

ITEM FOR FINANCE COMMITTEE

NEW HEAD “SECRETARIAT, COMMISSIONER ON INTERCEPTION OF COMMUNICATIONS AND SURVEILLANCE”

For the purpose of implementing the new regime for the regulation of interception of communications and covert surveillance after the passage of the Interception of Communications and Surveillance Bill, Members are invited to approve the following changes to the 2006-07 Estimates, with effect from the date of coming into force of the legislation –

- (a) creation of a new Head of Expenditure under the General Revenue Account entitled “Secretariat, Commissioner on Interception of Communications and Surveillance”, with the Secretary of the Secretariat as the controlling officer; and
- (b) creation of one Recurrent Account Subhead under this new Head of Expenditure.

PROBLEM

We need to fund the new institutional framework for implementing the new regime for the regulation of interception of communications and covert surveillance provided for under the Interception of Communications and Surveillance Bill (the Bill) after it comes into effect.

/PROPOSAL

PROPOSAL

2. We propose to create a new Head of Expenditure and one Recurrent Account Subhead under the General Revenue Account to account for the expenditure of the Secretariat, Commissioner on Interception of Communications and Surveillance (the Secretariat), with the Secretary of the Secretariat as the controlling officer (CO), with effect from the date of coming into force of the Bill.

JUSTIFICATION

New Institutional Framework

3. On 14 June 2006, the Establishment Subcommittee (ESC) of the Finance Committee (FC) endorsed, vide EC(2006-07)9, the proposed staffing structures of a new institutional framework to implement the new regime for the regulation of interception of communications and covert surveillance after the passage of the Bill. Under the proposed regime, the authority for authorising all interception of communications and the more intrusive covert surveillance operations would be vested in a member of a Panel of Judges, consisting of three to six judges of the Court of First Instance (CFI) of the High Court. Moreover, a Commissioner on Interception of Communications and Surveillance will be appointed as an independent oversight authority. The Commissioner is proposed to be a serving or retired judge not below the level of the Judge of the CFI of the High Court. The Chief Executive (CE) will make these appointments on the recommendation of the Chief Justice, Court of Final Appeal.

Detailed Proposal for Secretariat, Commissioner on Interception of Communications and Surveillance

4. The Commissioner plays a very important role in the new regime. Owing to the anticipated heavy workload and sensitive nature of his duties, a strong team of supporting staff is necessary to assist the Commissioner in the coordination work with the law enforcement agencies (LEAs) in order to ensure the smooth functioning of the review and complaint handling systems, and to coordinate the compilation of the annual reports to CE and other reports as required. Strong analytical support is also necessary to assist the Commissioner in assessing the compliance of LEAs in individual cases and making recommendations on the code of practice and arrangement of the LEAs on covert operations. On this basis, a Secretariat, staffed by one Principal Executive Officer and 16 non-directorate staff, would be set up to provide support to the Commissioner in his day-to-day operation. An organisation chart of the Secretariat is attached at Enclosure 1.

5. As the oversight authority, the Commissioner, together with the Secretariat, would function independently. We consider it appropriate for this independent position of the Commissioner to be reflected in the financial arrangement of his Secretariat. We propose to create a new Head of Expenditure for the Secretariat. The Secretariat will be under the overall direction of the Commissioner. The Secretary, being the most senior civil servant within the establishment, will be the CO. Although the Security Bureau will be responsible for the Secretariat's housekeeping matters, the Secretariat's operation will be separate and independent from that of the Bureau.

6. As our current legislative proposals were not finalised in late 2005, a definitive proposal on the resources requirements arising from the legislative proposals could not have been drawn up then. Hence, we have not made provision in the draft 2006-07 Estimates to meet the costs of the proposals. The recurrent expenditure for the new Head of Expenditure for the Secretariat will be provided under Subhead 000 Operational expenses. Details of the new Head presented in the Estimates format with supporting explanation are set out in Enclosure 2.

Encl. 2

FINANCIAL IMPLICATIONS

7. We estimate that the Secretariat will incur recurrent expenditure totalling about \$7.5 million in 2006-07. Subject to Members' approval of the proposal in the paper, the Administration will provide under delegated authority a total supplementary provision of \$7.5 million to the new Head and Subhead of Expenditure.

8. The above amount has not taken into account the remuneration of the Commissioner and other expenses associated with his/her appointment. If the Commissioner is a serving judge, his/her salary and related expenses will be paid out from Head 80 – Judiciary and additional resources will be provided to the Judiciary. If a retired judge is appointed the Commissioner, appropriate additional virement will be made to the Secretariat to pay for his/her remuneration and other related expenses. As the actual package of benefits to be offered to the appointee (should he/she be a retired judge) would need to be decided having regard to circumstances of the case, it is not possible for us to have an accurate estimate of the actual expenses to be incurred at this point of time. In any event, should the total supplementary provision for 2006-07 required for the Secretariat exceed our delegated authority of \$10 million as a result, we shall seek the approval of the FC accordingly. The full-year requirements of the Secretariat and the Judiciary will be reflected in the draft Estimates of 2007-08 and subsequent years.

