

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 Wednesday, 20 June 2001 at 10:45 am
in Conference Room A of the Legislative Council Building**

Members Present : Hon Andrew CHENG Kar-foo (Chairman)
Hon Cyd HO Sau-lan
Hon CHAN Yuen-han
Hon SIN Chung-kai
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

Member Absent : Hon David CHU Yu-lin
Hon James TO Kun-sun
Hon Andrew WONG Wang-fat, JP
Hon YEUNG Yiu-chung
Hon CHOY So-yuk
Hon Abraham SHEK Lai-him, JP

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

Mr Stephen WONG
Deputy Solicitor General (Advisory)
Department of Justice

Mr J D SCOTT
Senior Assistant Law Draftsman
Department of Justice

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

Ms Anthea PANG
Senior Government Counsel, Prosecutions 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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I. Matters arising from previous meeting
[Paper Nos. CB(2)1879/00-01(01)]

At the Chairman's invitation, Deputy Secretary for Home Affairs (2) (DS(HA)2) briefed members on the paper setting out the Administration's response to the matters raised at the meeting held on 11 June 2001.

Blocking access to/taking down gambling websites

2. Ms Audrey EU asked why the Administration did not consider providing a general enabling provision to empower local Internet service providers (ISPs) to

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block local access to gambling websites. She recalled that the deputations attending the meeting on 5 June 2001 had indicated support for incorporation of such a provision in the Bill. Ms EU considered it unsatisfactory that ISPs should be left to exercise self-regulation because they could be caught by proposed section 16E for knowingly distributing or disseminating any advertisement or other information which served to promote and facilitate bookmaking. She suggested that after enactment of the Bill, the Administration should proactively provide ISPs with details of the websites to be blocked or taken down because of their involvement in illegal gambling. Ms EU stressed that legislation was preferable to administrative measures if it was considered necessary, as a matter of policy, for gambling websites to be blocked.

3. DS(HA)2 responded that the Administration would work closely with the industry to see how access to unauthorised gambling websites could be blocked by local ISPs without causing freedom of information and censorship concerns. The Administration would not impose a legal obligation on ISPs to block gambling websites at this stage. Ms Audrey EU suggested the Administration to provide information on existing provisions which empowered ISPs to block illegal local websites from transmission. DS(HA)2 pointed out that as conveyors of information, ISPs normally did not monitor the Internet traffic and activities (including those related to gambling) going through its network and therefore should not commit any offence under proposed section 16E in normal circumstances.

4. Mr SIN Chung-kai expressed support for the Administration's decision not to require ISPs to block access to gambling websites. He was of the view that ISPs should have complete discretion in determining their marketing strategies and consumers should enjoy the right to access to information and choices in entertainment programmes available on the Internet. Miss Cyd HO shared his view, stressing that it was important to preserve freedom of information. Mr SIN further pointed out that the Police should be able to take enforcement actions against a local gambling website without the need to ask the concerned local ISP to remove the website.

Promoting or facilitating bookmaking

5. Members noted that in view of some members' concern about the revised formulation of proposed section 16E ("knowingly promoting or facilitating bookmaking"), the Administration had put forward proposed Committee Stage amendments (CSAs) to further revise the formulation by giving a better idea of the acts, and the purposes they served to be covered.

6. Mr TAM Yiu-chung asked whether it was feasible not to use the word "facilitating" in proposed section 16E. He cited the Trade Marks Ordinance and the

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Employees Retraining Ordinance to illustrate that the word "facilitate" or "facilitating" should be used in a defined context when it applied to criminal offences. Mr TAM also pointed out that the word "promote" had been used in the Pyramid Selling Prohibition Ordinance and the word was defined as "establish, advertise, manage or assist in the management of a pyramid selling scheme". The Administration should make reference to the definition.

7. DS(HA)2 responded that the CSA to proposed section 16E(3) was proposed to the effect that any person who knowingly provided certain services for the purpose of bookmaking, facilitating bookmaking, or facilitating betting by any person with a bookmaker committed an offence. The targeted services were specified under proposed sections 16E(4)(a) to 16E(4)(d). She explained that the scope of the offence could just cover acts of advertising and distributing promotional materials, etc if only the word "promoting" was used in proposed section 16E. Deleting the word "facilitating" would substantially narrow the scope of offence by excluding financial institutions and credit-card issuing institutions which provided services for the purpose of facilitating bookmaking. DS(HA)2 further pointed out that unlike pyramid selling scheme, illegal gambling activities often involved intermediaries such as "agents" and "runners" and financial institutions which were difficult to be caught without incorporating an element of "facilitating" in the provision.

