

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

**Minutes of meeting
held on Tuesday, 5 June 2001 at 4:30 pm
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 James TO Kun-sun
Hon CHAN Yuen-han
Hon SIN Chung-kai
Hon YEUNG Yiu-chung
Hon CHOY So-yuk
Hon Timothy FOK Tsun-ting, SBS, JP
Hon TAM Yiu-chung, GBS, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Audrey EU Yuet-mee, SC, JP

Members Absent : Hon Andrew WONG Wang-fat, JP
Hon Abraham SHEK Lai-him, JP

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

Mr Stephen WONG
Deputy Solicitor General
Department of Justice

Ms CHEUNG Siu-hing
Deputy Secretary for Security (Special Duties)

Mr J D SCOTT
Senior Assistant Law Draftsman
Department of Justice

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

Mr John LEE
Chief Assistant Secretary for Security

Mr TSANG Wai-hung
Chief Superintendent, Organized Crime and Triad Bureau
Hong Kong Police Force

Mr Gavin SHIU
Senior Government Counsel, Prosecutions Division
Department of Justice

Mr Llewellyn MUI
Senior Government Counsel, Legal Policy Division
Department of Justice

Ms Mabel CHEUNG
Government Counsel, Bilingual Drafting Unit, Law Drafting
Division
Department of Justice

Mr CHAN Kwok-hung
Chief Inspector (Computer Crime Section), Commercial
Crime Bureau Headquarters
Hong Kong Police Force

Mr Vic YAU
Assistant Secretary for Home Affairs (5)2

Attendance by Invitation : The Hong Kong Jockey Club

Mr Kim MAK
Executive Director, Corporate Development

Mr Henry CHAN
Executive Director, Betting

Mr Steve BEASON
Executive Director, IT

American Express International, Inc

Mr Steven SIQUERIRA
Director, Government Affairs JAPA

Ms York Chi HARDER
Legal Consultant

Hong Kong Computer Society

Mr Joseph LEUNG
Director of Community Services

Mr John LI
Director of Public Relations

Internet Professionals Association

Ms Elizabeth QUAT
President

Mr William TANG
Chairman, Web Care Committee

Information Systems Audit and Control Association

Mr Pierre HERBST
President

Mr CHAN Wing-shing, Vincent
Director

Hong Kong Internet Service Providers Association

Mr Chester SOONG
Chairman

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

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The Chairman welcomed representatives of the deputations and the Administration to the meeting.

I. Meeting with deputations

[Paper Nos. CB(2)1524/00-01(02), CB(2)1708/00-01(01)-(02) and CB(2)1716/00-01(01)-(02)]

2. At the invitation of the Chairman, representatives of the six deputations presented their views as summarised in paragraphs 3 to 8 below.

The Hong Kong Jockey Club (HKJC)

[Paper No.CB(2) 1524/00-01(02) and CB(2)1750/00-01(01)]

3. Mr Kim MAK of HKJC said that HKJC strongly supported early enactment of the Bill to combat cross-border illegal gambling. He pointed out that the problem illegal gambling activities which were of a great diversity had become very serious. A conservative estimate of the annual turnover of illegal gambling was around \$80 billion. Cross-border gambling were mainly conducted by way of free IDD service provided by unauthorised offshore bookmakers, who advertised and promoted their bookmaking activities through various local channels. A number of overseas countries had initiated legislative measures to tackle illegal gambling and successfully suppressed the proliferation of the problem. HKJC believed that legislation was the most effective tool to combat illegal gambling. Details of HKJC's views and suggestions had been set out in its submission as well as the speaking note of Mr Kim MAK which was tabled at the meeting.

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American Express International Incorporation (AMEX)

[Paper No.CB(2) 1708/00-01(01)]

4. Mr Steven SIQUERIRA of AMEX briefed members on the submission of AMEX. He said that AMEX supported that the Gambling Ordinance should be amended in order to increase its effectiveness to curb illegal gambling. He stressed that AMEX's merchant agreement had expressly prohibited merchants from accepting an AMEX card for gambling goods or services. He, however, pointed out that it would be unfair to hold credit card-issuing institutions such as AMEX and related service providers responsible for illegal bookmaking activities if a merchant purposely misrepresented itself or the nature of its business. AMEX suggested that the Bill should provide exemptions for credit card-issuing institutions and related service providers such as banks, financial institutions, Internet service providers (ISPs), telephone system and payment card system operators, etc from the offence of promoting or facilitating bookmaking and the liability arising thereof.