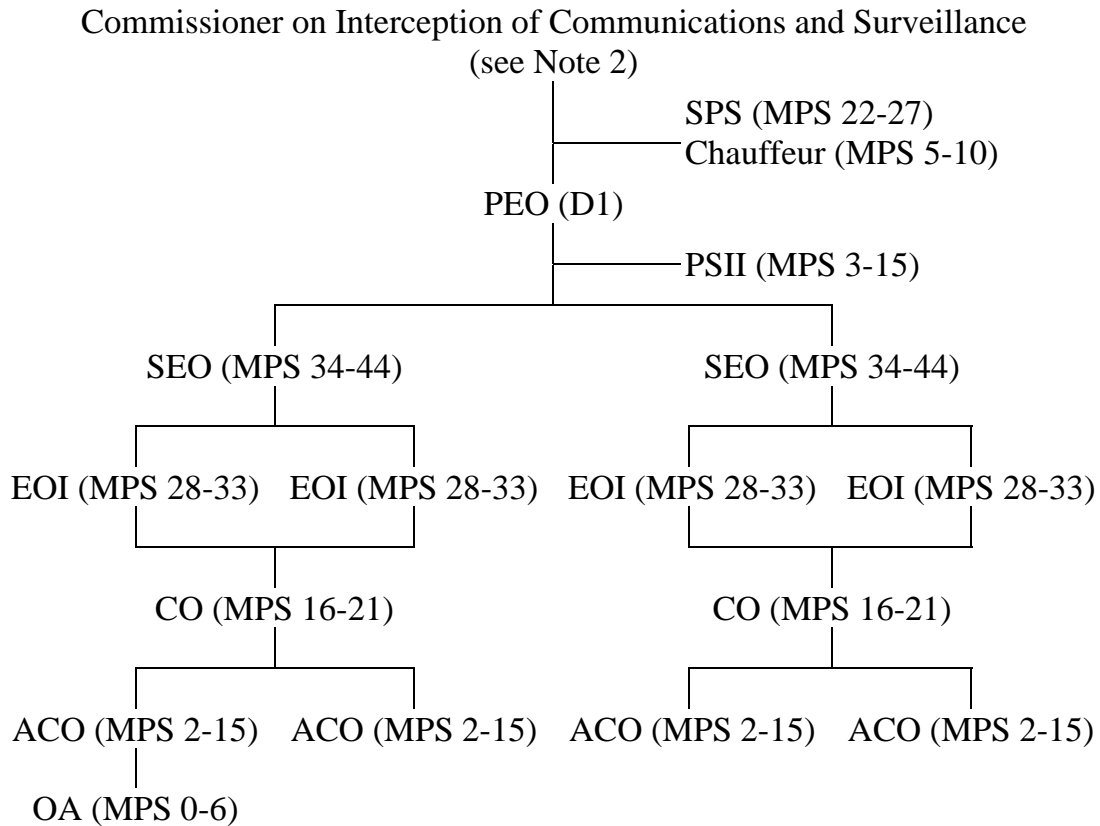
/BACKGROUND

BACKGROUND

9. The Bill was gazetted on 3 March 2006 and introduced into Legislative Council (LegCo) for first and second readings on 8 March 2006. It is being scrutinised by a Bills Committee. We briefed Members of the LegCo Panels on Administration of Justice and Legal Services and Security on the proposal at a joint meeting held on 22 May 2006. The ESC of the FC endorsed the proposed staffing structures of the Secretariat and the Judiciary on 14 June 2006.

Security Bureau
June 2006

**Proposed Organisation Chart of the Secretariat, Commissioner
on Interception of Communications and Surveillance**



Note:(1) Figures in brackets indicate Government Directorate/Master Pay Scales

- (2) The Commissioner could be -
- (a) a serving or former Justice of Appeal of the Court of Appeal of the High Court;
 - (b) a serving or former Judge of the CFI of the High Court; or
 - (c) a former permanent Judge, Court of Final Appeal.

Legend

- PEO Principal Executive Officer
- SEO Senior Executive Officer
- EO I Executive Officer I
- SPS Senior Personal Secretary
- PSII Personal Secretary II
- CO Clerical Officer
- ACO Assistant Clerical Officer
- OA Office Assistant

**Estimated Provision Required for
Secretariat, Commissioner on
Interception of Communications and Surveillance**

Sub- head (Code)	Estimate 2006-07
	\$'000

Operating Account

000	Recurrent Operational expenses	7,506
	Total, Recurrent	7,506
	Total, Operating Account	7,506
	Total Expenditure	7,506

Details of Expenditure by Subhead

The estimate of the amount required in 2006-07 for the salaries and expenses of the Secretariat, Commissioner on Interception of Communications and Surveillance is \$7,506,000.

Operating Account

Recurrent

2 Provision of \$7,506,000 under *Subhead 000 Operational expenses* is for the salaries, allowances and other operating expenses of the Secretariat.

3 The establishment will be 17 permanent posts^{Note}. Subject to certain conditions, the controlling officer may under delegated power create or delete non-directorate posts during 2006-07, but the notional annual mid-point salary value of all such posts must not exceed \$5,288,000.

4 An analysis of the financial provision under *Subhead 000 Operational expenses* is as follows:

	2006-07 (Estimate) (\$'000)
Personal Emoluments	
- Salaries	4,288
- Allowances	214
Departmental Expenses	
- General departmental expenses	3,004
	<hr/>
	7,506 <hr/>

^{Note} The establishment does not include the Commissioner on Interception of Communications and Surveillance which will be a statutory office established under the new legislation and not a civil service post.