Adm 8. The Chairman was of the view that although the CSAs had improved the drafting of proposed section 16E, it failed to address members' concern about the lack of clarity. He suggested that the Administration should consider removing the word "promoting" or "facilitating" from proposed section 16E. The Chairman pointed out that similar legislation in the United Kingdom and Canada used neither of these words. Assistant Legal Adviser (4) (ALA4) shared the view of the Chairman. He suggested that the Administration should consider defining the context for the offences under proposed section 16E(1) to (3). In this connection, the Chairman requested the Administration to provide further examples of prosecution cases in the United Kingdom and Canada under the Betting and Gaming Duties Act 1981 and the Criminal Code respectively. Deputy Solicitor General (Advisory) (DSG(A)) undertook to follow up the Chairman's request.

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Public consultation on Gambling Review

9. The Chairman said that after having read the reasons given by the Administration for criminalising unauthorised gambling activities rather than regulating them, he felt even more strongly that the Administration should have completed the public consultation on the Gambling Review before putting forward the Bill. The Chairman was of the view that given the fact the public consultation exercise was impending and both the Bill and the Gambling Review were closely

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related to the Government's gambling policy, the Administration should consider deferring consideration of the Bill until the majority view of the community was ascertained.

10. DS(HA)2 clarified that the Bill and the public consultation on the Gambling Review were two separate exercises. The Bill sought to criminalise all unauthorised cross-border gambling activities and activities in Hong Kong which promoted or facilitated cross-border gambling whereas the public consultation focused on whether the Government should regulate soccer betting through authorised outlets. She stressed that as unauthorised gambling activities had created a huge drain on betting revenue, the Administration considered it necessary to plug loopholes in the existing Gambling Ordinance immediately. Responding to the Chairman, DS(HA)2 explained that under the Gambling Ordinance, all gambling activities were illegal except those expressly authorised by the Government under the Betting Duty Ordinance, those exempted under section 3 of the Ordinance (mainly social gambling) and those licensed by the Commissioner for Television and Entertainment Licensing. If the community as a whole supported the provision of controlled local outlets for soccer betting, only amendments to the Betting Duty Ordinance would be required and there was no need to amend any provision of the Gambling Ordinance.

11. Ms Audrey EU said that as a matter of logic, she did not find it improper to consider the Bill which sought to criminalise all unauthorised gambling activities before the public consultation on the gambling review which dealt specifically with provision of controlled outlets for soccer betting. Mr TAM Yiu-chung shared the view, saying that the two issues could be dealt with separately.

II. Clause-by-clause examination of the Bill

[The Bill and the marked-up copy of the relevant provisions of the Ordinance to be amended by the Bill, the Legislative Council Brief (File Ref : HAB CR 1/17/93 Pt. 29)]

12. Members examined the Bill from Clauses 1 to 5. The salient points of discussion are summarised below.

Clause 2 - Interpretation

Definition of "bookmaking"

13. Members noted that the definition of "bookmaking" was amended to include the organisation, management or control of bookmaking which included the soliciting, receiving, negotiating or settling of a bet by way of trade or business whether personally or by letter, telephone, telegram or by any other means. In

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response to the Chairman, DS(HA)2 explained that the primary purpose of the amendment was to expand the scope of "bookmaking" for the facilitation of enforcement actions.

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14. Mr SIN Chung-kai and Miss CHAN Yuen-han suggested that the wording of the definition of "bookmaking" should be refined in the light of changing circumstances. They pointed out that nowadays very few bookmaking activities would be conducted by way of "letter" or "telegram". At members' request, DS(HA)2 agreed to consider whether the phrase "by telecommunication" would be a more appropriate term.

Definition of "gambling"

15. Members noted that the definition of "gambling" was amended to include any activity in relation to "keeping premises for betting on horse, pony or dog races, etc" under proposed section 16A and "keeping premises for competitions on results of future events, etc." under proposed section 16B.

16. Ms Audrey EU noted that the phrase "by way of trade or business" was included in the definition of "bookmaking" but not in that of "gambling". She asked whether gambling on social occasions would fall within the scope of the definition of "gambling".

17. Senior Assistant Law Draftsman (SALD) explained that the spirit of the Gambling Ordinance was to criminalise all unauthorised commercial bookmaking activities. Social gambling not conducted by way of trade or business was lawful as provided under section 3 of the Ordinance. In particular, section 3(2) had specified that gaming was lawful if the game was played on a social occasion in private premises and was not promoted or conducted by way of trade or business or for the private gain of any person. Section 3(7) also stipulated that betting was lawful if the bet was made between persons none of whom was thereby committing an offence of bookmaking under section 7 of the Ordinance.

