

立法會
Legislative Council

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by the Administration)

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

**Minutes of meeting
held on Monday, 11 June 2001 at 4:30 pm
in Conference Room A of the Legislative Council Building**

Members Present : Hon Andrew CHENG Kar-foo (Chairman)
Hon Cyd HO Sau-lan
Hon James TO Kun-sun
Hon CHAN Yuen-han
Hon SIN Chung-kai
Hon Andrew WONG Wang-fat, JP
Hon YEUNG Yiu-chung
Hon CHOY So-yuk
Hon Timothy FOK Tsun-ting, SBS, JP
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Audrey EU Yuet-mee, SC, JP

Member Attending : Hon Margaret NG

Member Absent : Hon David CHU Yu-lin

- Public Officers Attending** : Mrs Betty FUNG
Deputy Secretary for Home Affairs (2)
- Mr Stephen WONG
Deputy Solicitor General
Department of Justice
- Mr J D SCOTT
Senior Assistant Law Draftsman
Department of Justice
- Mr Francis LO
Principal Assistant Secretary for Home Affairs (5)
- 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 Vic YAU
Assistant Secretary for Home Affairs (5)2
- 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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Action

I. Meeting with the Administration

[Paper Nos. CB(2)1773/00-01(01)-(02)]

At the Chairman's invitation, Deputy Secretary for Home Affairs (2) (DS(HA)2) briefed members on the main points of the Administration's two papers in response to matters arising from previous meetings held on 15 May and 5 June 2001 respectively.

Promoting or facilitating bookmaking

2. Members noted that the Administration proposed to insert the word "knowingly" before "promotes and facilitates bookmaking" in proposed section 16E(1). The Administration believed that the proposed amendment would help address the concern about any unknown or unintended facilitation of bookmaking and that the provision of an exemption clause for certain classes of service providers such as credit card issuers and information technology professionals was not appropriate or necessary.

3. The Chairman said that while the word "knowingly" had been used in the provisions of overseas legislation against illegal gambling, he asked whether exemptions had also been given under the legislation in these overseas jurisdictions for Internet service providers (ISPs) and financial institutions such as credit card companies involving in illegal gambling activities.

4. In response, DS(HA)2 said that the Administration had received a letter from AMEX dated 7 June 2001 clarifying that there was currently legislation against illegal gambling including Internet gambling under consideration in the United States. AMEX had proposed to substitute "person who promotes or facilitates bookmaking" in the Bill by "person who intentionally aids or abets bookmaking" to incorporate the elements of "intent" and "aiding and abetting" into proposed section 16E. At the Chairman's request, DS(HA)2 undertook to provide a copy of the letter to the Bills Committee, subject to the AMEX's agreement.

Adm

5. The Chairman was of the view that the provisions in respect of the offence of promoting or facilitating bookmaking under the Betting and Gaming Duties Act 1981 in the United Kingdom (UK) were more specific and the acts which would be considered as promoting or facilitating bookmaking were more concrete. He requested the Administration to review the drafting of proposed section 16E by making reference to the phrases used in the Act.

Adm

6. DS(HA)2 responded that the UK Betting and Gaming Duties Act 1981 was targeted at advertisements on printed media two decades ago when Internet gambling was definitely not a problem. In the face of rapidly changing circumstances and

Action

advancing technologies, the Administration considered it more appropriate to use the phrase "promote and facilitate" in the provision to tackle activities of offshore bookmakers in Hong Kong.

7. Senior Government Counsel, Prosecutions Division (SGC(PD)) said that the sentences "conducts in any business or agency for the negotiation, receipt or transmission of bets" in section 9(1)(a) and "knowingly issues, circulates or distributes in any advertisement or other document inviting or otherwise relating to the making of such bets" in section 9(1)(b) of the UK Betting and Gaming Duties Act 1981 conveyed more or less the same meaning as "promote" and "facilitate" under proposed section 16E. Senior Assistant Law Draftsman (SALD) supplemented that the word "promote" was used in section 9 of the existing Gambling Ordinance for the offence relating to unlawful lotteries.

8. Miss Margaret NG said that adding the word "knowingly" before "promotes or facilitates bookmaking" in proposed section 16E(1) would not sufficiently narrow the scope. She considered that the acts and behaviours constituting the offence of promoting or facilitating bookmaking should be specified in the Bill.

9. DS(HA)2 reiterated that to list out in the section the acts that would be regarded as "promoting or facilitating bookmaking" might make the new legislation unduly short-lived because offshore bookmakers would soon find new ways to promote or facilitate their business in Hong Kong, without being caught by the stated provisions. The Administration preferred to stick to the formulation of "(knowingly) promoting or facilitating bookmaking" to characterise the state of mind and the act in question. She added that similar wording had been used in the legislation of a number of overseas jurisdictions.