Hong Kong Computer Society (HKCS)

[Paper No. CB(2) 1708/00-01(02)]

5. Mr John LI of HKCS briefed members on the submission of HKCS. He said that in general HKCS supported the Government policy of not encouraging gambling but allowing limited authorised outlets to meet local demand. HKCS also supported the use of Internet filtering tools in schools, libraries and government-run cyber centres to tackle Internet gambling and encourage parents to install the software in their computers at home. Mr LI, however, pointed out that practical problems would be encountered in the compilation of an updated list of offshore gambling sites as well as in the collection of evidence for prosecution. Mr Joseph LEUNG of HKCS supplemented that HKCS would be willing to collaborate with the Home Affairs Bureau to organise exhibitions and seminars on Internet gambling for educational purposes.

Internet Professionals Association (IPA)

6. Mr William TANG of IPA said that IPA supported enactment of the Bill to combat illegal gambling. However, given the nature and complexity of Internet gambling, IPA considered that the provisions of the Bill should be specific and comprehensive. For example, the Bill should specify the necessary conditions and circumstances which would constitute "knowingly permit or suffer" and "with the knowledge that such premises" under proposed new sections 16C(a) and 16C(b) respectively. The Bill should also provide that a notice with an appropriate period of time should be given to ISPs for taking necessary actions to terminate their

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commercial agreement with a merchant who was suspected of contravening the Gambling Ordinance.

Information Systems Audit and Control Association (ISACA)

[Paper No. CB(2)1716/00-01(01)]

7. Mr Pierre HERBST of ISACA briefed members on the submission of ISACA. He said that ISACA supported the Government's proposals to amend the existing Gambling Ordinance. With the current pace of technological development, Internet gambling, if left unchecked, would proliferate further. It was therefore essential that the law should be practical, enforceable and technology neutral. However, the mechanism to detect Internet gambling should be carefully designed in order not to compromise basic human rights such as individual's privacy right and the right to access information.

Hong Kong Internet Service Providers Association (HKISPA)

[Paper No. CB(2)1716/00-01(02)]

8. Mr Chester SOONG of HKISPA briefed members on the submission of HKISPA. He said that HKISPA supported the Government's initiative to tighten the control on illegal gambling. HKISPA was prepared to collaborate with the Home Affairs Bureau and the Hong Kong Police Force to combat illegal gambling. However, due to the complexity of the issues involved in Internet gambling, the Bill should be thoroughly discussed and drafted to ensure its enforceability.

Discussion

Scope and enforcement

9. Given the fact that business competitors of AMEX might not adopt a similar policy, Miss CHOY So-yuk asked whether AMEX would adhere to its policy of terminating agreement with a merchant who was found involving in illegal gambling activities. Mr Steven SIQUERIRA of AMEX responded that AMEX had a world-wide policy of not involving in any business dealing with illegal gambling. He stressed that since AMEX treasured its brand name and the interests of card members, it would not change the long-established policy simply to compete for business.

10. Ms Audrey EU asked whether AMEX would prefer a statutory requirement on all banks and credit card companies to refrain from involving in any illegal gambling transactions, or a laissez faire policy to let banks and credit card issuers exercise self-regulation. Mr Steven SIQUERIRA of AMEX responded that while the banking and credit card industry as a whole would prefer self-regulation, AMEX

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was prepared to comply with the existing Gambling Ordinance and the Bill, if enacted.

11. Ms Audrey EU also asked about the AMEX's action if a card member had used an AMEX card to place bets with an unauthorised bookmaker and subsequently requested AMEX to cancel the betting transactions. Mr Steven SIQUERIRA of AMEX replied that if a merchant accepted AMEX card for illegal gambling in violation of the merchant agreement and the transactions had been authorised by AMEX, AMEX would try to recover the charges from the merchant first. However, the card member would be held responsible for the transactions involved if AMEX could not recover the charges from the merchant.

12. Ms Audrey EU asked whether there was an international coalition or association of ISPs which would facilitate collaboration of their efforts to prevent Internet gambling on a world-wide basis. Mr Chester SOONG of HKISPA responded that there was no formal coalition agreement among ISPs to combat illegal gambling. However, ISPs registered in different jurisdictions would co-operate and assist one another on a voluntary basis. He pointed out that prevention of Internet gambling by way of technical measures such as real-time monitoring, the take-down approach and blocking access to gambling websites had limitations. Legislation prohibiting illegal gambling and requiring banks and credit card issuers to refrain from involving in illegal gambling activities should be far more effective.

