

立法會
Legislative Council

LC Paper No. CB(2)601/01-02
(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 Thursday, 5 July 2001 at 10:45 am
in the Chamber of the Legislative Council Building**

Members Present : Hon Andrew CHENG Kar-foo (Chairman)
Hon David CHU Yu-lin, JP
Hon Cyd HO Sau-lan
Hon James TO Kun-sun
Hon YEUNG Yiu-chung, BBS
Hon CHOY So-yuk
Hon Abraham SHEK Lai-him, JP
Hon Tommy CHEUNG Yu-yan, JP

Member Absent : Hon CHAN Yuen-han, JP
Hon SIN Chung-kai
Hon Andrew WONG Wang-fat, JP
Hon Timothy FOK Tsun-ting, SBS, JP
Hon TAM Yiu-chung, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP

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

Mr Gilbert MO
Deputy Law Draftsman (Bilingual Drafting and
Administration)
Department of Justice

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

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

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

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)1

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. Matters arising from previous meetings
[Paper Nos. CB(2)1926/00-01(01) and CB(2)2025/00-01(01)]

At the Chairman's invitation, Deputy Secretary for Home Affairs (2) (DS(HA)2) briefed members on the salient points of the Administration's paper [Paper No. CB(2)1926/00-01(01)] and proposed Committee Stage amendments

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(CSAs) in response to the concerns of members raised at the meeting on 20 June 2001.

2. Given that the Administration had published a Consultation Paper on Gambling Review, members discussed whether the Bills Committee should consider the results of the consultation before further deliberations of the Bill. After discussion, members agreed that the Committee should continue deliberation of the Bill while the consultation exercise was in progress. The Chairman stressed that the Committee had not delayed the scrutiny work of the Bill. Members had all along willing to hold meetings to scrutinise the Bill once the Administration was able to provide written response to members' questions for further discussion.

Betting with a bookmaker through an intermediary

3. DS(HA)2 informed members that the Administration was considering members' comments on the proposed section 8. The Hong Kong Tourism Board had also been consulted which had indicated that it did not consider the proposed prohibition would have any major adverse effect on tourism in general. The Board should be able to advise tourists of the provision. The Administration would revert to the Bills Committee on its considered view as soon as possible.

Adm

4. The Chairman sought clarification from the Administration as to whether betting with a bookmaker through an overseas intermediary would fall within the scope of the proposed new section 8 in the Bill.

5. Senior Government Counsel, Prosecutions Division (SGC(PD)) responded that the bettor in Hong Kong would have committed the offence of betting with a bookmaker regardless of whether the intermediary was in Hong Kong or overseas when he placed a bet with the bookmaker. The offence would be committed if that person had the intention to bet with a bookmaker irrespective of whether he placed the bet personally or through an intermediary. Conviction depended on the availability of substantive evidence. She added that whether the intermediary had committed the offence as an aider/abettor would depend on his knowledge of the purpose of the transaction involved.

Promoting or facilitating bookmaking

6. Members noted that at members' request, the Administration had provided a case study on the activities of an offshore bookmaker in Hong Kong [Paper No. CB(2)2025/00-01(01)] to illustrate the present difficulties in tackling the activities of offshore bookmakers in Hong Kong.

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7. Mr James TO expressed disappointment with the contents of the case study. He said that the Administration had only described in the case study the means adopted and the activities conducted by an offshore bookmaker to promote and facilitate his bookmaking business in Hong Kong. It failed to put forward necessary legal arguments to support enactment of the Bill. Mr TO requested that the Administration should provide (a) detailed legal arguments to explain the difficulties under the existing legislation; (b) more case studies if available; (c) elaboration on the evidential problems in relevant case(s); and (d) how these evidential problems could be addressed by proposed section 16E. He suggested that the Bills Committee could discuss relevant information in a closed session if necessary.

Adm

8. DS(HA)2 responded that the case provided was the first of its kind in Hong Kong and had unveiled the inadequacy of the current Gambling Ordinance in dealing with betting with an offshore bookmaker and activities promoting cross-border gambling in Hong Kong. SGC(PD) supplemented that many Hong Kong people were found to have placed bets with the offshore bookmaker, but no prosecution had been pressed against them because the current Gambling Ordinance had not incorporated an extraterritorial element. The Administration agreed to provide additional information to the Bills Committee for further discussion.