10. Miss Margaret NG said that she could not agree with the Administration's explanation. She cautioned that it might not be appropriate to make direct reference to provisions in overseas legislation as some of them i.e. France were not adopting a common law system. Legislation pertaining to one set of circumstances in one jurisdiction did not necessarily pertaining to another. Miss NG considered that putting forward the formulation without specifying the act in question for the purpose of facilitating prosecution went against the criminal law principle.

11. Miss Margaret NG stressed that the term "promoting or facilitating bookmaking" must be more clearly defined given the fact that it would be applied in a very wide context as the Bill sought to criminalise all unauthorised bookmaking activities. Ms Audrey EU and Miss Cyd HO shared a similar view.

12. Ms Audrey EU cited the provisions under relevant overseas legislation including the Wire Act 1961 and the Travel Act in the United States, and the 2nd June

Action

1891 Law in France to illustrate that the word “promote” or “facilitate” should be used in a defined context. She stressed that the behaviours and acts which would constitute the offence should be set out in detail. Otherwise, a publisher might be caught by the offence if he had printed publicity materials containing bookmaking information in the course of his business. Ms EU was concerned that proposed section 16E as presently worded seemed to focus on the consequences of an act instead of the act itself. She maintained that the wording should be carefully considered in the overall context of the offence.

13. DS(HA)2 responded that in collecting evidence for prosecution of an offence of promoting or facilitating bookmaking, the Administration would have to prove the existence of bookmaking activity and the knowledge and intent of the accused to promote or facilitate the activity. Deputy Solicitor General (DSG) explained that the offence of promoting or facilitating bookmaking should be interpreted within the scope of bookmaking. The wording "by way of trade or business" in the definition of "bookmaking" made it clear that only commercially operated bookmaking would be regulated. SGC(PD) supplemented that printing and distribution of information such as flyers relating to gambling activities would not be caught by the offence, unless the act was knowingly or intentionally performed to promote or facilitate unauthorised gambling.

14. Mr James TO asked whether the concept of "promoting or facilitating" had been used in criminal offences under other ordinances. SALD replied in the affirmative. He said that "promoting or facilitating" was similar to "aiding or abetting" in criminal offences. Mr TO queried whether the concept of "promoting or facilitating" had the same degree of certainty as compared with the common law concept of "aiding or abetting". He also asked whether the provision of a hyperlink and deposit service for offshore bookmakers would constitute an offence of promoting or facilitating bookmaking.

15. SGC(PD) responded that the element of intent or knowledge of the bookmaking activity should be the fundamental consideration for establishing an offence of promoting or facilitating bookmaking. He stressed that whether certain acts or behaviours would constitute promoting or facilitating bookmaking would have to be examined in the light of the facts and circumstances in each case.

16. Mr James TO expressed concern that a number of situations might fall within the scope of "promoting or facilitating bookmaking". He urged that the Administration should carefully consider the impact of criminalising acts such as advertising on betting with an offshore bookmaker, opening betting accounts for punters, collecting betting deposit for cross-border gambling purposes and operating telephone hotlines for Hong Kong punters as highlighted in the Administration's paper. Mr TO suggested that the Administration should provide more information

Action

on the context in which the concept of "promoting or facilitating" had been used in other ordinances.

17. DSG said that the phrase "promoting or facilitating" was proposed to adopt in proposed section 16E in view of the deficiency in the existing Gambling Ordinance to combat illegal bookmaking activities via toll-free IDD service or the Internet, and the substantial increase of Internet gambling in recent years. DSG also cited a recent case to illustrate the difficulties in tackling illegal gambling under existing legislation. Mr James TO requested the Administration to provide concrete prosecution cases to illustrate the prosecution difficulties under the existing legislation and to explain how the loopholes could be addressed by proposed section 16E. The Chairman also requested the Administration to provide more examples of prosecution cases in the United Kingdom and Canada under the Betting and Gaming Duties Act 1981 and the Criminal Code respectively.

[*Post-meeting note* : A Case Study of the activities of an offshore bookmaker in Hong Kong was subsequently forwarded to members under confidential cover on 9 July 2001 vide LC Paper No. CB(2)2025/00-01]

18. In response to members' concern about the scope of the offence of knowingly promoting or facilitating bookmaking as proposed by the Administration, DS(HA)2 undertook to consider putting forward further amendments to revise the wording of proposed section 16E and/or list out in the section the acts that would be regarded as promoting or facilitating bookmaking.

