponding Chinese term should be "以司法方式行事" instead of "以司法身分行事".

17. Clause 4 of Schedule 2 of the Bill provides that "(i)n performing any of his functions under the Ordinance, a panel judge shall act judicially and have the same powers, protection and immunities as a judge of the Court of First Instance has in relation to proceedings in that Court, although he is for all purposes not regarded as a court or a member of a court."

18. As explained at the meeting of the Bills Committee on 12 April 2006, the requirement for the panel judge to "act judicially" means that the judge would have to exercise his power without bias and fairly weigh the competing considerations of privacy on the one hand and law enforcement on the other, and to consider the applications submitted to him on the strength of evidence that is placed before him, rather than acting as an administrator and basing his decision on administrative and policy considerations.

19. The expression "acting judicially" appears in section 38 of the Evidence Ordinance (Cap. 8), section 3 of the Oaths and Declarations Ordinance (Cap. 11) and section 289 of the Companies Ordinance (Cap. 32). The corresponding Chinese expression is "以司法人員身分行事" in Cap. 8 and Cap. 11, and "以司法官員身分行事" in Cap. 32. Cap. 11 gives the expression "person acting judicially" ("以司法人員身分行事的人") a specific meaning for the purposes of that Ordinance and the expression is defined in section 2 of that Ordinance to mean a tribunal, commission or other person having by law power to receive evidence on oath. On the other hand, the expression "acting judicially" is not defined in Cap. 8 or Cap. 32.

20. Separately, there is also a reference to the Chief Executive (CE) in Council having to act in an administrative or executive capacity, and not "in a judicial or quasi-judicial capacity" ("以司法或類似司法身分處事"), in considering appeals and objections in section 64(4) of the Interpretation and General Clauses Ordinance (Cap. 1).

21. We have taken reference from the above provisions in coming up with the Chinese term "以司法身分行事" in the Bill.

Issue 3 : Panel judges

- ***To consider whether the extended checking results should be made available to the Chief Justice (CJ) so that he could give his opinion on any risks identified in respect of the judge concerned for CE's consideration in respect of the appointment.***

22. As previously explained, the results of extended checking are provided to the appointment authority. It would be up to the appointment authority to decide whether to disclose the results of the checking to other parties. In the case of the panel judges, since CE would be the appointment authority, it would be appropriate to provide results of the extended checking to him. In the unlikely event that the checking indicates any risk factor, the CE would inform CJ as CJ would be responsible for making recommendations to CE for the appointment of panel judges.

23. The relevant extracts of papers presented previously to the Security Panel and the Bills Committee on the checking of panel judges are extracted at **Annex B** for Members' ease of reference.

- ***To explain the criteria adopted in determining whether an appointee could pass an extended checking.***

24. For extended checking, the prospective appointee will be requested to provide information on his personal particulars, educational background, social activities, employment history and family members. He will also be asked to nominate two referees. The checking will comprise interviews with the prospective appointee, his referees and supervisors as well as record checks. The checking **does not involve** any form of political vetting, and no investigation will be conducted on the political beliefs or affiliations of a prospective appointee. Please see paragraphs 7 to 12 of our previous paper on the mechanism of checking provided to the Security Panel (at **Annex C**) for other relevant information.

25. The aim of the checking is to assess, on the basis of the facts obtained, any possible risk in appointing a candidate to a position involving much sensitive information. As such, there is no pre-determined single set of criteria for determining whether any

appointee would "pass" the extended checking. Indeed, it would not be correct to describe someone as having "passed" or "failed" the checking. It is up to the appointment authority, having regard to results of the checking **and** circumstances of the proposed appointment, to decide if the appointment should proceed.

- ***To explain the circumstances where an application for authorization would be considered by a panel judge at a place other than within the court precincts.***

26. Clause 1(2) of Schedule 2 of the Bill provides that without prejudice to subsection (1) (which provides that any application shall be considered in private), "the application may, where the panel judge so directs, be considered at any place other than within the court precincts."

