

**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**).

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

For information
on 13 May 2004

Legislative Council Panel on Security

Integrity Checking for Disciplined Forces

Purpose

This paper sets out, in response to Members' request, information on the integrity checking for the disciplined services.

Integrity Checking for the Civil Service

2. The Government's overall policy on integrity checking for the civil service is applicable to all Government servants, including those in the disciplined services. The aim is to ensure that potential and serving employees are of good character and high integrity.

3. There are three levels of checking, namely, appointment checking, normal checking and extended checking. The level of checking applicable will depend on the nature or rank of the post to which a candidate is to be appointed. Briefly, the three levels are as follows.

- (a) The first level is appointment checking. This will be carried out as part of the recruitment procedure before a candidate is offered appointment to any post.
- (b) The second level is normal checking. This will apply to candidates or serving officers who are being considered for appointment to ranks or posts having access to information which offer scope for possible corrupt activities or other forms of pressure on the officer. In considering which ranks and posts should fall under this category, a useful benchmark is whether or not such positions involve access to information classified as confidential or above.

- (c) The third level is extended checking. Officers who are being considered for appointment to very senior posts or posts requiring a particularly high degree of trust and integrity are subject to this form of checking.

4. Among other things, the Management will take into consideration the results, if any, from the integrity checking to decide on the overall suitability of the candidate or officer for appointment to a post, promotion to a rank or in some cases continuing to discharge his duties in his current capacity. The Management will usually consider the reliability of the information; the gravity of any allegations against the officer and what action had been taken since that piece of information came into light. Integrity checking is a risk assessment tool and is not the sole factor for determining the suitability of an individual for appointment or promotion. Each case has to be dealt with on its own merits having regard to individual circumstances, including the nature and severity of any adverse comment and its relevance to the officer's posting. It remains a conscious decision of the appointment authority as to whether a particular individual should be appointed or promoted if the checking reveals information that may need to be taken into account.

5. After assessing the overall suitability of the candidate or officer, the Management will make a decision on whether his appointment to a rank or post of sensitive nature should be endorsed or denied.

Integrity Checking for the Disciplined Services

6. The disciplined services follow the Government's overall policy on integrity checking set out in paragraphs 2 to 5 above. From 2001 to 2003, there were a total of 9 instances of promotions being denied as a result of information revealed from checking, having taken into account all relevant considerations.

7. The Panel on Security has asked for the number of officers who "failed to pass integrity checking" resulting in interdiction from duty and termination of employment. In practice, such cases do not arise. If an officer

has committed a misconduct which is so serious that interdiction from duty or termination of employment is called for, the Management should have dealt with the case immediately.

Guidelines on Avoidance of Conflict of Interest

8. The Government has issued guidelines on the avoidance of conflict of interest, which apply to all officers. The underlying principle is that all civil servants should be honest, impartial and objective in carrying out their duties and in their dealings with members of the public and with their staff. A conflict of interest situation arises where the “private interests” of an officer compete or conflict with the interests of the Government or the officer’s official duties. “Private interests” include the financial and other interests of the officer himself; his family or other relations; his personal friends; the clubs and associations to which he belongs; any other groups of people with whom he has personal or social ties; or any person to whom he owes a favour or is obligated in any way.

9. The guidelines also provide that all officers must avoid situations which might compromise (or be seen to compromise) their personal judgement or integrity at work or lead to conflict of interest. An officer must not use his official position to further his private interests or those of his family, friends or associates, nor put himself in a position which gives rise to suspicion that he has done so. In particular, an officer should –

- (a) refrain from acquiring any investment or any financial or other interest which may lead to a conflict of interest with his official duties;
- (b) refrain from taking part in the deliberation, decision-making, investigation or enforcement process in connection with any matter in which he has a private interest;
- (c) avoid putting himself in a position of obligation to his subordinates or any person who has or may have official dealings with his department;

- (d) decline to provide assistance, advice or information to relations, friends, etc. in connection with his work where this would give the recipient an unfair advantage over other people. All legitimate requests for assistance, advice and information should be referred to the proper subject officer to be dealt with in the normal way; and
- (e) report to his superior officer any private interest that might be seen to compromise his personal judgement in the performance of his duties.