Regulation instead of criminalisation of unauthorised gambling activities

19. Miss Margaret NG and Ms Audrey EU queried why the Administration sought to impose criminal sanction on all unauthorised gambling activities instead of to regulate them in the first place. Miss NG considered that despite the adverse social impacts of illegal gambling, it might not be appropriate to criminalise all unauthorised offshore betting activities including those conducted over the Internet. Ms EU added that the Administration should consider exempting certain offshore betting activities. Miss NG and Ms EU held the view that the Administration should conduct a comprehensive consultation on the proposal of criminalising all betting activities with offshore bookmakers.

20. DS(HA)2 responded that the purpose of the gambling policy was to provide limited and controlled gambling opportunities to satisfy local demand. Unauthorised gambling operators however provided a much wider range of gambling products and more frequent gambling opportunities. If these bookmakers were allowed to take bets from Hong Kong people and if Hong Kong people could place bets with them at will, there would be de facto unlimited gambling opportunities available to Hong

Action

Kong people. This was in contradiction to the Government's gambling policy and definitely not in the overall interest of the community. The purpose of the Bill was to plug the existing loopholes of the Gambling Ordinance in tackling cross-border gambling activities. Whether the Government should authorise additional bookmakers on other types of gambling such as soccer betting was out of the scope of the Bill. She added that the Administration would launch a comprehensive consultation on Gambling Review shortly. SALD supplemented that while section 7 of the Gambling Ordinance specified that bookmaking was unlawful, section 3 provided a list of gambling activities which were not unlawful. In other words, the Gambling Ordinance did to some extent regulate the conduct of gambling activities.

21. Miss Cyd HO queried whether the Administration put forward the Bill for the purpose of allowing Hong Kong Jockey Club (HKJC) to monopolise all bookmaking activities in Hong Kong. DS(HA)2 clarified that the Bill was not proposed to pave the way for authorising HKJC to operate a variety of gambling activities. So far HKJC was the only authorised bookmaker in Hong Kong. It was a non-profit-making organisation and had been operating in accordance with the legislative and other requirements.

22. Mr Andrew WONG expressed concern that the Bill did not provide exemptions for overseas visitors to place bets with offshore bookmakers licensed in their native countries and local horse owners to place bets on their horses participating in overseas races. DS(HA)2 responded that the provision of exemptions under the proposed section 8 to certain class of persons was a complicated issue and that any exemption without substantial justifications might appear to be arbitrary and could be challenged as discriminatory.

23. Mr SIN Chung-kai was of the view that the gravity of punishment for unauthorised bookmakers and punters who would be convicted of the offences under the Bill should be different. DS(HA)2 pointed out that under the Gambling Ordinance, the maximum penalties imposed on bookmakers were much heavier than that for the punters under the respective offences.

24. Members noted that the Administration proposed to amend the level of fine from \$5,000,000 to \$500,000 in proposed section 16C(2)(a) and (b). Responding to the Chairman, DS(HA)2 explained that the proposed amendment was necessary so that the maximum levels of penalty provided under the section would be in line with those under the existing section 15, given the similar gravity of the offences.

Blocking access to and taking-down gambling websites

25. Ms Audrey EU said that representatives of financial institutions, ISPs and related professional associations attending the last meeting of the Bills Committee

Action

had indicated their willingness to collaborate with the Administration to combat unlawful Internet gambling activities by means of blocking access to/taking-down gambling websites. She enquired about the feasibility of such arrangement. Ms Audrey EU considered that a general enabling provision to empower ISPs to block illegal gambling websites from transmission should be provided for in the Bill.

26. DS(HA)2 responded that the Administration would collaborate with relevant professional bodies and trade associations to combat unlawful Internet gambling activities. The Hong Kong Association of Banks had already agreed to stop providing banking services for illegal gambling transactions and refuse to authorise credit-card transactions on the condition that they knew or were informed that unlawful gambling activities were involved. The Administration would maintain contact with relevant parties and provide assistance where necessary and appropriate. She added that the Administration had no intention to impose on ISPs a legal obligation to block access to gambling websites in view of the freedom of information concerns. DS(HA)2 also explained that blocking gambling websites would not be very effective to combat cross-border gambling given the existence of a large number of gambling websites around the world.

II. Any other business

Date of next meeting

27. Members agreed to hold the next meeting on Wednesday, 20 June 2001 at 10:45 am to continue discussion with the Administration.

28. There being no further business, the meeting ended at 6:40 pm.

Legislative Council Secretariat

21 November 2001