27. Furthermore, clause 3(3) provides express procedures regarding the keeping of documents and records related to the panel judge's consideration of such applications, as follows -

> "(3) Where any documents or records are kept in a packet under subsection (1) –
>
> (*a*) the packet is to be kept in a secure place specified by a panel judge;
>
> (*b*) the packet may not be opened, and the documents or records may not be removed from the packet, except pursuant to an order of a panel judge made for the purpose of performing any of his functions under this Ordinance; and
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> (*c*) the packet, and the documents or records, may not be destroyed except pursuant to an order of a panel judge."

28. The effect of clauses 1(2) and 3(3) of Schedule 2 is that the power to direct an application to be considered at a place other than within the court precincts and to determine the place that the documents from such applications are to be kept rests squarely with the panel judge. In no circumstances would the LEAs be in a position to "direct" the judge in any way in this regard.

29. The situation in which we envisage applications might be considered outside the court precincts would be exceptional. It would

arise where there is an urgent need to invite the panel judge's consideration of an application outside office hours, in which case the panel judge may consider it appropriate for the LEA's application to be delivered to the panel judge's residence for his/her consideration. If this special arrangement is indeed to be invoked, we envisage that the judge would, having regard to the circumstances of individual cases, make suitable arrangements for the safekeeping of the documents and materials concerned.

30. Schedule 2 of the Bill has been drafted in consultation with the Judiciary, and we are in discussion with them on the detailed procedural operations. We are confident that suitable arrangements would be devised to allow for maximum flexibility to the panel judges in the logistical arrangements for their consideration of such cases while ensuring the safety in handling the documents and materials concerned. Where necessary, additional resources would be provided to the Judiciary for the purpose.

Security Bureau
April 2006

<u>Annex A</u>

Sample cases on threats to public security

I. Counter-proliferation of strategic commodities

Intelligence suggested that a person living in Hong Kong and belonging to a clandestine network of Country X, was actively involved in smuggling strategic commodities into that country for its military development programme. The person had close connections with companies suspected to be involved in weapon proliferation activities for that country. However, the intelligence did not suggest that an offence would necessarily be committed in Hong Kong.

2. As a member of the international community, Hong Kong has an obligation to contribute to the effort of combating the proliferation of strategic commodities, which would affect global security. In addition, failure to cooperate with our counterparts in this crucial area might result in our counterparts not sharing with us other intelligence that might more directly impact on Hong Kong's public security.

3. The person's activities in Hong Kong therefore had to be kept under close surveillance on public security grounds. Covert operations were carried out on him.

II. Movement of terrorists

4. Intelligence suggested that a few members of an international terrorist organization were visiting Hong Kong. No criminal element was directly involved, but there was reasonable suspicion that the individuals could be planning some terrorist activities in the region. We were requested by an overseas counterpart to help monitor the activities of the persons concerned during their stay in Hong Kong.

5. It is in the interest of Hong Kong's own public security to contribute towards the effort to combat international terrorism and to take preventive actions when terrorists show some form of interest in Hong Kong, in order to minimize any possible threat to Hong Kong itself. It is also important to maintain close cooperation with our counterparts to ensure that they would continue to share intelligence that might impinge on Hong Kong's public security. There were therefore strong

justifications for monitoring the movement of the suspected terrorists whilst in Hong Kong. Interception of communications and covert surveillance operations were conducted on them and their local contact while they were in Hong Kong.

III. Human trafficking

6. Large-scale human trafficking has become a serious public security concern of many countries. At issue is not just the trafficking of the people concerned. The people being trafficked are subject to much risk during the hazardous journeys and continued exploitation after their entry into the destination countries. Their presence is also a potential source of social conflicts in the recipient communities. Moreover, such trafficking is usually underpinned by organized criminal syndicates operating on a transnational basis. Fed by the profits from human trafficking, these syndicates branch into various serious crimes affecting all sectors of the community. If not kept under control, their activities could be a destabilizing force. There is therefore consensus in the international community that combating human trafficking is a public security issue that should be accorded priority.

