

立法會
Legislative Council

LC Paper No. CB(2)810/00-01
(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, 7 December 2000 at 4:30 pm
in the Chamber of the Legislative Council Building**

Members Present : Hon Andrew CHENG Kar-foo(Chairman)
Hon David CHU Yu-lin
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 TAM Yiu-chung, GBS, JP
Hon Tommy CHEUNG Yu-yan, JP

Members Absent : Hon Cyd HO Sau-lan
Hon Timothy FOK Tsun-ting, SBS, JP
Hon Abraham SHEK Lai-him, JP

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

Mr Francis LO
Principal Assistant Secretary for Home Affairs

Mr Vic YAU
Assistant Secretary for Home Affairs

Mr Stephen WONG
Deputy Solicitor General, Department of Justice

Mr Andrew BRUCE
Senior Assistant Director of Public Prosecutions
Department of Justice

Mr J D SCOTT
Senior Assistant Law Draftsman, Department of Justice

Ms Mabel CHEUNG
Government Counsel, Department of Justice

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. Election of Chairman

Nominated by Mr SIN Chung-kai and seconded by Mr YEUNG Yiu-chung, Mr Andrew CHENG was elected Chairman of the Bills Committee.

II. Meeting with the Administration

[Legislative Council Brief issued by the Home Affairs Bureau (File Ref: HAB CR 1/17/93 Pt. 29)]

2. Mr Tommy CHEUNG declared interest as a voting member of the Hong Kong Jockey Club (HKJC) and a member of the Macau Horse Racing Company Limited (MHRC). Messers James TO and YEUNG Yiu-chung also declared interest as a racing member of HKJC.

Action

3. At the invitation of the Chairman, Deputy Secretary for Home Affairs (2) (DS/HA(2)) briefed members on the main proposals of the Bill as detailed in the Legislative Council (LegCo) Brief. She stressed that the purpose of the Bill was to combat activities of offshore bookmakers in Hong Kong and their receipt of bets placed from Hong Kong. The provisions of the Bill aimed to make it explicit that unauthorized bookmaking would be illegal even when the bet was solicited or received outside Hong Kong. She stressed that the Government had no intention to target any single offshore gambling operation such as MHRC.

Scope of the Bill

4. Members noted that proposed section 16D would prohibit the broadcast of any forecast, hints, odds or tip in relation to any unauthorized horse or dog racing event via television or radio within the 12-hour period preceding the conduct of that event. Mr SIN Chung-kai said that he understood that the proposed provision did not cover broadcasting through the Internet. However, he estimated that around one-third of the population in Hong Kong would have access to the Internet within the next three years and bookmaking with bookmakers via the Internet could become very popular in the future. Mr SIN therefore asked how the Administration would address the problem.

5. In response, DS/HA(2) confirmed that as defined in the proposed new section 16D(5), "broadcasts" means broadcasts by means of a broadcasting service as defined in section 2(1) of the Broadcasting Ordinance, or broadcasts by transmitting sound for general reception by means of radio waves under and in accordance with a licence granted under section 13C of the Telecommunications Ordinance. It did not cover electronic communications over the Internet. However, unauthorized bookmakers who solicited or received bets through the Internet might be caught by other provisions of the Bill e.g. proposed section 7 which did not specify the medium used. The Administration understood that there might be problems with prosecuting offshore bookmakers who set up websites outside Hong Kong. The Administration hoped to address the issue in the overall review on gambling to be conducted shortly.

6. Mr SIN Chung-kai said that it was common for Hong Kong people to place a bet with an offshore bookmaker by way of the Internet or opening an offshore account in a bank in the overseas country concerned. He asked whether a person would commit an offence for placing the bet with an offshore bookmaker.

