

**立法會**  
**Legislative Council**

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(These minutes have been  
seen by the Administration)

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

**Minutes of meeting  
held on Monday, 9 July 2001 at 10:45 am  
in Conference Room B of the Legislative Council Building**

**Members Present** : Hon Andrew CHENG Kar-foo (Chairman)  
Hon CHAN Yuen-han, JP  
Hon SIN Chung-kai  
Hon Andrew WONG Wang-fat, JP  
Hon YEUNG Yiu-chung, BBS  
Hon CHOY So-yuk  
Hon Tommy CHEUNG Yu-yan, JP  
Hon Audrey EU Yuet-mee, SC, JP

**Member Attending** : Hon Margaret NG

**Members Absent** : Hon David CHU Yu-lin, JP  
Hon Cyd HO Sau-lan  
Hon James TO Kun-sun  
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 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 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

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**I. Matters arising from the last meeting**

Ms Audrey EU pointed out that the Administration had undertaken to amend proposed section 16B but the amendment was not yet available for members' consideration.

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2. Miss Margaret NG was of the view that it was highly undesirable that a complete set of Committee Stage amendments (CSAs) to be proposed by the Administration was still not available when the Bills Committee started to examine the Bill clause-by-clause. The Chairman appreciated members' concerns since the Administration had yet to revert to the Bills Committee on some policy issues raised by members. However, as some members had urged at previous meetings the Bills Committee to proceed with its scrutiny work, he invited members to continue the clause-by-clause examination for the time being.

3. Responding to the Chairman, Deputy Secretary for Home Affairs (2) (DS(HA)2) and Deputy Law Draftsman (Bilingual Drafting and Administration) (DLD(BDA)) confirmed that the Administration would provide a written response to members' concerns raised at previous meetings with a full set of CSAs for discussion at the next meeting .

**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), and Paper No. CB(2)1879/00-01(01)]

4. Members continued the clause-by-clause examination of the Bill from clause 8 onwards.

Clause 8 - Part added

Part IIIA - Keeping premises for betting, etc., restriction on broadcasting, and promoting or facilitating bookmaking

*Proposed section 16A - Keeping premises for betting on horse, pony or dog races, etc.*

*Proposed section 16B - Keeping premises for competitions on results of future events, etc.*

5. The Chairman asked about the interpretation of the phrase "open, keep or manage" in the context of keeping a premises for the conduct of illegal gambling. DLD(BDA) explained that apart from the literal meaning of the words, the court would base on the acts and behaviours of the suspected to determine whether the offence of opening, keeping or managing the premises for conducting, promoting or facilitating a bookmaking activity under proposed section 16A or 16B had been committed. He added that the elements of "open", "keep" and "manage" did not need to exist concurrently in order to prove the commission of the offence.

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6. Miss Margaret NG pointed out that proposed section 16A(1)(e) stipulated that any activity which promoted or facilitated any activity under subsections (a) to (d) was illegal. She considered that the words "promotes" and "facilitates" under proposed section 16E should be defined to facilitate interpretation of the scope of proposed section 16A. The Chairman added that the context of "promotes" and "facilitates" should be set out in detail to facilitate interpretation of other sections containing any of these words.

7. DS(HA)2 and DLD(BDA) responded that the Administration had seriously considered members' concern on the issue and would propose a new CSA to define the scope and context for the concept of "promotes" and "facilitates". At the Chairman's suggestion, DLD(BDA) agreed to consider adding an interpretation provision for "promotes or facilitates" to new PART IIIA of the Bill.

8. Miss Margaret NG observed that the English and Chinese versions of proposed section 16A(1) seemed to emphasise on different types of activity. While the phrase "whether on one occasion or more than one occasion" in the English version referred to the frequency of illegal bookmaking activities as described in proposed sections 16A(1)(a) to 16A(1)(e), the phrase "不得一次或多於一次" in the Chinese version referred to the frequency of opening, keeping or managing a premises for such purposes. In this connection, Miss NG sought clarification about the policy intent of proposed section 16A(1).