10. The disciplined services have brought to the attention of their officers and new recruits the contents of the Prevention of Bribery Ordinance, the need to avoid conflict of interest and relevant sections of the Civil Service Regulations. Moreover, staff's attention is also drawn to the contents of the Resource Centre on Civil Service Integrity Management from time to time.

11. Essential points in guidelines specific to the disciplined services are set out below.

Correctional Services Department (CSD)

12. CSD has issued specific guidelines in the form of Standing Orders / Standing Procedures (SO / SP) to its officers on the avoidance of conflict of interest. The SO / SP expressly provide that all CSD officers should make a conscious effort to avoid and declare, as appropriate, any conflict of interest, which may arise or has arisen in exercise of their office. In particular, an officer -

- (a) shall not associate with undesirable characters or visit places of poor or doubtful reputation except in the course of their duty. Under no circumstances should an officer allow himself to be drawn into a situation where his official status or duty may be compromised;

- (b) shall abstain from any activity which is likely to interfere with the impartial discharge of his duties, or which is likely to give rise to the impression that it may so interfere; and
- (c) shall report cases in which his family members, relatives or friends are involved in a criminal offence as the accused, or as a victim and the subject concerned may be placed in the institution to which the officer is posted.

13. All officers and new recruits are given a pocket-size “Handbook on Conduct and Discipline for CSD Staff”. The handbook has been compiled with the assistance of the Civil Service Bureau (CSB) and the Independent Commission Against Corruption (ICAC). The importance of integrity and avoiding conflict of interest is emphasized from time to time at meetings and training sessions.

Customs and Excise Department (C&ED)

14. C&ED has published a Code on Conduct and Discipline for its staff. Amongst other things, the Code provides that every officer should take it as his personal responsibility to avoid engaging in situations that may lead to or involve conflict of interest. An officer should at all times ensure that his dealings with members of the public, suppliers, contractors, traders or other related personnel and colleagues will not place him in a position of obligation that may lead to a conflict of interest situation.

15. In cases where an officer or his immediate family member is engaged or considered to have been engaged in businesses or activities that may have actual or perceived conflict with his official duties, it is the responsibility of the officer to make full disclosure in writing to the Deputy Commissioner, Branch Head or Formation Head, as appropriate.

16. In cases of unforeseen circumstances under which a conflict of interest situation arises before an officer can report to the Department, he should take the initiative to make a verbal declaration to his supervisors on the scene. Such a declaration should be properly recorded and filed by his supervisors.

Failure to avoid or to declare a conflict of interest may result in disciplinary action being instituted against the officer.

Fire Services Department (FSD)

17. FSD has published a Guide on Conduct and Discipline which was written with the assistance of CSB and ICAC. The Guide highlights the potential conflict of interest situations in the normal course of operations (including vetting of applications for a fire certificate, inspection of fire service installations, acceptance tests of fire services equipment, and tender evaluation in the procurement process); officers' responsibility to disclose actual or perceived conflict of interest; and the departmental procedures for declaring and administering conflict of interest situations, etc. The guidelines are issued to all relevant staff. Staff are also reminded to make a conscious effort at all times to avoid or declare, as appropriate, any conflict that may arise or has arisen. Failure to take the necessary steps to avoid or declare a conflict of interest may result in disciplinary proceedings against the staff concerned.

Government Flying Service (GFS)

18. All members of GFS are issued with a copy of the Guide on Conduct and Discipline which was written with the assistance of CSB and ICAC. Staff of GFS are reminded to adhere to the core values of commitment to the rule of law; honesty and integrity above private interests; accountability and openness in decision-making and in all actions; political neutrality in conducting official duties; impartiality in the execution of public functions; and dedication and diligence in serving the community.

