

立法會
Legislative Council

LC Paper No. CB(2)460/01-02
(These minutes have been seen
by the Administration)

Ref : CB2/BC/6/00

**Bills Committee on
Gambling (Amendment) Bill 2000**

**Minutes of meeting
held on Tuesday, 15 May 2001 at 10:45 am
in Conference Room A of the Legislative Council Building**

Members Present : Hon Andrew CHENG Kar-foo(Chairman)
Hon David CHU Yu-lin
Hon Cyd HO Sau-lan
Hon CHAN Yuen-han
Hon Andrew WONG Wang-fat, JP
Hon CHOY So-yuk
Hon Tommy CHEUNG Yu-yan, JP
Hon Audrey EU Yuet-mee, SC, JP

Members Absent : Hon James TO Kun-sun
Hon SIN Chung-kai
Hon YEUNG Yiu-chung
Hon Timothy FOK Tsun-ting, SBS, JP
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, JP

Public Officers Attending : Mrs Betty FUNG
Deputy Secretary for Home Affairs (2)

Mr Francis LO
Principal Assistant Secretary for Home Affairs (5)

Mr Stephen WONG
Deputy Solicitor General
Department of Justice

Mr J D SCOTT
Senior Assistant Law Draftsman
Department of Justice

Mr Gavin SHIU
Senior Government Counsel
Department of Justice

Ms Mabel CHEUNG
Government Counsel
Department of Justice

Mr Vic YAU
Assistant Secretary for Home Affairs

Clerk in Attendance : Miss Flora TAI
Chief Assistant Secretary (2)2

Staff in Attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Mr Stanley MA
Senior Assistant Secretary (2)6

Action

I. Confirmation of minutes
[LC Paper Nos. CB(2)1510/00-01 and CB(2)1511/00-01]

The minutes of the meetings held on 9 January 2001 and 9 February 2001 were confirmed.

Action

II. Meeting with the Administration

[Paper No. CB(2)1524/00-01(01)]

2. At the invitation of the Chairman, Deputy Secretary for Home Affairs (2) (DS(HA)2) introduced the paper setting out the Administration's response to members' concerns expressed at the meeting held on 9 February 2001.

Internet gambling and law enforcement

3. The Chairman expressed reservations about the effectiveness of the Bill in tackling cross-border gambling activities, particularly those conducted through the Internet. As the Administration had indicated in its paper, there were three possible measures to improve enforcement against Internet gambling, namely, real-time monitoring, the take-down approach and blocking access to gambling web-sites. However, in view of the sensitivity and the limited effectiveness of these measures, the Administration did not recommend the adoption of these measures for the time being. He requested the Administration to make reference to overseas experience and further elaborate on feasible measures which would facilitate enforcement of the Bill.

Adm

4. In response, DS(HA)2 said that the need for legislation to tackle cross-border Internet gambling and the effectiveness and limitations of the Bill were frankly and thoroughly explained in the Administration's paper. She pointed out that the difficulties in investigating into the offence and tracking down the identities of the bookmakers and the punters engaging in Internet gambling were not unique to Hong Kong. Many overseas jurisdictions such as the United States, France and the United Kingdom were also wrestling with the problem of cross-border gambling and had introduced some legislative measures to combat unauthorised offshore bookmaking activities. In particular, the United States had extended the ambit of the 1961 Wire Act to cover cross-border gambling and an unauthorised off-shore bookmaker was convicted under the relevant law.

5. DS(HA)2 further said that the co-operation of banks and credit card-issuing institutions was essential in combating unauthorised cross-border bookmaking activities. In this connection, the Administration had approached the Hong Kong Association of Banks and the Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies. The two Associations agreed in principle that their members should refrain from providing banking services to offshore bookmakers upon the enactment of the Bill.

6. Senior Government Counsel (SGC) supplemented that under the amended section 26, money used in connection with unlawful gambling activities, including

Action

bets and winnings or with promoting or facilitating offshore bookmaking could be forfeited. In addition, if the Bill was enacted and the offence of "bookmaking" expanded to cover offshore bookmaking, the relevant provisions in the Organized and Serious Crimes Ordinance (OSCO) could be invoked to give enhanced powers to the Police to investigate into an offence of offshore bookmaking and confiscate the offender's assets, since "bookmaking" was listed as a "specified offence" under OSCO.

