

香港特別行政區政府
保安局



The Government of the
Hong Kong Special Administrative Region
Security Bureau

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本函檔號 Our Ref.: SBCR 14/2/3231/94 Pt. 27

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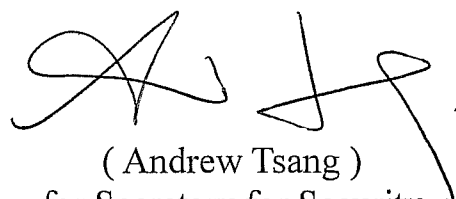
31 December 2015

Miss Betty Ma
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Miss Ma,

We refer to the meeting of the Bills Committee on Interception of Communications and Surveillance (Amendment) Bill 2015 on 15 December 2015. As requested by Members, we provide at Annex the Government's written response to two issues raised at that meeting.

Yours sincerely,



(Andrew Tsang)
for Secretary for Security

Encl (2 pages)

c.c.

Department of Justice

(Attn: Mr Godfrey Kan, Senior Assistant Solicitor General
Ms Monica Law, Senior Assistant Law Draftsman)

**Interception of Communications
and Surveillance (Amendment) Bill 2015
("the Bill")**

**Written Response to Issues Raised
at the Bills Committee's Meetings on 15 December 2015**

To explain whether the requirement under section 57 of the Interception of Communications and Surveillance Ordinance ("ICSO") (Cap. 589) to "cause the interception or covert surveillance concerned to be discontinued" obliges an officer conducting a review under section 56(1) or (2) to order in writing the discontinuance so as to mandate compliance by the officer-in-charge of that interception or covert surveillance

Under section 57 of the ICSO, if an officer responsible for conducting regular reviews under section 56 is of the opinion that the ground for discontinuance of a prescribed authorization exists, he shall as soon as reasonably practicable after forming the opinion, **cause** the interception or covert surveillance concerned to be discontinued (emphasis added). According to paragraph 158 of the Code of Practice ("CoP"), this would mean, in practice, that the reviewing officer should **inform** the officer of the department concerned who is for the time being in charge of the interception or covert surveillance of his decision, and the latter should so comply (emphasis added). Neither the ICSO nor the CoP provides that the reviewing officer has to convey his decision orally or in writing. In practice, as soon as the reviewing officer has formed the opinion and informed the officer-in-charge of the operation of his decision either orally or in writing, arrangements for discontinuing the operation will ensue. The reviewing officer's decision will be documented in writing in the report on the discontinuance to be submitted to the relevant authority under section 57 of the ICSO. Section 60(1)(d) of the ICSO also requires each department to keep a record which is to contain a record of (i) any case in which any interception or covert surveillance has been discontinued by any officer of the department under section 57; and (ii) any case in which any prescribed authorization has been revoked under section 57 further to the discontinuance.

To explain whether investigations or inquiries by authorities outside the territory of Hong Kong fall within the meaning of “arrest” for the purpose of section 58 and whether the safeguards for information subject to legal professional privilege (“LPP”) are applicable to legal advice provided by a lawyer in another jurisdiction

2. Under section 58 of the ICSO, there is no requirement that the “arrest” of the subject is made within the territory of Hong Kong. During the conduct of an interception or covert surveillance operation, if a law enforcement agency becomes aware of the subject’s arrest in any place via any source, it is required by section 58 of the ICSO to submit a report to the relevant authority. The purpose of section 58 is to safeguard the subject’s right to confidential legal advice following his arrest and to ensure that the operation may continue only if the conditions for the continuance of the prescribed authorization under section 3 of the ICSO are still met after his arrest. Section 58 is not applicable if the subject of an operation is subject to an investigation or inquiry without being arrested.

3. For reference, *Halsbury’s Laws of Hong Kong* points out that “generally an arrest is effected by seizing the arrested person’s body with a view to the apprehension and detention of the arrested person and it is not sufficient to simply declare words of arrest. However, such a seizure is unnecessary to effect an arrest if words of arrest are declared and the words bring home to the person to whom the words are directed that he is under arrest and that person submits to arrest. The issue of whether the words are effective to make it clear to that person that he is under arrest is a question of fact”.

4. That said, whether the subject has been arrested or not, there are safeguards at different stages of an interception or covert surveillance operation to protect LPP information (irrespective of whether the case involves a local or foreign lawyer in or outside Hong Kong).