

立法會
Legislative Council

LC Paper No. CB(2)416/15-16
(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, 16 November 2015, at 10:45 am
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 Cyd HO Sau-lan, JP
Hon CHAN Kin-por, BBS, JP
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 CHIANG Lai-wan, JP
Hon CHUNG Kwok-pan
Hon Christopher CHUNG Shu-kun, BBS, MH, JP
Hon Tony TSE Wai-chuen, BBS
- Members absent** : Hon Emily LAU Wai-hing, JP
Hon WONG Kwok-kin, SBS
Dr Hon Elizabeth QUAT, JP

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

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) explain the use of the term "becomes aware" as opposed to the term "knows" in the proposed new section 58A of the Interception of Communications and Surveillance Ordinance ("ICSO") (Cap. 589);

- (b) explain, with examples where appropriate, the meaning of the term "becomes aware" in the proposed new section 58A of ICSO;
- (c) explain how the review on whether the interception of communications and surveillance by non-public officers should be regulated was relevant to the consideration of whether criminal sanction should be imposed under ICSO;
- (d) explain in writing the basis in ICSO on which the Commissioner on Interception of Communications and Surveillance ("the Commissioner") had the power to make written notes and summaries when performing his function of checking protected products;
- (e) explain in writing whether the Commissioner was empowered under ICSO to order the relevant law enforcement agency ("LEA") to apply for a device retrieval warrant after expiry of the prescribed authorization concerned;
- (f) provide the Panel on Security with information on the Commissioner's internal guidelines, when available, relating to the discharge of his function of checking protected products, including the declaration and security vetting arrangements of persons who provided translation services to the Commissioner; and
- (g) provide information on the mechanisms for the destruction by LEAs of intelligence derived from interception or covert surveillance operations of which the prescribed authorization was revoked by a panel judge on the ground that information provided in the application concerned was inaccurate.

3. The Administration advised that it would provide a written response on the Committee stage amendments ("CSAs") proposed by Mr Dennis KWOK.

II. Any other business

4. Members agreed that the Clerk would schedule the next meeting in consultation with the Chairman.

(Post-meeting note: With the concurrence of the Chairman, the next meeting was subsequently scheduled for 15 December 2015 at 2:30 pm to continue discussion with the Administration.)

5. The Chairman said that individual members who wished to propose amendments to the Bill should forward their CSAs to the Clerk for consideration by the Bills Committee.
6. There being no other business, the meeting ended at 12:48 pm.

Council Business Division 2
Legislative Council Secretariat
8 December 2015

**Proceedings of meeting of the Bills Committee on
Interception of Communications and Surveillance (Amendment) Bill 2015
held on Monday, 16 November 2015, at 10:45 am
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action Required
000000 - 000644	Chairman	Opening remarks	
000645 - 000826	Chairman	Paragraphs 20 to 22 of the Annex to the Administration's response to issues raised at the Bills Committee meetings on 6, 12, 23 October and 2 November 2015 as well as letter dated 4 November 2015 from Mr James TO (LC Paper No. CB(2)214/15-16(01)).	
000827 - 004305	Chairman Admin Mr James TO SALA1 Ms Claudia MO Ms Cyd HO	<p>Discussion of paragraph 23 of the Annex to the Administration's paper.</p> <p>Mr James TO's view and the Administration's response regarding -</p> <p>(a) whether the term "becomes aware" in the proposed new section 58A of the Interception of Communications and Surveillance Ordinance ("ICSO") (Cap. 589) should be amended along the line of "reasonably suspects"; and</p> <p>(b) the meaning of "becomes aware" in the proposed new section 58A of ICSO.</p> <p>Views of Mr James TO, Ms Claudia MO, Ms Cyd HO, the Chairman, SALA1 and the Administration's response regarding whether there was any difference in meaning between the terms "becomes aware" and "knows".</p> <p>Ms Cyd HO's suggestion that the Legislative Council ("LegCo") Secretariat should identify information on the discussions, if any, on the term "becomes aware" in the Interception of Communications and Surveillance Bill when it was examined by the then Bills Committee.</p>	

Time marker	Speaker(s)	Subject(s)	Action Required
		<p>The Administration was requested to -</p> <p>(a) explain the use of the term "becomes aware" as opposed to the term "knows" in the proposed new section 58A of ICSO; and</p> <p>(b) explain, with examples where appropriate, the meaning of the term "becomes aware" in the proposed new section 58A of ICSO.</p>	Admin
004306 - 004514	Chairman Admin Mr James TO	<p>Discussion of paragraphs 24 and 25 of the Annex to the Administration's paper.</p> <p>Mr James TO's question and the Administration's response regarding whether the phrase "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 new section 58A(4) should be amended along the line of "如該當局認為未符合第3條所指的.....先決條件".</p>	
004515 - 010527	Chairman Admin Mr James TO Ms Cyd HO	<p>Discussion of paragraphs 26 and 27 of the Annex to the Administration's paper.</p> <p>Views of Mr James TO, Ms Cyd HO and the Administration's response regarding -</p> <p>(a) whether criminal sanctions should be imposed on a law enforcement officer who failed to provide protected products as per the request of the Commissioner on Interception of Communications and Surveillance ("the Commissioner") under section 53(1)(a) of ICSO or to comply with any other requirement of the Commissioner;</p> <p>(b) whether the former Commissioners had made any suggestions regarding the imposition of criminal sanctions on such a law enforcement officer; and</p> <p>(c) whether the incumbent Commissioner had any views regarding the imposition of criminal sanctions on such a law enforcement officer.</p>	