7. Mr Tommy CHEUNG asked how money used in connection with unlawful gambling activities, including bets and winnings, or with promoting or facilitating offshore bookmaking could be forfeited after enactment of the Bill. He also asked whether a foreign bank or card-issuing institution without a commercial base in Hong Kong could be prosecuted for assisting an offshore unauthorised bookmaker in enticing bets from punters in Hong Kong or involving in money laundering activities.

8. SGC explained that upon enactment of the Bill, offshore "bookmaking" would become an "indictable offence" under OSCO. A bank or card-issuing institution would commit an offence under section 25(1) of OSCO by assisting a merchant in accepting offshore bets if it had reasonable grounds to believe or known that the transactions and monies involved were related to the proceeds of illegal bookmaking activities. After enactment of the Bill, banks and credit card-issuing institutions would proactively review the business of their customers so as to avoid getting involved in unauthorised bookmaking activities. SGC added that section 25(1) of OSCO mainly targeted at local banks and institutions. Hence, there would be difficulties in prosecuting an overseas bank or financial institution for issuing a credit card which was used in Hong Kong to place bets with an offshore bookmaker.

9. Mr Tommy CHEUNG asked whether the banks and credit card-issuing institutions could restrict their cards from being used for cross-border gambling before the enactment of the Bill. DS(HA)2 responded that a number of banks in Hong Kong had recently notified their customers that they would not process any credit card transactions arising from illegal gambling. Enactment of the Bill would render cross-border gambling illegal and hence provide a firm legal basis for banks and card-issuing institutions to introduce administrative measures in compliance with the legislative requirements.

10. Ms Audrey EU asked whether the Administration agreed to Hong Kong Jockey Club (HKJC)'s estimation that illegal and offshore gambling amounted to at least HK\$80 billion in the last racing season. If yes, she asked why the Government did not reinforce enforcement actions and institute appropriate prosecutions against the illegal bookmakers involved.

Action

11. In response, DS(HA)2 said that it was difficult to provide an accurate estimate of the turnover of illegal and offshore gambling because of their illegal and offshore nature. The existing Gambling Ordinance was first drafted in 1976 and was inadequate to tackle unauthorised cross-border gambling. As far as Internet gambling was concerned, the existing Gambling Ordinance did not criminalise unauthorised gambling involving an offshore website and the related promotional activities and services in Hong Kong. Taking advantage of this loophole in legislation, many local illegal bookmakers had moved their operation bases outside Hong Kong to take bets from Hong Kong. On enforcement against unauthorised Internet gambling, DS(HA)2 pointed out that the Police would have to put in substantial resources in order to collect sufficient evidence for instituting prosecutions. She undertook to invite representatives from the Police to explain their law enforcement actions against Internet gambling at a future meeting.

Adm

12. The Chairman pointed out that at the meeting of the Panel on Home Affairs on 14 November 2000, the Police had advised that illegal bookmaking activities on horse and dog racing events in Hong Kong were not serious. He stressed that relevant statistics about the gravity of illegal bookmaking activities would enhance members' understanding of the actual problem. At his request, the Administration agreed to provide relevant information as far as practicable.

Adm

13. Miss Cyd HO enquired about the recommendations of the Inter-departmental Working Group on Computer Related Crime (the Working Group) and requested a copy of the final report. She considered that the Administration should not avoid tackling the problem of Internet gambling by using the excuse of remaining "technological neutral".

14. In response, DS(HA)2 explained that the Working Group and the Bill had different foci and objectives. The Working Group focused on the framework or environment within which law enforcement against computer crime could be strengthened. It aimed to identify problems concerning crimes directed at the computer or computer system, as well as crime prevention, evidence gathering, investigation and prosecution issues associated with computer crime in general. It however did not seek to put forward tailor-made solutions to deal with all specific crimes that might be committed via the computer or the Internet such as unlawful Internet gambling and transmission of pornographic materials. DS(HA)2 also explained the sensitivity and limitations of the three possible enforcement measures set out in paragraph 21 of the Administration's paper and the reasons for not recommending any one of them at the present stage. She said that the Administration would continue to closely monitor the developments in other jurisdictions in this regard.

