

立法會
Legislative Council

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Bills Committee on
Interception of Communications and Surveillance (Amendment) Bill 2015

Minutes of meeting
held on Tuesday, 6 October 2015, at 2:30 pm
in Conference Room 3 of the Legislative Council Complex

- Members present** : Hon IP Kwok-him, GBS, JP (Chairman)
Hon YIU Si-wing, BBS (Deputy Chairman)
Hon James TO Kun-sun
Hon Emily LAU Wai-hing, JP
Hon CHAN Kin-por, BBS, JP
Hon WONG Kwok-kin, SBS
Hon Paul TSE Wai-chun, JP
Hon Claudia MO
Hon NG Leung-sing, SBS, JP
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK, JP
Hon LEUNG Che-cheung, BBS, MH, JP
Hon KWOK Wai-keung
Hon Dennis KWOK
Hon SIN Chung-kai, SBS, JP
Dr Hon Elizabeth QUAT, JP
Dr Hon CHIANG Lai-wan, JP
Hon Christopher CHUNG Shu-kun, BBS, MH, JP
- Members absent** : Hon CHAN Kam-lam, SBS, JP
Hon Cyd HO Sau-lan, JP
Hon WONG Yuk-man
Hon Frankie YICK Chi-ming, JP
Hon CHUNG Kwok-pan
Hon Tony TSE Wai-chuen, BBS

**Public Officers : Item I
attending**

Ms Mimi LEE Mei-mei, JP
Deputy Secretary for Security 1

Mrs Millie NG KIANG Mei-nei
Principal Assistant Secretary for Security E

Mr CHIU Man-hin
Assistant Secretary for Security E2

Mr Godfrey KAN Ka-fai
Senior Assistant Solicitor General
Department of Justice

Ms Monica LAW Man-yuen
Senior Assistant Law Draftsman (II)2
Department of Justice

**Clerk in : Miss Betty MA
attendance Chief Council Secretary (2) 1**

**Staff in : Mr Timothy TSO
attendance Senior Assistant Legal Adviser 1**

Mr Raymond LAM
Senior Council Secretary (2) 7

Ms Kiwi NG
Legislative Assistant (2) 1

I. Meeting with the Administration

The Bills Committee deliberated (index of proceedings attached at **Annex**).

2. Members requested the Administration to -
 - (a) consider amending the proposed section 24(3A) of the Interception of Communications and Surveillance Ordinance ("ICSO") (Cap. 589) to make it clear that the "further authorization" referred to in the subsection was any of the authorizations referred to in section 29 and section 30 of ICSO which was an ancillary authorization; and
 - (b) provide information on -
 - (i) whether any application for prescribed authorization involving journalistic material or legal professional privilege ("LPP") had been rejected; and
 - (ii) whether any prescribed authorization had been revoked by a panel judge on the ground that there was a material change in circumstances which involved journalistic material or LPP.
3. Mr Dennis KWOK said that he would consider moving Committee stage amendments to expand the scope of ICSO to cover the obtaining of communications transmitted via the Internet from Internet service providers.

II. Any other business

4. Members noted that the next meeting had been scheduled for 12 October 2015 at 10:45 am to continue discussion with the Administration.
5. There being no other business, the meeting ended at 4:30 pm.

**Proceedings of meeting of the Bills Committee on
Interception of Communications and Surveillance (Amendment) Bill 2015
held on Tuesday, 6 October 2015, at 2:30 pm
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action Required
000000 - 000838	Chairman	Relevant papers	
000839 - 002942	Chairman Mr James TO Ms Claudia MO SALA1 Admin	<p>Mr James TO's concern regarding whether a translator who was not a law enforcement officer could be authorized by a law enforcement agency ("LEA") under section 40 of the Interpretation and General Clauses Ordinance ("IGCO") (Cap. 1) to listen to communications intercepted which were of a foreign language in which law enforcement officers were not proficient.</p> <p>Administration's response that a translator who was not a law enforcement officer could be authorized to provide assistance for the execution of the prescribed authorization, including translation service, under section 40 of IGCO and section 30 of the Interception of Communications and Surveillance Ordinance ("ICSO") (Cap. 589).</p> <p>SALA1's suggestion that consideration might be given to incorporating an express provision in ICSO to empower LEAs to seek the assistance of others in carrying out the prescribed authorization, e.g. the assistance of translators to listen to communications intercepted which were of a foreign language in which law enforcement officers were not proficient.</p> <p>Administration's response that section 30(g) of ICSO had already provided that a prescribed authorization also authorized the undertaking of conduct that was necessary for and incidental to the carrying out of what was authorized to be carried out under the authorization, including the provision of assistance by a third party to LEA for the execution of the prescribed authorization. The Administration would consider issuing guidelines on such authorization in the Code of Practice for LEAs, if necessary.</p>	