Time marker	Speaker(s)	Subject(s)	Action Required
		<p>The Administration was requested to explain how the review on whether the interception of communications and surveillance by non-public officers should be regulated was relevant to the consideration of whether criminal sanction should be imposed under ICSO.</p>	<p>Admin</p>
<p>010528 - 011319</p>	<p>Chairman Admin Mr James TO</p>	<p>Discussion of paragraphs 28 and 29 of the Annex to the Administration's paper.</p> <p>Mr James TO's views and the Administration's response regarding whether there was a need to provide expressly in ICSO that the Commissioner had the power to make written notes and summaries when performing his function of checking protected products.</p> <p>The Administration was requested to put in writing the basis in ICSO on which the Commissioner had the power to make written notes and summaries when performing his function of checking protected products.</p>	<p>Admin</p>
<p>011320 - 011520</p>	<p>Chairman Admin</p>	<p>Administration's explanation of paragraphs 30 to 32 of the Annex to the Administration's paper.</p>	
<p>011521 - 014835</p>	<p>Chairman Admin Mr James TO Mr Dennis KWOK SALA1</p>	<p>Discussion of paragraphs 33 to 39 of the Annex to the Administration's paper.</p> <p>Mr James TO's view that the non-retrieval of a surveillance device after expiry of the prescribed authorization concerned should be approved by a panel judge instead of being endorsed by an officer at directorate rank as provided in paragraph 137 of the Code of Practice ("CoP").</p> <p>Administration's response that -</p> <p>(a) pursuant to paragraph 137 of CoP, any decision of not applying for a device retrieval warrant where the device had not been retrieved after the expiry of an authorization should be endorsed by an officer at the directorate rank and a report on the decision, together with the reasons and steps taken to minimize possible</p>	

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		<p>intrusion into privacy by the device, should be submitted to the Commissioner;</p> <p>(b) there had not been any case of non-retrieval of surveillance device since ICSO came into operation some nine years ago; and</p> <p>(c) the non-retrieval of a surveillance device, which would only occur under exceptional circumstances, was subject to adequate monitoring by the Commissioner under paragraphs 136 and 137 of CoP together with sections 5 and 30 of ICSO.</p> <p>Mr James TO's concerns, SALA1's views and the Administration's response regarding whether the Commissioner was empowered to order a law enforcement agency ("LEA") to apply for a device retrieval warrant after expiry of the prescribed authorization concerned.</p> <p>Mr James TO's concerns and the Administration's response regarding -</p> <p>(a) whether the requirements and arrangements to retrieve devices deployed in a covert surveillance operation upon completion as provided in paragraphs 136 and 137 of CoP were consistent with the requirements under Article 30 of the Basic Law in relation to protection of freedom and privacy of communication by law; and</p> <p>(b) whether the Commissioner was empowered to order the retrieval of a surveillance device.</p> <p>Mr Dennis KWOK's question regarding whether the Administration would provide a response on his proposed Committee stage amendments ("CSAs").</p> <p>Administration's response that it would provide a response on Mr Dennis KWOK's proposed CSAs.</p>	

Time marker	Speaker(s)	Subject(s)	Action Required
		<p>The Administration was requested to put in writing whether the Commissioner was empowered under ICSO to order the relevant LEA to apply for a device retrieval warrant after expiry of the prescribed authorization concerned.</p>	<p>Admin</p>
<p>014836 - 015707</p>	<p>Chairman Mr James TO Admin</p>	<p>Discussion of paragraphs 40 and 41 of the Annex to the Administration's paper.</p> <p>Mr James TO's concerns regarding the confidentiality arrangements to be adopted in relation to translation services arranged by the Commissioner, including whether any declaration and security vetting would be required of the translators appointed by the Commissioner to listen to intercepted communication in a language in which the Commissioner and his designated officers were not proficient.</p> <p>Administration's response that -</p> <p>(a) upon the passage of the Interception of Communications and Surveillance (Amendment) Bill 2015 ("the Bill"), the Commissioner would draw up internal guidelines relating to the discharge of his function of checking protected products, including the security measures and arrangements; and</p> <p>(b) the Administration would convey Mr James TO's concerns to the Commissioner.</p> <p>Mr James TO's request for the Administration to provide the Panel on Security with information on the Commissioner's internal guidelines, when available, relating to the discharge of his function of checking protected products, including the declaration and security vetting arrangements of persons who provided translation services to the Commissioner.</p>	<p>Admin</p>

Time marker	Speaker(s)	Subject(s)	Action Required
015708 - 020126	Chairman Admin Mr James TO	<p>Discussion of paragraph 42 of the Annex to the Administration's paper.</p> <p>Mr James TO's concerns and the Administration's response regarding whether there were mechanisms for the destruction by LEAs of intelligence derived from interception or covert surveillance operations of which the prescribed authorization was revoked by a panel judge on the ground that information provided in the application concerned was inaccurate.</p> <p>The Administration was requested to provide information on the mechanisms for the destruction by LEAs of intelligence derived from interception or covert surveillance operations of which the prescribed authorization was revoked by a panel judge on the ground that information provided in the application concerned was inaccurate.</p>	Admin
020127 - 020456	Chairman Mr James TO Clerk Ms Cyd HO	<p>Provision by members of proposed CSAs for discussion by the Bills Committee.</p> <p>Possible dates of resumption of Second Reading debate on the Bill and legislative timetable.</p> <p>Date of next meeting</p>	