Action

15. Miss CHOY So-yuk asked whether illegal and unauthorised gambling over the Internet could possibly be detected and eliminated following the enactment of the Bill. She pointed out that a Hong Kong resident might open an account with an overseas bank or financial institution to place bets with unauthorised offshore bookmakers. She also questioned whether the Bill would require banks and financial institutions to refrain from assisting or aiding illegal and unauthorised bookmaking activities by way of facilities other than use of credit card.

16. DS(HA)2 responded that transactions relating to Internet gambling were mainly conducted by way of credit cards or deposits to bank accounts. Once the Bill was enacted, it was most likely that all banks and card issuers would refrain from dealing with money transactions relating to illegal and unauthorised gambling activities. The Administration would also provide banks and financial institutions with the particulars of known illegal and unauthorised offshore bookmakers enticing bets from Hong Kong people to facilitate their compliance with the law.

17. Deputy Solicitor General stressed that the Bill was not intended to amend the existing gambling policies. While there would be limitations in applying the proposals in the Bill to tackle cross-border gambling including Internet gambling, enactment of the Bill would render cross-border gambling less convenient and more risky, thereby reducing its attractiveness. In fact, as with other legislation, prosecution against offences involving a technological or an extra-territorial element or both would inevitably encounter some difficulties.

Promoting or facilitating bookmaking

18. Ms Audrey EU expressed disappointment with the Administration's response because it had failed to address her earlier query about the interpretation of "promoting or facilitating bookmaking" under different situations. She asked whether merely printing odds, tips and hints on newspapers would constitute an offence under proposed section 16E. Ms EU stressed that it was important to give a clearer definition in the legislation.

19. SGC responded that the Administration had adopted a focused and narrow approach in constructing the offence under proposed section 16D. The Administration proposed to prohibit the broadcast of betting information relating to horse and dog race, such as any forecast, hint, odds or tip relating to guessing or foretelling the result of any horse, pony or dog race, at any time within a period of 12 hours before the conduct of the relevant race. Publication of such information in newspapers, magazines, etc. was not included under proposed new section 16D. He stressed that in drafting the new sections 16D and 16E, the Administration had carefully considered the need to strike a balance among the different policy objectives of combating unauthorised gambling activities, preserving freedom of

Action

expression and maintaining a liberal broadcasting policy. However, if a person was closely related to an unauthorised bookmaking activity and advertised or published in a newspaper to invite punters to bet regularly, he might have committed the offence of promoting or facilitating bookmaking under proposed section 16E.

20. Ms Audrey EU asked why proposed section 16D prohibited the broadcast of any forecast, hints, odds or tip in relation to any unauthorised horse or dog racing event via television or radio within a fixed 12-hour period but not other periods preceding the conduct of that event. She also asked why printed media were exempted from the section.

21. DS(HA)2 explained that concurrent provision of betting information by way of live TV and radio coverage had greatly increased the appeal of offshore races to Hong Kong residents. The 12-hour period before the conduct of the event for prohibition of TV or radio broadcast of the relevant betting information was therefore proposed for consideration. The Administration would listen to the views of the community and might consider adjusting the duration of the period if necessary. She also pointed out that printed media were not covered because they were less capable of disseminating up-to-date and instant betting information to facilitate the placing of bets on horse and dog races.

22. Ms Audrey EU considered that the scope of application for a new criminal offence should be clearly defined to facilitate enforcement. She therefore sought clarifications about the coverage of proposed section 16E. With reference to paragraphs 9(c) and 9(h) of Annex A of the Administration's paper, she also asked whether the printed media would commit the offence of promoting or facilitating bookmaking for publishing betting information such as odds on overseas soccer matches which might stimulate betting interest.