Hong Kong Police Force (HKPF)

19. All police officers are strongly reminded that they should at all times make a conscious effort to avoid or declare, as appropriate, any conflict that may arise or has arisen. Failure to do so may render an officer liable to disciplinary action. Besides, other than in the course of duty, a police officer shall not associate with known criminals or triad personalities. Officers are

also advised that they should not associate with persons of doubtful or undesirable reputation.

20. The definition of conflict of interest and the reporting requirements are clearly explained in the Force's internal guidelines. The salient points of the guidelines are set out below.

- (a) A Police officer should not acquire any investment which could lead to a real or apparent conflict of interest with his/her official duties.
- (b) A Police officer should report to the Assistant Commissioner of Police (Personnel) any existing private interest that might influence, or appear to influence, his/her judgment in the performance of duties.
- (c) A Police officer must report to his/her Formation Commander if he/she is called upon to deal with any matter which affects his/her interests or those of his/her spouse or a dependant, or those of an individual or company acting on his/her behalf.
- (d) A Police officer whose spouse or dependant has or acquires an interest in the entertainment business shall declare such interest in writing to the Assistant Commissioner of Police (Personnel).
- (e) A Police officer who, in the opinion of the Commissioner of Police, possesses an interest which leads to, or may lead to, a conflict of interest may be required to divest himself/herself of any or some of the interests, to refrain from acquiring or disposing of the interests or to place the interests in a blind trust.
- (f) A Police officer who contravenes any of the orders pertaining to conflict of interest may, in addition to being liable to

disciplinary action, be required to divest himself/herself of the interests.

Immigration Department (ImmD)

21. All immigration officers are issued with a Guide on Conduct and Discipline which is a booklet written with the assistance of CSB and ICAC. Amongst other things, the booklet reminds all officers to comply with the rules governing conflict of interest. Every Service member should make a conscious effort to avoid and declare, as appropriate, any conflict of interest, whether actual or perceived, which may arise or has arisen. Failure to do so may lead to disciplinary action which may result in removal from service.

22. An officer should not associate himself with undesirable characters or visit places of poor or doubtful reputation except in the course of duty. He should not act as a sponsor or reference in any immigration matter without the consent of an Assistant Director. He must ensure that there is no conflict of interest between his official duties and his private investments, including those of his spouse, relations, any dependant and any individual person or company acting on his behalf. It will be deemed to be a conflict of interest if he is able to profit financially as a result of information obtained in his official capacity.

23. Classified information, such as information relating to investigation, special operations and strategic planning, should under no circumstances be disclosed without proper authorization. An officer must obtain prior permission before he takes up any paid outside work. Any unpaid outside work must not give rise to any actual or perceived conflict of interest with his official duties or embarrassment to the Department.

Security Bureau
May 2004

For information

Legislative Council Panel on Security

Integrity Checking for Disciplined Forces

Purpose

This note sets out the Administration's response to various requests made by Members when discussing the item on integrity checking for the disciplined forces at the meeting on 13 May 2004. These requests are -

- (a) to advise whether integrity checking on disciplined forces between 2001 and 2003 had resulted in disciplinary actions such as interdiction from duty or termination of employment;
- (b) to provide a comparison between the integrity checking on civil servants and background checks on persons to be appointed to advisory committees and persons to be appointed Justices of the Peace;
- (c) to advise on the government department, besides the Fire Services Department and the Hong Kong Police Force, where the promotion of an officer was denied as a result of information revealed from integrity checking in the past three years;
- (d) to provide a paper explaining -
 - (i) the types of integrity checks applicable to civil servants and other public officers, such as principal officials and the chairmen and members of advisory bodies;
 - (ii) the types of integrity checks conducted at different stages, such as those conducted on appointment or promotion;
 - (iii) the persons responsible for conducting integrity checks and how integrity checks were conducted; and
 - (iv) measures to ensure that integrity checks were conducted independently;

- (e) to provide the Police's new internal guideline on the declaration by a police officer on his spouse's or dependent's interest in the entertainment business; and
- (f) to advise whether disciplined forces other than the Police had laid down reporting requirements on the interest of an officer's spouse or dependent in the entertainment business.