7. Given these considerations, Hong Kong has been participating in efforts to combat international human trafficking so as to ensure that human trafficking would continue to be contained and would not become a major public security threat to Hong Kong. In some cases, the intelligence gathered may not pinpoint any person committing an offence in Hong Kong as such. For example, it is unlikely to be an offence in Hong Kong to make arrangements in Hong Kong for the trafficking of people from Country X to Country Y through Country Z. However, it would be irresponsible for Hong Kong to turn a blind eye to such activities.

8. In some cases, the intelligence gathered also leads to criminals being caught in Hong Kong. For example, the covert monitoring of a human trafficking syndicate specializing in smuggling people from Country X to the Country Y by containers yielded intelligence that this time the human cargo would be shipped to Country Y via Hong Kong. Acting on further intelligence gathered through covert operations, the Police intercepted a container loaded with 12 illegal migrants and arrested 20 persons, including the mastermind, involved in the criminal plot. It was also revealed that the mastermind was active in other forms of illicit activities such as smuggling of vehicles, cigarettes, and arranging illegal entry into a South American country.

IV. Drugs for missiles

9. The Federal Bureau of Investigation of the United States (US) requested the Hong Kong Police to provide assistance to foil an attempt to exchange drugs for four Stinger anti-aircraft missiles and cash. The exchange would be made outside Hong Kong (with the drugs to be smuggled from Pakistan to the US and the Stinger missiles to be provided outside Hong Kong). The Police mounted a covert surveillance operation on the suspects when they were in Hong Kong. The suspects were later arrested for extradition to the US.

10. Given the extradition procedures involved, the case details have been reported in public. However, it is obviously incumbent on us to act on similar cases even if no criminal offence in Hong Kong is immediately involved. Failure to do so could make Hong Kong an attractive base for terrorists and transnational criminal elements, ultimately affecting our own public security.

V. Preventing violent disturbance

11. A person with a track record of organizing violent attacks on law enforcement agents, causing criminal damage and generally causing disturbance during international conferences, had arrived in Hong Kong just prior to the holding of a major international conference here. Although when she entered Hong Kong there was no evidence implicating her in any specific offence, intelligence indicated that she would organize some "radical action" resulting in considerable disturbance. It was therefore necessary to conduct covert operations on her.

Annex B

Interception of Communication and Surveillance Bill

Pre-Appointment Checking

Extract of paper SB Ref: ICSB 1/06

14. The Panel has discussed whether it would be appropriate to subject panel judges to extended checking. The Administration has advised that this is a standard operational arrangement applicable to those with wide access to sensitive information, and will apply to the judges, their support staff, the proposed Commissioner, and his support staff. Please also see paragraph 24 below.

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24. We have also explained to the Panel that in line with our established operational arrangement for safeguarding sensitive information, we will subject the panel judges, the Commissioner, and their respective staff to extended checking. Details that we have provided to the Panel are at **Annex A11**.

See Annex C

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Annex C

For information
7 March 2006

Legislative Council Panel on Security
Interception of Communications and Covert Surveillance
Pre-Appointment Checking

Introduction

At the meeting of the Panel on Security of the Legislative Council (LegCo) on 2 March 2006, Members requested the Administration to explain in greater detail the checking to be conducted on panel judges prior to their appointment under the Interception of Communications and Surveillance Bill (the Bill).

Standard Arrangements for Protecting Information

2. For the covert law enforcement operations under discussion, it is essential to have operational arrangements to protect the information about the operations and the materials collected from the operations, so as to minimise the risk of leakage of intelligence, operational details, personal information etc. Apart from measures to ensure the physical security of documents and products, we need to ensure that access to such information and materials is restricted to the minimum number of persons, and that there is as little risk as possible of any disclosure, from such persons, that is not in line with the purpose of the operation. To this end, it has been our operational practice to require all Government officers with access to protected information to go through checking.

3. This practice will continue for Government officers under our proposed regime for the covert operations in question. In line with this practice, and to ensure the continued integrity of the system, we intend to conduct similar checks on the panel judges, the oversight authority and their respective staff.

4. Checking is not a sign of distrust of the person. On the contrary, it is because a person is trusted that he or she is considered for appointment to the position of, say, a Principal Official, the Commissioner of Police, or a panel judge under our proposal. The purpose of the checking is to confirm that trust, and minimize any risks for the system, the information under protection, and the persons themselves.

