

**立法會**  
**Legislative Council**

LC Paper No. CB(2)395/15-16  
(These minutes have been seen  
by the Administration)

Ref : CB2/BC/1/14

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

**Minutes of meeting**  
**held on Monday, 2 November 2015, at 2:30 pm**  
**in Conference Room 1 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 CHAN Kam-lam, SBS, JP  
Hon CHAN Kin-por, BBS, JP  
Hon WONG Kwok-kin, SBS  
Hon Paul TSE Wai-chun, JP  
Hon WONG Yuk-man  
Hon Claudia MO  
Hon NG Leung-sing, SBS, JP  
Hon Frankie YICK Chi-ming, 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

**Members absent** : Hon Emily LAU Wai-hing, JP  
Hon Cyd HO Sau-lan, JP  
Hon CHUNG Kwok-pan  
Hon Christopher CHUNG Shu-kun, BBS, MH, JP  
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

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**I. Meeting with the Administration**

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

2. Members requested the Administration to -

- (a) provide a response to issues raised in the submission dated 28 October 2015 from The Law Society of Hong Kong;

Clause 17

- (b) provide information on how law enforcement agencies ("LEAs") became aware of arrest of the subject of interception or covert surveillance;
- (c) consider amending "becomes aware" in section 58(1) of the Interception of Communications and Surveillance Ordinance ("ICSO") (Cap. 589) along the line of "reasonably suspects";
- (d) explain whether the arrest referred to in section 58 of ICSO covered arrest outside the territory of Hong Kong;
- (e) consider amending "Revocation of prescribed authorization" in the proposed amendment to the heading of section 58 of ICSO along the line of "Revocation of the whole or part of prescribed authorization";
- (f) review the drafting of the amended heading of section 58 of ICSO as to whether the heading could adequately cover the different scenarios under the section;

Clause 18

- (g) consider amending "知悉在" and "關鍵性" in the Chinese text of the proposed section 58A of ICSO along the line of "知悉" and "關鍵" respectively;
- (h) consider providing in the Code of Practice examples of "material inaccuracy" referred to in the proposed section 58A(1)(a) of ICSO;
- (i) consider amending "becomes aware" in the proposed section 58A of ICSO along the line of "reasonably suspects";
- (j) consider amending "there is a material inaccuracy" and "there has been a material change" in the proposed section 58A of ICSO along the line of "there is or may be a material inaccuracy" and "there has been or may have been a material change" respectively;

- (k) consider recasting the expression "如該當局認為第3條所指的、.....先決條件未獲符合" in the Chinese text of the proposed section 58A(4) along the line of "如該當局認為未符合第3條所指的.....先決條件";

#### Clause 19

- (l) advise whether the Commissioner on Interception of Communications and Surveillance ("the Commissioner") and staff of his office who were delegated with the power to examine protected products were allowed under ICSO to take notes when examining protected products and whether such notes were subject to any destruction requirements;
- (m) provide information on the mechanisms for the retention and destruction of intelligence derived from protected products by LEAs;
- (n) explain the operation and interactions of the proposed amendments to section 59 in relation to other relevant sections, such as sections 23 or 26, of ICSO relating to the immediate destruction of information obtained by carrying out interception of communications or covert surveillance;
- (o) explain whether the procedures determined by the Commissioner under section 53(5) of ICSO for his checking of protected products, such as for LEAs to keep the protected products for a certain period to facilitate the checking, would have overriding effect over the destruction requirement imposed on LEAs by section 59(1)(c) of ICSO as currently drafted;
- (p) consider amending ICSO to make it an offence to destroy protected products which had been requested by the Commissioner for his checking; and

#### Clause 20

- (q) consider amending ICSO to prohibit the use of protected products referred to in the proposed section 65A of ICSO.

**II. Any other business**

3. Members noted that the next meeting had been scheduled for 9 November 2015 at 2:30 pm to continue discussion with the Administration.

4. The Chairman said that individual members who wished to propose amendments to the Bill should forward their amendments to the Clerk for consideration by the Bills Committee.