23. DS(HA)2 responded that whether publication of betting information such as odds and tip would be regarded as promoting or facilitating bookmaking would depend on the circumstances of each case, such as who was giving the odds or tips, the reason for doing so, and where the betting information appeared. SGC supplemented that if publication of the information was merely factual reporting of odds or indication of tips, it was unlikely that the act would contravene the provisions under proposed section 16E. If the information was linked to an identified offshore bookmaker and that such reporting of information would attract punters to place bets, proposed section 16E might apply.

24. The Chairman asked whether it was an offence for an offshore bookmaker to publish a newspaper to disseminate only information and reports relating to offshore horse racing events. DSG(DJ) responded that if the sole purpose of the newspaper was to encourage readers to bet with an offshore bookmaker, it was very likely that

Action

the operator of the newspaper had committed the offence under proposed section 16E.

25. The Chairman referred to the legislative measures against offshore gambling adopted in the United States, Australia, the United Kingdom and France as highlighted in the HKJC's submission [Paper No. CB(2) 1524/00-01(02)] He requested the Administration to provide concrete information on overseas experience in tackling Internet gambling. He also suggested that the Administration should provide a table comparing provisions of the Bill, proposed new sections 16A to 16E in particular, with relevant overseas legislation in order to facilitate members' consideration of the drafting of relevant provisions. DS(HA)2 agreed to provide the information.

Adm

Adm

Soccer betting

26. Mr Tommy CHEUNG pointed out that soccer betting had become increasingly popular and widespread in recent years, both in terms of the number of people participating and the amount of bets involved. He considered that the problems of illegal and unauthorised soccer betting should be addressed by a comprehensive review, and preferably be discussed in parallel with the consideration of the Bill. He therefore asked about the Government's stance towards legalisation on soccer betting.

27. DS(HA)2 responded that the consultation paper on Gambling Review to be issued by end of June 2001 would include the issue of soccer betting for extensive consultation. The Administration had no foregone conclusion as to whether legal outlets should be provided for soccer betting. It would consider introducing relevant legislative proposal if there was public support for the provision of such legal outlets. She added that the Administration's original plan was to release the consultation paper following the enactment of the Bill.

Progress of deliberations

28. Ms Audrey EU expressed disappointment with some media reports that the slow progress of the scrutiny of the Bill would defer its enactment before the end of the current session. The Chairman stressed that members were aware of the need to enact the Bill to combat unauthorised bookmaking and the need to amend the existing Gambling Ordinance in the light of changing circumstances.

29. Mr David CHU considered that the need to legislate should be placed on top of other considerations such as possible enforcement problems. Given the substantial loss of revenue and funding for charity which could be generated by authorised gambling, he urged the Bills Committee to speed up its scrutiny work.

Action

30. The Chairman remarked that members all along had not objected to the proposed legislative amendments, and that the duty of the Bills Committee was to thoroughly scrutinise the Bill and suggest appropriate amendments to facilitate smooth implementation of the legislative proposals. Ms Audrey EU said that legislation should be enforceable and that members should be convinced of the feasibility to enforce the legislative proposals in the Bill. She pointed out that the Administration had not recommended any feasible options for enforcement against cross-border and unauthorised Internet gambling in its paper. Ms Cyd HO echoed the view of Ms Audrey EU. She considered that the Administration had not provided sufficient information for members to facilitate the deliberation of the Bill.

31. Mr Tommy CHUENG opined that regardless of the estimated turnover of cross-border and unauthorised gambling, the Bills Committee should aim to complete deliberation of the Bill as soon as practicable. He pointed out that offshore bookmakers did not need to bear the capital and recurrent costs of running horse races. Without the need to pay betting duty, they were in an advantageous position to compete with HKJC and would continue to enjoy the competitive edge in the absence of adequate legislative control.

III. Any other business

Date of next meeting

32. In view of the possible limitations of the Bill in tackling cross-border gambling including Internet gambling effectively, Miss CHAN Yuen-han suggested and members agreed that the Bills Committee should invite representatives of banks and credit card issuers to give their views on the feasibility of legislative control on Internet gambling at the next meeting to be held on Tuesday, 5 June 2001 at 4:30 pm. Members also agreed that representatives of HKJC, computer professionals and Internet service providers should also be invited to the meeting.

33. There being no further business, the meeting ended at 4:30 pm.

Legislative Council Secretariat

21 November 2001