5. The operational need for checking prospective appointees to the proposed panel (and the oversight authority and their staff) before their appointment, is separate from the questions of whether there should be a panel of judges or who should appoint them. For the above operational reasons, whoever appoints the judges to our proposed panel, we would need the judges to be checked to minimize the risk of disclosure of information and materials, on par with the LEA officers involved, the oversight authority and his staff. (Our separate paper "Interception of Communications and Covert Surveillance – Panel of Judges" reiterates our thinking behind the arrangements for the Chief Executive (CE) to appoint a panel of judges.)

6. The following provides background information on the practice of checking.

Background

7. It is a long-standing and standard arrangement for checks to be conducted to ascertain the risks, if any, that might be involved in the appointment of an individual to a certain position. It is a routine procedure for various Government appointments, including appointments to civil service posts and to certain advisory and statutory bodies. The need for and types of checking required will depend on the particular circumstances of each individual case and take into account, among other things, the level and type of information to which the prospective appointee may have access and other relevant factors such as the frequency with which he may have access to such information, and the degree of control he may have over such information. Given its nature, the checking is normally done at the end of the appointment process when the candidate is considered suitable in all other respects.

8. As pointed out at the Security Panel meeting on 2 March 2006, the subject of "Integrity Checking for Disciplined Forces" has been the subject of discussion of the Panel on Security. Copies of the relevant papers submitted by the Administration for the May 2004 Panel meeting on the subject are at **Annex A**. In response to the concerns of Members regarding the related issue of checking of persons to be appointed to advisory and statutory bodies, to be Justices of the Peace and Principal Officials, upon the request of Members, supplementary information was subsequently provided to Members (a copy of the subsequent information paper is at **Annex B**).

not attached

not attached

9. As can be seen from the Annexes, broadly speaking there are three levels of checking : appointment checking, normal checking and extended checking, with the last one being the most extensive. Extended checking is applicable to all people to be appointed to the most senior positions in the Government, e.g., Principal Officials and senior civil servants. It is also applicable to those who have access to very sensitive information. This is the checking that we have been doing for law enforcement officers with wide access to the more sensitive information arising from covert operations and will do for panel judges, the oversight authority, and their staff.

10. In extended checking, the prospective appointee will be requested to provide information on his personal particulars, educational background, social activities, employment history and family members. He will also be asked to nominate two referees. The checking will comprise interviews with the prospective appointee, his referees and supervisors as well as record checks. The checking is therefore much more thorough in order to help the appointment authority assess if there is any possible risk in appointing a candidate to a position involving much sensitive information. It **does not involve** any form of political vetting, and no investigation will be conducted on the political beliefs or affiliations of a prospective appointee.

11. Extended checking does not focus only on the "integrity" per se of the prospective appointee. There may well be factors unrelated to a person's personal "integrity" and beyond their control (for example, association of family members), that may expose them to a greater risk of, say, possible conflict of interests, than would otherwise be the case. In the case of the panel judges under discussion, there should not be doubts about their "integrity", but it is not inconceivable that a person is suitable to be a judge but circumstances are such that, without any reflection on his "integrity", it would not be appropriate for him to sit or continue to sit on the panel. Partly for this reason, and as mentioned in our previous papers, the Bill provides for CE to revoke the appointment of a panel judge on the Chief Justice's recommendation and for good cause.

12. We understand that at present, all Court of First Instance judges have been subject to criminal record checks and ICAC record checks prior to their appointment.

Position of the Judiciary

13. The Judiciary has stated its position on the subject as follows –

"The Judiciary's position is that under the proposed legislation, the Chief Justice's recommendation of panel judges to the Chief Executive would only be based on professional criteria. The Administration's proposal is that before the appointment by the Chief Executive, the panel judges would undergo integrity checking.

The Judiciary understands that any person with access to such highly sensitive materials has to undergo integrity checking and that there is no question that political vetting is involved. And the Judiciary has indicated to the Administration that it has no objection to its proposal."

Security Bureau
March 2006