Disciplinary actions

2. Integrity checking is a tool to assist the management in deciding whether to appoint a candidate/officer to a post/rank. It would not directly lead to disciplinary action. However, if integrity checking reveals information indicating possible misconduct/malpractice of an officer, the department concerned may conduct further investigation as appropriate. Whether disciplinary action would be taken against the officer would depend on the findings of the department's investigation.

Checking for different purposes

3. Please see the note at **Annex A**.

Denial of promotion

4. During the period from 2001-03, besides disciplined services departments, one civilian department denied promotion of officers upon the management's conscious decisions taking account of information revealed from integrity checking and other relevant factors.

Police internal guideline on declaration of interest in the entertainment business

5. A copy of Chapter 51-02 of the Police General Orders, entitled "*Conflict of Interest with Private Investments*", is at **Annex B**. It stipulates, inter alia, the requirement for police officers to declare the interest of their spouse or dependent in the entertainment business.

Reporting requirements on interest in the entertainment business

6. No other disciplined force has a specific requirement to report interest in the entertainment business. However, the need to avoid conflict of interest applies to all civil servants. Where appropriate, interests in the entertainment business may have to be reported in order to comply with the

general requirement on declaration.

Security Bureau
July 2005

Integrity Checking System for Different Purposes

There are different arrangements of integrity checking for civil servants, Advisory and Statutory Bodies (ASBs) and Justices of the Peace (JPs).

Civil servants

2. The purpose of the integrity checking system for civil servants is to ensure that serving civil servants and prospective appointees for civil service posts are of good character and high integrity. The system is meant to contribute to public confidence in the civil service.

3. The integrity checking system provides for three levels of checks, namely appointment checking, normal checking and extended checking. The level of checking applicable depends on the nature or rank of the civil service post concerned. None of the checks involves any form of political vetting and no investigation is conducted on the political beliefs or affiliations of a serving officer or prospective appointee.

4. The three levels of checks and how they are conducted are detailed below -

(a) Appointment checking

Appointment checking is carried out as part of the recruitment procedure before a prospective appointee is offered appointment to a civil service post. The appointment checking is undertaken by the Police and ICAC. It involves checking of details provided by the prospective appointee against criminal and ICAC records.

(b) Normal checking

Normal checking applies to serving officers or candidates who are being considered for appointment to ranks or posts having access to material that offers scope for possible corrupt activities or other forms of pressure on the post holders. It is undertaken by the Police and ICAC and involves the checking of information provided by the officers/prospective appointees against records kept by the Police and ICAC.

(c) Extended checking

Extended checking applies to serving officers or candidates who are being considered for appointment to very senior posts or posts requiring a particularly high degree of trust and integrity. The extended checking is undertaken by the Police with input from the ICAC where necessary. It involves interviews with the officer/prospective appointee, his referees and supervisors as well as checks against records kept by the Police and ICAC.

5. Under the Accountability System, candidates for appointment as Principal Officials are subject to extended checking. The arrangement is modelled on the extended checking for civil servants.

Non-official members of ASBs

6. The Government relies on a large number of ASBs to provide advice on Government policies and the delivery of public services, to perform statutory functions and to deal with appeals against Government decisions. Each advisory body gives advice to the Government in a specified area of activity according to its terms of reference. The areas covered range from fundamental livelihood issues such as housing, labour issues, education, social welfare, medical care and transport to highly specialized and technical matters, such as the operation of our securities and futures markets or radiological protection. Statutory bodies are set up primarily to perform an executive function. Some of these manage publicly-owned corporations such as the Kowloon-Canton Railway Corporation; others, such as the Hospital Authority and the Airport Authority, are responsible for the provision of public services and facilities. Statutory boards have also been set up to deal with appeals under a number of ordinances.

7. We aim to appoint the best available persons to meet the requirements of the board or committee concerned. Each appointment is made on the basis of the merit of the individual concerned, taking into account the candidate's ability, expertise, experience, integrity and commitment to public service. Depending on the nature of the ASB, the responsible bureau or department may arrange for integrity checking of potential candidates prior to appointment in order to ascertain the candidates' suitability of appointment.