Adm

Gambling on a social occasion in commercial premises

9. Members noted that the Administration considered that sections 3(2) and 3(7) of the Gambling Ordinance should provide sufficient safeguard for private and social gambling among friends in private premises or otherwise. Mr James TO said that the Administration's response had failed to address members' query as to whether gambling on social occasions in commercial premises was lawful.

10. DS(HA)2 responded that social gambling not conducted by way of trade or business, either in private or commercial premises, was allowed under the Gambling Ordinance. The exemptions provided for under section 3(7) had not specified the element of location. Hence social gambling among friends even in commercial premises would not be unlawful. Mr James TO remarked that if it was the case, the Administration should clearly relay the policy intention to the Police so that frontline police officers would act accordingly during their inspection of bars. DS(HA)2 undertook to liaise with the Police in this respect.

Adm

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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, please quote relevant Paper No. CB(2)1879/00-01(01), the Legislative Council Brief (File Ref : HAB CR 1/17/93 Pt. 29)]

Clause 5 – Betting with a bookmaker

11. At the Chairman's request, DS(HA)2 undertook that the Administration would provide the Chinese version of all the CSAs before the next meeting. Members agreed to examine the drafting of Clause 5 when the Chinese version of the relevant CSA was available.

Clause 6 - Section substituted

12. The Chairman observed that the Chinese version of the word "promotes" was "籌辦" in section 9 and "推廣" in proposed section 16E. In response to his enquiry, Deputy Law Draftsman (Bilingual Drafting and Administration) (DLD(BDA)) explained that the Chinese version of the word "promotes" would depend on the policy intent of the respective provision. Mr Tommy CHEUNG considered that "籌辦" appeared to be a more appropriate Chinese version for the word "organizes". Miss Cyd HO further said that the Administration should consider narrowing the scope of proposed section 16E by using "籌辦" as the Chinese version for the word "promote". The Chairman remarked that the Chinese version "籌辦" carried a clearer meaning than the word "推廣". Mr CHEUNG did not share the view. He said that the Administration should consider the wording of Chinese version carefully in order to ensure that it would adequately reflect the policy intent.

13. Miss Cyd HO requested the Administration to provide members with background information on the preparation of the Gambling Bill 1976 and the deliberations of the Bilingual Law Advisory Committee about the decision to use "籌辦" instead of "推廣" as the Chinese version for the word "promotes" in section 9. The Administration undertook to ascertain the information and revert to the Bills Committee at the next meeting.

Adm

14. DS(HA)2 pointed out that any amendment to the Chinese version of the term might have implications for the policy intent of a provision. The Gambling Ordinance contained different provisions to deal with unlawful lotteries and bookmaking activities. As the Police had indicated that unlawful lotteries activities with an extraterritorial element were not serious, the Administration only proposed technical amendment in the Bill to section 9 by deleting the reference to "assisting" in the offence.

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15. The Chairman said that he appreciated the Administration's concern. However, given the significance of the term "promotes" in the Bill, the Administration should clarify the policy intent and revise the Chinese version if necessary in order to ensure consistency in the legislation.

Adm

16. Mr James TO sought clarifications about the policy intention for using the word "assist" in sections 5, 7, 9 and 13 of the Gambling Ordinance. DLD(BDA) replied that when the Gambling Ordinance was drafted in the 1970s, the concept of "aiding and abetting" had already been incorporated in the Interpretation and General Clauses Ordinance. He undertook to ascertain as far as practicable the rationale for using the term "assist" in the Gambling Ordinance. Mr TO said that he was concerned that the scope of the relevant provisions would be unduly broad if the concept of "aiding or abetting" was used. He therefore requested the Administration to provide a situation analysis on relevant court cases (including *The Queen v Fung Sik-chung*) with headnotes to illustrate the difference between using "assisting" and "aiding or abetting" in the legislation. DLD(BDA) pointed out that the Administration would need time to follow up with Mr TO's request.

Adm

Clause 7 - Gambling in any place not being a gambling establishment or in a street

Adm

17. Mr James TO requested and the Administration agreed to ascertain the rationale as to why the term "promotes" was not used in section 13 of the existing Gambling Ordinance.

III. Any other business

Date of next meeting

18. Members agreed to continue clause-by-clause examination of the Bill on Monday, 9 July 2001 at 10:45 am.

19. There being no other business, the meeting ended at 12:40 pm

Legislative Council Secretariat

6 December 2001