

Comments on the Interception of Communications and Surveillance Bill

I appreciate very much that the Bills Committee arrange this session to listen to the views of the members of the public on this very important Bill.

Strengths of the Bill :-

1. I basically support the Bill which provides a legal basis for interception of communications and covert surveillance. The Bill is trying to strike a balance between the use of interception of communications and covert surveillance by the public officers and the protection of privacy. To prevent and detect serious crimes and protect public security is equally important as to protect privacy of the public.
2. The Bill sets out a clear regulatory framework for the public officers to follow when they carry out the work that may intrude the privacy of the citizens. It adopts a two-tier approach, i.e. the more intrusive and less intrusive operations. The former requires a judicial authorization and the latter an executive authorization.
3. The Bill provides a more comprehensive and unified regime than the current systems under section 33 of the Telecommunications Ordinance and the Law Enforcement (Covert Surveillance Procedures) Order.
4. The Bill also specifically provides that the information collected through the subject interception shall not be adduced as evidence other than as proof of the commission of a crime. It clearly sets out the admissibility of certain types of evidence. All these serves to save time and costs when the question of admissibility arises.

Areas to be improved :-

1. However, clear operation guidelines should be given to the front-line officers when interception of communication and covert surveillance are carried out.
2. Also, the power of appointment of the panel judges shall be given to the Chief Justice instead of the Chief Executive. It is of utmost importance. All judges

have passed the integrity check when they are appointed. Which judge should sit on which court or panel must be decided by the Chief Justice. If this power is given to the Chief Executive, I will be very concerned if the Chief Executive will pick only those conservative judges. Justice is to be done and seen to be done. I cannot accept any act that may or may be seen to prejudice the independence of the Judiciary. I wish the Government will re-consider whether the appointment of the panel judges be determined by the Chief Executive.

3. An authorization granted is valid for a period of 3 months. However, the Bill does not provide how many times an authorization can be renewed. Perhaps the Government may consider to impose a maximum number of times that an authorization can be renewed. Moreover, the Bill may set out some principles, rules or minimum requirements for a renewal application, e.g. further evidence be adduced and the result of surveillance so far taken be produced before a renewal is granted.
4. Although I see some advantages in the 2-tier authorization mechanism, I have some worries about the executive authorization. There is no doubting that the law enforcement officers will and should bear in mind their duty to combat crimes. But exactly because they are very mindful of their duty and eager to combat crimes, I will doubt if they will give regards to privacy of the public. In this aspect, perhaps the Bill should prescribe some more guidelines or lay down some requirements in respect of the executive authorization, or introduce a device that at some stage, an executive authorization case should also be subject to the scrutiny of the court.
5. There is no mechanism of appeal. On the one hand, for example, the Police Commissioner has the duty to review the compliance with the statutory requirements by the police. It is fair that the Commissioner of Police may be given the right to appeal against a decision of a panel judge in some circumstances.

Dated the 3rd day of April 2006.

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