5. There being no other business, the meeting ended at 4:35 pm.

Council Business Division 2  
Legislative Council Secretariat  
3 December 2015

**Proceedings of meeting of the Bills Committee on  
Interception of Communications and Surveillance (Amendment) Bill 2015  
held on Monday, 2 November 2015, at 2:30 pm  
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action Required
000000 - 000637	Chairman	Opening remarks	
<i>Continuation of clause-by-clause examination</i>			
000638 - 004309	Chairman Admin Mr James TO Mr Dennis KWOK Ms Claudia MO Dr CHIANG Lai-wan SALA1	<p>Examination of clause 17 of the Bill.</p> <p>Mr James TO's concern, views of SALA1 and Administration's response regarding the possibility of non-applicability of section 58 of the Interception of Communications and Surveillance Ordinance ("ICSO") (Cap. 589) due to the officer in charge of interception or covert surveillance concerned being not aware of the arrest of the subject of interception or covert surveillance by another law enforcement agency ("LEA") not involved in the interception or covert surveillance concerned.</p> <p>Mr Dennis KWOK's concern regarding issues raised in the submission of 28 October 2015 from The Law Society of Hong Kong (LC Paper No. CB(2)149/15-16(01)).</p> <p>Ms Claudia MO's concerns and the Administration's response regarding -</p> <p>(a) the meaning of "relevant authority" in section 58 of ICSO;</p> <p>(b) the Chinese rendition of "conditions" in the proposed amendment to section 58(2) of ICSO; and</p> <p>(c) whether "Revocation of prescribed authorization" in the proposed amendment to the heading of section 58 of ICSO should be amended along the line of "Revocation of the whole or part of prescribed authorization".</p>	

Time marker	Speaker(s)	Subject(s)	Action Required
		<p>Dr CHIANG Lai-wan's concern and the Administration's response regarding whether the drafting of the proposed amendment to the heading of section 58 of ICSO could cover different scenarios under the section.</p> <p>Mr James TO's concern and the Administration's response regarding whether "becomes aware" in section 58(1) of ICSO should be amended along the line of "reasonably suspects".</p> <p>Mr James TO's concern, views of SALA1 and the Administration's response regarding whether the arrest referred to in section 58 of ICSO covered arrest outside the territory of Hong Kong.</p> <p>The Administration was requested to -</p> <ul style="list-style-type: none"> <li>(a) provide a response to issues raised in the submission dated 28 October 2015 from The Law Society of Hong Kong;</li> <li>(b) provide information on how LEAs became aware of arrest of the subject of interception or covert surveillance;</li> <li>(c) consider amending "becomes aware" in section 58(1) of ICSO along the line of "reasonably suspects";</li> <li>(d) explain whether the arrest referred to in section 58 of ICSO covered arrest outside the territory of Hong Kong;</li> <li>(e) consider amending "Revocation of prescribed authorization" in the proposed amendment to the heading of section 58 of ICSO along the line of "Revocation of the whole or part of prescribed authorization"; and</li> <li>(f) review the drafting of the amended heading of section 58 of ICSO as to whether the term "revocation" could adequately cover the different scenarios under the section.</li> </ul>	<p><b>Admin</b></p>

Time marker	Speaker(s)	Subject(s)	Action Required
004310 - 012303	Chairman Admin Mr WONG Yuk-man Mr James TO Ms Claudia MO Mr Paul TSE	<p>Examination of clause 18 of the Bill.</p> <p>Mr WONG Yuk-man's suggestion that "知悉在" and "關鍵性" in the Chinese text of the proposed section 58A of ICSO should be amended along the line of "知悉" and "關鍵" respectively.</p> <p>Mr James TO's concern and the Administration's response regarding the interpretation of "material inaccuracy" in the proposed section 58A(1)(a) of ICSO.</p> <p>Ms Claudia MO's concern and the Administration's response regarding -</p> <p>(a) the interpretation of "material change in the circumstances" in the proposed section 58A of ICSO; and</p> <p>(b) whether communication with other professionals, such as doctors, and journalistic material were subject to protection similar to that for information subject to legal professional privilege.</p> <p>Concerns of Mr James TO, Mr Paul TSE and the Administration's response regarding the drafting of the proposed amendments to section 58 and the proposed 58A of ICSO.</p> <p>The Administration was requested to -</p> <p>(a) consider amending "知悉在" and "關鍵性" in the Chinese text of the proposed section 58A of ICSO along the line of "知悉" and "關鍵" respectively;</p> <p>(b) consider providing in the Code of Practice examples of "material inaccuracy" referred to in the proposed section 58A(1)(a) of ICSO;</p> <p>(c) consider amending "becomes aware" in the proposed section 58A of ICSO along the line of "reasonably suspects";</p>	<p><b>Admin</b></p>