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9. DS(HA)2 confirmed that the English version reflected more accurately the policy intent. The Administration undertook to review the Chinese version of proposed section 16A(1) in order to ensure its consistency in meaning with the English version. DLD(BDA) acknowledged the discrepancy in literal meaning between the English and Chinese versions of proposed section 16A(1). He undertook to refine drafting of the Chinese version to ensure conformity in literal meaning of both versions.

10. Miss Margaret NG pointed out that the timing for the person to keep the premises should coincide with that of the gambling activities. She suggested that the time element for establishing the offence under proposed section 16A(1) should be specified. DLD(BDA) responded that while the court should make judgement based on the facts and circumstances in each case, an offence under the section should be established by sufficient evidence that the acts or behaviours constituting the offence had repeated or continued over a certain period of time. DS(HA)2 assured members that the Administration would take the opportunity to review the drafting of the provision to ensure that it had accurately reflected the policy intent.

11. Mr Tommy CHEUNG suggested replacing the words "open, keep" by "operate" to enhance enforcement of proposed section 16A. He pointed out that it could be difficult to establish the element of "open" for private premises or clubs

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which were used to conduct, promote or facilitate illegal bookmaking activities. Assistant Legal Adviser 4 (ALA4) added that the Administration might consider the word "operates" which was used in section 5(a) of the existing Gambling Ordinance for offences under "unlawful gambling establishment". The Chairman shared the same view. At his request, DLD(BDA) undertook to consider the suggestion.

Adm

12. Ms Audrey EU considered that proposed sections 16A and 16B were similar provisions which could be combined to simplify drafting and interpretation of the Bill. Noting that the Administration had proposed a CSA to substitute "other event" by "any competition, race, event or contest" in new section 7(1A)(a)(ii), she asked whether the combined scope of proposed sections 16A and 16B would then be equivalent to that of proposed section 7.

13. DS(HA)2 responded that proposed sections 16A and 16B were targeted at premises which were used for conducting, promoting or facilitating bookmaking activities on horse or dog racing events, and competitions on results of future events respectively. They were not intended to cover a scope larger than that of proposed section 7 which covered all bookmaking activities. DLD(BDA) echoed that the purpose of drafting separate provisions for premises used for betting on horse or dog races and competitions on results of future events was to facilitate enforcement. He undertook to consider integrating the two sections into one section in the light of Ms Audrey EU's views.

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14. ALA4 pointed out that proposed section 16B covered licences granted by the Commissioner for Television and Entertainment Licensing under section 22 of the Gambling Ordinance which appeared to be beyond the scope of the amended section 7. DS(HA)2 reiterated that the policy intent of proposed sections 16A and 16B was to curb the proliferation of service centres operating to promote or facilitate betting with an offshore bookmaker. Currently, the problem of opening, keeping or managing premises to promote and facilitate unlawful lotteries was not serious. The Chairman remarked that the Administration should adopt a long-term perspective in proposing amendments to the Ordinance to combat new types of gambling and new ways of promoting or facilitating bookmaking which might emerge in the future. DS(HA)2 undertook to examine the policy implications of extending the scope of proposed sections 16A and 16B to cover lottery and other forms of gambling activities.

15. Ms Audrey EU asked why the word "assist" was used in proposed sections 16A and 16B when clause 14 of the Bill sought to delete any reference to "assisting" from sections 5, 7, 9 and 13 of the principal Ordinance. DLD(BDA) responded that the Administration would consider removing the concept of "assisting" from proposed sections 16A and 16B in the revised CSAs to be proposed.

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16. Mr SIN Chung-kai asked whether a person would commit an offence under proposed section 16A(1)(e) if he kept premises to print promotional materials for an overseas casino.

17. DLD(BDA) responded that the proposed CSA to amend proposed section 16E had specified the types of activities which would be caught by the offence of promoting and facilitating bookmaking. He considered that given the scope as amended, the activity described by Mr SIN Chung-kai would not constitute an offence under proposed section 16A or 16B. However, local distribution of the promotional materials to Hong Kong people would probably be caught by the offence under proposed section 16A or 16B.