18. Ms Audrey EU noted that under section 3(2) of the Gambling Ordinance, gaming was lawful if the game was played on a social occasion in private premises and was not promoted or conducted by way of trade or business or for the private gain of any person. She asked why "gambling" under the same circumstances was not lawful. DS(HA)2 responded that the definition of gambling under the existing Gambling Ordinance included gaming, betting and bookmaking. Section 3(2) already provided for an exemption for social gaming which was not conducted by way of trade or business. Similar exemption was also provided for betting under subsection (7). According to the definition of "bookmaking", only a person who

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engaged in bookmaking by way of trade or business would be caught. Similar exemption for gambling therefore was not provided for under the legislation.

Definition of "Gambling establishment"

19. With reference to the proposed expanded definition of "gambling establishment", Mr SIN Chung-kai said that the scope of proposed section 16B(1)(c) seemed very broad. DS(HA)2 responded that when proposed sections 16A and 16B were drafted, the Administration aimed to include those premises which had not actually involved in the taking of bets, i.e., service centres operated for the promotion and facilitation of bookmaking on horse racing or future events.

20. In response to the Chairman, DS(HA)2 said that proposed section 16B "Keeping premises for competitions on results of future events, etc." was meant to cover soccer matches. ALA4 pointed out that the wording of proposed section 16B(1)(a) was similar to that of paragraph (f)(i) of the definition of "lottery". However, paragraph (f)(ii) of the definition of "lottery" was not included in proposed section 16B(1)(a). He requested the Administration to clarify the policy intent of proposed section 16B(1) as to whether the section intended to cover both soccer matches and lottery.

21. DS(HA)2 and SALD responded that the policy intent of proposed section 16B was to target betting on events generally including soccer matches, but not lottery which was already adequately covered under sections 4, 9, 10, 11 and 12 of the Gambling Ordinance. The proposed wording in section 16B was similar but not identical to the definition of "lottery" under section 2.

22. ALA4 further said that although there was slight difference in drafting, the meaning of proposed section 16B(1)(a) in essence was the same as paragraph (f)(i) of the definition of "lottery" under section 2. This would mean that prosecutions against illegal gambling on results of future events such as soccer matches could be instituted on the basis of either provision. Ms Audrey EU shared the concern raised by ALA4. She said that although proposed 16B dealt with premises for competitions on results of future events, the scope of activities to be targetted against should be clear. SALD confirmed that illegal bookmaking on soccer matches could be caught under section 7 of the Ordinance. However, proposed section 16B was targetted at premises for competitions on results of future events. DSG(A) pointed out that it was not uncommon that there might be overlapping among different offences. Prosecution would be instituted under the appropriate provision depending on the circumstances of each case. At the Chairman's request, DS(HA)2 agreed to consider revising the drafting of proposed section 16B(1)(a) in order to avoid any possible overlapping of meaning with the definition of "lottery".

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23. Mr SIN Chung-kai and Miss CHAN Yuen-han asked whether owners of pubs, bars and restaurants operating in commercial premises with broadcasting equipment would be caught by the offence of promoting or facilitating bookmaking if their customers or employees was found betting with one another in these premises. Mr Tommy CHEUNG stressed that owners should not be held responsible because they could not know whether betting activities had taken place.

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24. DSG(A) reiterated that section 3(7) provided that betting was lawful if the bet was made between persons none of whom was committing an offence of bookmaking. In other words, gambling on a social occasion in commercial premises not involving bookmaking was not unlawful. DS(HA)2 added that the gambling activities would not be covered if they were not conducted by way of trade or business. DSG(A) further pointed out that the responsibility of owners, tenants, etc. of the premises had been set out under proposed section 16C. Members requested the Administration to ensure the clarity of section 3(2) so that gambling on social occasions in commercial premises would not be unlawful.

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25. In response to the Chairman's enquiry, DS(HA)2 confirmed that the term "competitions" in proposed section 16B(1)(a) referred to the betting itself rather than the future events e.g. soccer matches. She undertook to consider whether "競賽" was the proper translation of the term "competition".

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26. Ms Audrey EU sought clarifications about the difference between "for the purposes of" and "in connection with" in the definition of "gambling establishment". The Administration undertook to provide a written response.