Time marker	Speaker(s)	Subject(s)	Action Required
		<p>(d) consider amending "there is a material inaccuracy" and "there has been a material change" in the proposed section 58A of ICSO along the line of "there is or may be a material inaccuracy" and "there has been or may have been a material change" respectively; and</p> <p>(e) consider amending "如該當局認為第3條所指的、讓有關訂明授權或其某部分持續有效的先決條件未獲符合" in the Chinese text of the proposed section 58A(4) along the line of "如該當局認為未符合第3條所指的、讓有關訂明授權或其某部分持續有效的先決條件".</p>	
012304 - 015559	Chairman Admin Mr James TO SALA1	<p>Examination of clause 19 of the Bill.</p> <p>Mr James TO's concern and Administration's response regarding -</p> <p>(a) the effect of the proposed section 59(1)(c)(i) of ICSO;</p> <p>(b) whether the Commissioner on Interception of Communications and Surveillance ("the Commissioner") and staff of his office who were delegated with the power to examine protected products were allowed under ICSO to take notes when examining protected products;</p> <p>(c) whether such notes taken by the Commissioner and staff of his office delegated with such power were subject to any destruction requirements;</p> <p>(d) whether there were mechanisms for the retention and destruction of intelligence derived from protected products by LEAs;</p> <p>(e) whether the proposed amendments to section 59 would override other sections of ICSO in relation to destruction of protected products; and</p>	

Time marker	Speaker(s)	Subject(s)	Action Required
		<p>(f) whether it was an offence under ICSO for a law enforcement officer to destroy protected products requested by the Commissioner for his checking.</p> <p>SALAI's questions and the Administration's response regarding -</p> <p>(a) the operation and interactions of the proposed amendments to section 59 in relation to other relevant sections, such as sections 23 or 26, of ICSO relating to the immediate destruction of information obtained by carrying out interception of communications or covert surveillance; and</p> <p>(b) whether the drafting of the proposed section 59(1)(c) of ICSO would allow destruction of protected products by LEAs before any requirement was imposed by the Commissioner under section 53(1)(a) of ICSO.</p> <p>The Administration was requested to -</p> <p>(a) advise whether the Commissioner and staff of his office who were delegated with the power to examine protected products were allowed under ICSO to take notes when examining protected products and whether such notes were subject to any destruction requirements;</p> <p>(b) provide information on the mechanisms for the retention and destruction of intelligence derived from protected products by LEAs;</p> <p>(c) explain the operation and interactions of the proposed amendments to section 59 in relation to other relevant sections, such as sections 23 or 26, of ICSO relating to the immediate destruction of information obtained by carrying out interception of communications or covert surveillance;</p> <p>(d) explain whether the procedures determined by the Commissioner under section 53(5) of ICSO for his checking of</p>	<p><b>Admin</b></p>

Time marker	Speaker(s)	Subject(s)	Action Required
		<p>protected products such as for LEAs to keep the protected products for a certain period to facilitate the checking, would have overriding effect over the destruction requirement imposed on LEAs by section 59(1)(c) of ICSO as currently drafted; and</p> <p>(e) consider amending ICSO to make it an offence to destroy protected products which had been requested by the Commissioner for his checking.</p>	
015600 - 020342	Chairman Admin Mr James TO	<p>Extension of meeting time.</p> <p>Examination of clause 20 of the Bill.</p> <p>Mr James TO's concern and the Administration's response regarding prohibition from use of protected products obtained after revocation of prescribed authorization.</p> <p>The Administration was requested to consider amending ICSO to prohibit the use of protected products referred to in the proposed section 65A of ICSO.</p>	<b>Admin</b>
020343 - 020639	Chairman Mr James TO	<p>Completion of clause-by-clause examination and discussion of outstanding issues at the next meeting.</p> <p>Provision by members of proposed Committee stage amendments for discussion by the Bills Committee.</p> <p>Date of next meeting</p>	