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		<p>Mr James TO's concern that LEAs might apply a broad interpretation of section 30(g) of ICSO and outsource interception of communications to non-law enforcement officers. Ms Claudia MO's concern regarding the possibility of authorization of persons other than law enforcement officers to carry out interception of communications for LEAs.</p> <p>Administration's response that -</p> <p>(a) interception could only be carried out for the prevention or detection of serious crime, for which a person could be sentenced on conviction to not less than seven years' imprisonment or for the protection of public security; and</p> <p>(b) ICSO did not provide for authorization of persons other than law enforcement officers to carry out interception of communications for LEAs.</p>	
002943 - 004947	<p>Chairman Mr SIN Chung-kai Mr Dennis KWOK Mr James TO Mr Charles MOK Admin</p>	<p>Views of Mr SIN Chung-kai, Mr James TO and Mr Charles MOK that LEAs should maintain statistics for the coming three months on the respective numbers of approved and rejected applications for search warrants to obtain information from Internet service providers ("ISPs") and provide such statistics to the Bills Committee.</p> <p>Administration's response that -</p> <p>(a) the court was the authority for considering search warrant applications. LEAs had to observe stringent requirements when applying for search warrants from court; and</p> <p>(b) it was more appropriate to discuss issues relating to search warrants at meetings of the relevant Panel, as they were outside the scope of the Bill.</p> <p>Mr Dennis KWOK's view that the Administration should consider moving Committee stage amendments ("CSAs") to</p>	

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		<p>expand the scope of ICSO to cover the obtaining of communications transmitted via the Internet from ISPs.</p> <p>Administration's response that -</p> <p>(a) during crime investigation, LEAs might, depending on the nature of the cases and for the purpose of crime prevention and detection, request necessary information relating to crime prevention and detection, including subscribers' information and log records from ISPs; and</p> <p>(b) LEAs were required to strictly abide by the provisions of the Personal Data (Privacy) Ordinance (Cap. 486) when requesting information relating to personal data from ISPs for the purpose of crime prevention and detection.</p> <p>Mr Dennis KWOK advised that he would consider moving CSAs to expand the scope of ICSO to cover the obtaining of communications transmitted via the Internet from ISPs.</p>	
004948 - 010501	Chairman Mr James TO Admin SALA1	<p>Mr James TO's concern regarding whether the Commissioner on Interception of Communications and Surveillance ("the Commissioner") would have to rely on LEAs to arrange translation services for the performance of his function to listen to communications intercepted which were of a foreign language in which the Commissioner was not proficient.</p> <p>Mr James TO's view that the Administration should move amendments to introduce a provision similar to section 30(g) of ICSO to explicitly empower the Commissioner to require any public officer or any other person to provide translation service to assist him in the performance of his functions.</p> <p>Administration's response that -</p> <p>(a) under section 40(1) of IGCO and the proposed section 53(1)(a) of ICSO, the Commissioner could require any public</p>	

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		<p>officer or any other person to provide such translation service;</p> <p>(b) the amendments referred to by Mr James TO might be outside the scope of the Bill; and</p> <p>(c) in practice, the Commissioner would perform his function of listening to communications intercepted at the premises of LEAs.</p> <p>SALA1's advice that -</p> <p>(a) whether a proposed amendment was within the scope of a Bill would have to be examined having regard to the actual text of the amendment; and</p> <p>(b) when considering whether a proposed amendment was within the scope of a bill, the President of the Legislative Council ("LegCo") had in past rulings all along taken into account all relevant factors and documents including the provision(s) concerned, the LegCo Brief and Explanatory Memorandum of the Bill concerned as well as other relevant factors.</p>	
010502 - 012542	Chairman Mr Charles MOK Mr SIN Chung-kai Admin	<p>Concerns of Mr Charles MOK and Mr SIN Chung-kai regarding whether surveillance involving the use of surveillance software supplied by hacking software companies were subject to regulation by ICSO.</p> <p>Administration's response that -</p> <p>(a) under ICSO, a prescribed authorization was required for all interception and covert surveillance operations; and</p> <p>(b) the definition of "surveillance device" under section 2 of ICSO included a "data surveillance device" which was in turn defined as any device or program used to monitor or record the input of information into, or the output of information from, any information system by electronic means.</p>	

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015733 - 015921	Chairman Admin Mr SIN Chung-kai	Examination of clause 7 of the Bill. Mr SIN CHUNG-kai's question and the Administration's response regarding whether the Administration had relied on the English or Chinese version of section 26(1) of ICSO in the application of the section in the past.	
015922 - 020018	Chairman	Date of next meeting	

Council Business Division 2
Legislative Council Secretariat
26 October 2015