13. In response to members' enquiries about the effectiveness of the Bill in combating Internet gambling, Mr Henry CHAN of HKJC explained that the Bill would prohibit offshore bookmakers from publicising and promoting unauthorised bookmaking activities in Hong Kong. The Bill would also prohibit banks and financial institutions from dealing with business relating to unauthorised gambling. These legislative requirements could substantially suppress the operation of Internet gambling. He stressed that HKJC supported the Bill on the ground that illegal gambling had led to substantial loss of public revenue and other adverse social impacts. Early enactment of the Bill and effective co-ordination of efforts in enforcement and education could effectively suppress the growth of illegal Internet gambling.

14. Mr Tommy CHEUNG asked whether HKJC had estimated the increase in its betting turnover on horse racing after enactment of the Bill. Mr Henry CHAN of HKJC replied that HKJC had not made an estimation about the possible increase of its betting turnover arising from enactment of the Bill because it was not a factor of consideration.

15. Mr Chester SOONG of HKISPA, Ms Elizabeth QUAT of IPA and Mr John LI of HKCS concurred that the Bill would create a deterrent effect on illegal

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gambling. They also agreed that although it was not technically feasible to eliminate Internet gambling, reinforcing education and use of filtering tools would help reduce illegal gambling activities. In response to Mr SIN Chung-kai, Mr John LI of HKCS clarified that HKCS did not recommend that the Bill should impose a mandatory requirement on ISPs to install filtering software on Internet networks with a view to combating illegal gambling.

Promoting or facilitating bookmaking

16. Mr SIN Chung-kai referred to proposed section 16E(2)(a) which stipulated that any person who promoted or facilitated bookmaking committed an offence whether or not the bet was placed partly or wholly outside the jurisdiction concerned. He asked whether AMEX was subject to similar stringent provision in the United States.

17. Mr Steven SIQUERIRA of AMEX responded that similar legislation was in force in the United States which prohibited banks and financial institutions and credit card issuers from participating in illegal gambling activities. The prosecuting authority had to prove that the suspected was "knowingly" participating in illegal gambling activity. However, he did not consider that the meaning of "knowingly" was sufficiently defined for compliance purpose.

18. The Chairman sought clarifications on the scope of exemption under "promoting or facilitating bookmaking" for financial and credit card issuing institutions as proposed by AMEX in its submission.

19. Mr Steven SIQUERIRA of AMEX said that there was currently legislation under consideration at the federal and state levels in the United States in connection with criminalising Internet gambling. Possible exemption provisions to be provided for service providers such as credit card companies or ISPs in these legislative proposals were still under consideration. He reiterated that AMEX was concerned about the definition of "knowingly" in the context of the Bill. At the Chairman's request, he undertook to provide wording of relevant exemption provisions under consideration in the United States for the Bills Committee to consider. The Chairman also requested the Administration to consider the AMEX's proposal.

Overseas experience

20. Miss CHOY So-yuk and Mr David CHU asked how overseas jurisdiction would tackle the problem of offshore illegal gambling and whether legislative measures adopted by overseas jurisdictions were effective in eliminating cross-border gambling.

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21. Mr Steven SIQUERIRA of AMEX responded that the United States had introduced legislative measures against Internet gambling. Card-issuing financial institutions were required to assist in preventing Internet gambling but their assistance in tracking offshore illegal gambling activities had not been very successful in the United States.

22. Mr Henry CHAN of HKJC said that similar to Hong Kong, most overseas jurisdictions allowed only authorised or exempted gambling activities to exist. In the face of the challenges posed by cross-border gambling, many countries had adopted legislative measures to uphold the integrity of their gambling policies and prohibit unauthorised offshore bookmakers to entice bets from their residents or to promote their business within their jurisdictions. He cited the measures taken by the United States, the United Kingdom and France in tackling the problem of illegal cross-border gambling as examples. He believed that most of these measures were effective in curbing the proliferation of illegal offshore gambling activities.

23. Mr Henry CHAN of HKJC added that according to a report of the South China Morning Post on 28 February 2001, a number of leading banks in Hong Kong had refused to process transactions in respect of credit card payment for unauthorised offshore bookmaking. The International Gaming News in the United States had also reported that the turnover of illegal betting had dropped by around 50% following the decision of the Visa and Master Card companies to prohibit their merchants from accepting their cards for illegal gambling payment.