8. As regards the need for integrity checking, the following considerations are relevant :

- (a) public expectations of integrity and honesty in members appointed to the ASB;
- (b) whether there have been previous cases of corruption in the areas of responsibility under the ambit of the ASB;
- (c) whether the ASB concerned has executive powers;
- (d) whether the appointees are given classified papers or sensitive information;
- (e) whether the ASB manages or uses a large sum of public funds; and
- (f) whether the advice or decisions made by members of the ASB have the potential to benefit individuals.

9. ASBs to be included under the integrity checking system are reviewed from time to time.

10. Where checking is required, it is undertaken by the Police and ICAC and involves the checking of the prospective member's details against criminal and ICAC records.

JPs

11. Candidates for appointment as JPs should also be persons of integrity and social standing. All appointments other than ex-officio ones are also subject to the comments of the Police and ICAC.

**Civil Service Bureau
Home Affairs Bureau
Administration Wing**

July 2005

Extracts of Police General Orders

POLICE GENERAL ORDERS

CHAPTER 51

INVESTMENTS

19/01

51-02 Conflict of Interest with Private Investments

A police officer shall not acquire any investment which could lead to a real or apparent conflict of interest with his official duties. An officer shall keep himself abreast of the Civil Service Regulations, supplemented by CSB circulars and circular memoranda that are issued from time to time which may be relevant on this subject. In case of doubt, an officer shall, before making any investment which may be in conflict with his duties, report in writing to ACP P (Attn. SP D) forthwith and seek instructions on whether such investments should be avoided or declared.

2. A police officer must report to his Formation Commander if he is called upon to deal with any matter which affects his investments or those of his/her spouse or a dependent person, or those of an individual or company acting on his behalf. Another officer shall normally be assigned to deal with the matter. In case of doubt, the Formation Commander shall refer the matter to ACP P (Attn. SP D) for advice and guidance.

3. A police officer shall report to the Commissioner (ACP P) if he makes any investment or undertakes business activity with members of public or private bodies, including the Legislative Council or District Councils of the HKSAR, with which he has official dealings.

4. A police officer who, in the opinion of the Commissioner, possesses an investment which is, or may be, a conflict of interest may be required to divest himself of any or some of the investments, refrain from acquiring or disposing of the investments or place the investments in a blind trust.

5. A police officer who contravenes any of the provisions of this chapter may, in addition to being required to divest himself of investments, be liable to disciplinary proceedings.

6. All officers are strongly reminded that they should at all times make a conscious effort to avoid or declare, as appropriate, any conflict that may arise or has arisen. Failure to do so may render an officer liable to disciplinary action.

7. If it later appears that an officer has dealt with any matter without declaring his interest, the burden of proof in any disciplinary proceedings will be on the officer to show that he had no personal knowledge of such investment.

8. A serving police officer whose spouse or dependent has or acquires an interest in the entertainment business shall declare this interest in writing to the Commissioner (ACP P) forthwith. If he is in any doubt as to what constitutes an interest in the entertainment business, he shall report in writing to ACP P (Attn: SP D) forthwith and seek guidance. An entertainment business includes, but is not confined to, a business/premise regulated under the following pieces of legislation: 26/03

- (a) Dutiable Commodities Ordinance, Cap.109
- (b) Miscellaneous Licences Ordinance, Cap.114
- (c) Public Health and Municipal Services Ordinance, Cap.132
- (d) Places of Amusement By-Laws, Cap.132
- (e) Gambling Ordinance, Cap.148
- (f) Societies Ordinance, Cap.151
- (g) Places of Public Entertainment Ordinance, Cap.172
- (h) Firearms and Ammunition Ordinance, Cap.238
- (i) Massage Establishments Ordinance, Cap.266
- (j) Clubs (Safety of Premises) Ordinance, Cap.376
- (k) Amusement Games Centres Ordinance, Cap.435