Clause 3 - Unlawful gambling establishments

ALA4

27. Ms Audrey EU asked the Administration to explain why the reference to "assisting" was deleted from section 5 of the Gambling Ordinance. SALD explained that the court ruled in 1985 that the enactment of the specific offence of "assisting in bookmaking" under section 7(1)(c) of the Ordinance had displaced the common law doctrines of accessory liability of aiding, abetting, counselling or procuring an offence as set out under section 89 of the Criminal Procedure Ordinance. It was thus necessary to reinstate the concept of "aiding, abetting, procuring or counselling" in the offence of bookmaking, as well as other offences containing a reference to "assisting". Similar amendments were therefore proposed under Clauses 4, 6 and 7. ALA4 undertook to provide members with the relevant case report of *The Queen v FUNG Sik-chung*.

[*Post-meeting note* : The case report of *The Queen v FUNG Sik-chung* was subsequently circulated to members vide LC Paper no. CB(2)2025/00-01 on 4 July 2001.]

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Clause 4 - Bookmaking

28. Members noted that the Administration had proposed a CSA to proposed section 7(1A)(a)(ii) by deleting "other event" and substituting "any competition, race, event or contest". Members further noted that similar amendment was also proposed to proposed section 8(2)(1)(ii) under Clause 5 of the Bill.

Clause 5 - Betting with a bookmaker

29. Ms Audrey EU pointed out that the proposed incorporation of an extraterritorial element in section 8 of the Gambling Ordinance would mean criminalisation of all betting activities with an unauthorised bookmaker as long as the bettor was in Hong Kong. She expressed strong reservations on the proposal. Ms EU reiterated her view that the public should be thoroughly consulted before implementing the proposal.

30. Mr Tommy CHEUNG expressed support for the proposal. He said that the community should be well aware of its implications. Mr TAM Yiu-chung, Mr SIN Chung-kai and Miss CHAN Yuen-han considered that the Administration should conduct a comprehensive consultation to ascertain the majority views of Hong Kong people on criminalisation of all betting activities with offshore bookmakers. Miss CHAN suggested that the Government should also seek the advice of the Hong Kong Tourism Board on the impact of the proposal on tourism in Hong Kong. Mr SIN requested the Administration to re-consider the proposal of exempting tourists so that they would not be caught for placing bets with offshore bookmakers licensed in their home countries. He also reiterated his concern that the provision might not be enforceable.

31. DS(HA)2 responded that members had suggested at an earlier meeting that consideration should be given to exempting a tourist or a foreign passport holder who bet with a licensed bookmaker in his home country via the telephone or the Internet. The Administration had given serious consideration to the issue but remained of the view that there was no strong justification for exempting tourists and any other class of persons such as horse owners from the ambit of proposed section 8. In fact, any such exemption could be regarded as arbitrary and challenged as discriminatory. Moreover, it was not unreasonable that a visitor to Hong Kong should abide by the domestic law, regardless of whether he was residing in or visiting Hong Kong. She assured members that the Administration would consult the Hong Kong Tourism Board and work out measures that could be implemented to apprise visitors to Hong Kong of the prohibition in law.

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32. Some members asked whether a person would commit an offence under proposed section 8 if he placed a bet with an offshore bookmaker through a friend outside Hong Kong. DSG(A) responded that any person placing a bet with an unauthorised bookmaker committed an offence. However, that person might be able to avoid being caught if he placed the bet through a friend outside Hong Kong. Given the Administration's response, Ms Audrey EU queried the purpose of proposed section 8 if a person could evade being caught by placing a bet through a third party.

Adm 33. DS(HA)2 pointed out that subject to the considered views of the Bills Committee, the Administration might consider deferring consideration of the proposed amendments to section 8 pending the results of a comprehensive consultation exercise. However, she cautioned that allowing Hong Kong people to bet with offshore bookmakers would be a major and fundamental departure from the existing policy which prohibited illegal and unauthorised gambling in Hong Kong.

Adm 34. Mr Tommy CHEUNG said that he did not have a strong view as to whether proposed section 8 should be retained or not. However, he considered that the provision would have the effect of discouraging betting with offshore bookmakers because it was necessary to place the bet through an intermediary in order to avoid breaking the law. Mr TAM Yiu-chung expressed a similar view. Miss CHAN Yuen-han said that she personally inclined to agree if the Administration decided to delete the proposed provision for the time being. The Chairman asked the Administration to carefully consider members' views and revert to the Bills Committee on its position in respect of proposed section 8.

III. Any other business

Date of next meeting

35. Members agreed that on the assumption that the Council meeting of 20 June 2001 would resume on the following day at 2:30 pm for continuation of business, the Bills Committee would hold its next meeting immediately after the Council meeting if the Council meeting adjourned on or before 6:00 pm on 21 June 2001.

[*Post-meeting note* : The next meeting was subsequently held on Thursday, 5 July 2001 at 10:45 am.]

36. The meeting ended at 2:10 pm.

Legislative Council Secretariat
6 December 2001