II. Meeting with the Administration
[Paper No. CB(2) 1708/00-01(02)]

24. At the invitation of the Chairman, Chief Superintendent, Organized Crime and Triad Bureau, Hong Kong Police Force (CSP(OCTB)) demonstrated the operation of a gambling website on the Internet with the aid of a power-point presentation.

Enforcement against illegal Internet gambling

25. The Chairman asked how the Bill would affect enforcement actions of the Police against Internet gambling. CSP(OCTB) responded that without the proposed provisions in the Bill, the Police could not take any enforcement actions because unauthorised cross-border gambling activities currently were not illegal. The proposed amendments to sections 7 and 8 of the Gambling Ordinance which had an extraterritorial element would empower the Police to investigate into Internet gambling activities involving cash or credit card transactions processed by a local bank or financial institution. The Bill also provided the legal base for the Police to

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seek cooperation and assistance from the jurisdictions concerned in investigation or instituting prosecution.

26. The Chairman asked how overseas jurisdictions would cooperate and assist the Hong Kong Government in the collection of evidence for prosecution against operators of illegal gambling on the Internet. CSP(OCTB) responded that the extent of cooperation and assistance provided by an overseas jurisdiction would depend on its domestic laws against illegal Internet gambling. Normally, legal assistance between different countries would be provided on a reciprocal basis.

27. Given the enforcement difficulties to combat Internet gambling, Mr SIN Chung-kai suggested that the Administration should consider narrowing the scope of the Bill by focusing on combating specific illegal gambling activities. Deputy Secretary for Home Affairs (2) (DS(HA)2) noted the suggestion.

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28. Ms Andrey EU referred to the suggestions made by some deputations that collaboration between the Government and relevant information technology bodies and financial institutions to combat illegal offshore gambling. Ms EU requested that the Administration to provide information on possible measures (including statutory protection) to facilitate the collaboration.

Promoting or facilitating bookmaking

29. The Chairman and Mr SIN Chung-kai expressed concern about the lack of clarity in the definition of "promoting or facilitating bookmaking". Mr SIN queried how the knowledge of the accused or his intent to commit the offence of facilitating bookmaking could be proved. He urged the Administration to address the concerns of deputations that ISPs, financial institutions, credit card issuers and the money transmitting business might commit the offence of promoting or facilitating bookmaking unintentionally.

30. DS(HA)2 responded that over time there would be new means and acts of promoting or facilitating bookmaking in the light of advancing technologies and changing circumstances. A list of the acts which would constitute an offence under proposed section 16E might quickly become obsolete because offshore bookmakers could easily evade being caught by the provisions by finding new ways of promoting or facilitating their business in Hong Kong.

31. On the question of proving the intent to promote and facilitate bookmaking, DS(HA)2 explained that proposed section 16E as currently drafted already required the prosecution to prove the defendant's knowledge of or intent to commit the act which could be characterised as promoting or facilitating bookmaking. However, in view of the concerns of members and deputations, the Administration would put

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forward proposed amendments to specify that a person would only be liable if he knowingly promoted or facilitated bookmaking for members' consideration.

32. In response to Mr Tommy CHEUNG, Senior Assistant Law Draftsman confirmed that adding the word "knowingly" before "promote or facilitate bookmaking" in proposed section 16E was feasible.

Prosecution of offshore bookmakers

33. Mr SIN Chung-kai enquired whether it was feasible to prosecute unauthorised offshore bookmakers enticing bets from Hong Kong people and whether the Government would arrest these bookmakers on their arrival at Hong Kong. The Administration noted Mr SIN's concern.

Way forward

34. Mr David CHU opined that the Committee should aim at completing deliberations of the Bill as soon as practicable. The Chairman shared the view and urged the Administration to provide further references on overseas legislation against illegal gambling, as well as proposed Committee Stage amendments, for discussion at the next meeting.

III. Any other business

Date of meetings

35. The Chairman informed the meeting that the Bills Committee would hold the next two meetings on Monday, 11 June 2001 at 4:30 pm and Wednesday, 20 June 2001 at 10:45 am.

36. There being no other business, the meeting ended at 6:40 pm.

Legislative Council Secretariat

21 November 2001