18. Ms Audrey EU sought clarifications about whether keeping premises for promoting or facilitating bookmaking activities which took place or would take place wholly outside Hong Kong would be caught by the offences under proposed sections 16A and 16B.

19. DS(HA)2 clarified that proposed sections 16A and 16B were not intended to catch a person who operated a local premises to provide services to attract local punters to travel to his country to place bets. She pointed out that proposed section 16E(2)(b) stipulated that the offence of promoting or facilitating bookmaking should not apply where there was evidence that the bookmaking transactions were conducted wholly outside Hong Kong and that all the parties to the transaction were outside Hong Kong at the time the transaction took place. In view of members' concern, she undertook to discuss with the Department of Justice to examine the need for incorporating a similar exemption provision in proposed sections 16A and 16B by way of a CSA.

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20. Mr SIN Chung-kai and Mr Tommy CHEUNG expressed support that similar to proposed section 16E, proposed sections 16A and 16B should incorporate a provision to exclude premises which were operated to provide services for bettors who intended to bet with an offshore bookmaker outside Hong Kong. In this connection, Mr SIN asked whether the service centres of the Macau Horse Racing Company (MHRC) would commit the offence under proposed section 16A or 16B. DS(HA)2 responded that MHRC would not commit either offence as long as their service centres did not provide services and information contributing to the promotion or facilitation of betting by a person who was in Hong Kong with an unauthorized bookmaker.

Clause 11 - Disconnection of telephone service

21. Mr SIN Chung-kai expressed concern about the impact of the proposed amendment to section 21 on telecommunications service providers (TSPs) which were licensees as defined in section 2(1) of the Telecommunications Ordinance. He

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pointed out that the provision empowered the court to make an order for TSPs to disconnect any telephone service provided to a person convicted of an offence under section 5, 7 or 8 of the Gambling Ordinance, and to the premises in connection with the commission of the offence. Mr SIN expressed doubt about the effectiveness of the provision to deter unlawful gambling activities. He pointed out that given the development in telecommunications, the bookmaker could easily use another telephone number. He added that TSPs would not have any information about the users of the calling cards issued by them.

22. Senior Government Counsel, Prosecutions Division (SGC(PD)) responded that the Police had applied for court orders under section 21(1) in recent years for taking enforcement actions. Despite the rapid development in telecommunications services, the provision was still considered useful because it would create a certain degree of inconvenience for a convicted bookmaker, particularly when his telephone number had been publicised to his patrons. Apart from using another number to communicate with his customers again, the bookmaker would also lose telephone services provided to the premises which were found to have been used for the commission of the offence.

Adm 23. At Mr SIN Chung kai's request, SGC(PD) undertook to provide the number of court orders issued under section 21(1) of the current Gambling Ordinance and information on actions taken by the Police in enforcing the rules. Mr SIN also requested the Administration to consider the impact of proposed section 21 on the operation of TSPs. The Chairman asked whether a TSP would commit the offence of criminal or civil contempt of court if he failed to observe the court order.

Adm 24. SGC(PD) responded that the amended section did not impose on TSPs additional obligations than that which was imposed on the then Hong Kong Telephone Company Limited. As regards the offence of contempt of court, SGC(PD) said that any disobedience with such a court order, i.e. did not disconnect or refrain from providing telephone services to the defendant or the subject premises, was most likely a civil contempt. The Chairman requested the Administration to confirm whether it would constitute a criminal contempt of court if a TSP disobeyed the court order.

### **III. Any other business**

#### Date of next meeting

25. Members agreed to hold a further meeting on Friday, 20 July 2001 from 9:00 am to 12:00 noon to discuss the Administration's response to members' concerns raised at previous meetings.

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26. The meeting ended at 12:45 pm.

Legislative Council Secretariat

21 December 2001