7. Senior Assistant Director of Public Prosecutions (SAD/PP) responded that section 8 of the Gambling Ordinance would be amended by Clause 5 of the Bill to incorporate an extraterritorial element into the offence of "betting with a

Action

bookmaker". It would be an offence for Hong Kong people to bet with an offshore bookmaker, unless the bet was made and the parties to the transaction were wholly outside Hong Kong. In other words, betting with offshore bookmakers by way of the Internet or telephone would constitute an offence under the Bill.

8. Mr SIN Chung-kai was of the view that the proposed legislation was very strict. He also queried whether it was enforceable. DS/HA(2) said that due to the extraterritorial element of the offence, prosecution would be difficult since there might be problems with investigation, evidence collection and its satisfactory production in court. Nevertheless, the Administration considered that the law should reflect its policy intention. The Administration also considered it necessary to protect the integrity of the gambling policy by stating clearly in the law that betting with offshore bookmakers would not be allowed.

9. Mr Tommy CHEUNG asked whether the proposed new section 8 under the Bill would cover persons placing bets on a totalizator operated by a licensed racing organization. SAD/PP replied that an organization operating a totalizator to solicit, receive and settle bets was already a bookmaker in law. Accordingly, HKJC was a bookmaker but it was authorized under section 7 of the Betting Duty Ordinance. He pointed out that the proposed amendment to section 8 of the Gambling Ordinance was in effect to make it clear that betting with unauthorized bookmakers was illegal, regardless of whether the bookmakers were within or outside Hong Kong. SAD/PP added that the proposed section would apply even though the offshore bookmaker was a licensed gambling operator in his own country.

10. The Chairman drew members' attention to the fact that the definition of "bookmaking" in the Bill included the organization, management or control of any act of soliciting, receiving, negotiating or settling of a bet by way of trade or business whether personally or by letter, telephone, telegram or by any means. SAD/PP agreed with the Chairman's view. He explained that by such definition, the persons who managed the organization providing bookmaking services would fall within the scope of the Bill.

11. The Chairman, Mr SIN Chung-kai and Mr James TO expressed reservations that the scope of the Bill was too wide. They considered that the Bill would impose restrictions on the satisfaction of human desire and have substantial impact on individual freedom. Mr SIN was of the view that individual participation in offshore bookmaking activities on sports in a private place would do no harm to the community. Mr TO suggested that the Administration could consider limiting the application of the proposed provisions to unauthorized bookmakers only.

Action

12. Mr Andrew WONG suggested that the Administration should narrow the scope of the Bill by focusing on specific problem areas e.g. unauthorized operation of MHRC's outlets and promotion activities of offshore bookmakers in Hong Kong. The Chairman expressed a similar view. He pointed out that proposed section 16E (Promoting or facilitating bookmaking) should be adequate to address the problem.

Adm 13. At members' request, DS/HA(2) said that the Administration would consider fine-tuning the wording of the Bill in the light of members' concerns. She added that not criminalizing betting with unauthorized bookmakers would go against the Government's gambling policy.

Clarity of sections 7 and 8

14. Mr Andrew WONG asked whether placing bets with an offshore bookmaker with the assistance of a person or an agent outside Hong Kong would commit an offence under the Bill. He pointed out that it appeared unfair to legislate against local horse owners to place bets on their horses participating in overseas horse racing events.

15. SAD/PP responded that it was clearly an offence under proposed section 8 for a person in Hong Kong to bet with an offshore bookmaker. However, it might not be the case if that person placed his bet through another person other than a bookmaker outside Hong Kong.

16. Mr Andrew WONG remarked that the Administration should specify clearly what was lawful and what was not in the legislation. Senior Assistant Law Draftsman (SALD) responded that Clause 5 of the Bill proposed to add a new section 8(2)(b) to specify clearly that the offence of betting with a bookmaker did not apply where there was evidence that -

- (a) the bet was made or was to be made, as the case may be, wholly outside Hong Kong; and
- (b) both the person who made the bet and the bookmaker, were at the time that the bet was made, or would be at the time that it was to be made, as the case may be, outside Hong Kong.

Legislative intent of section 8

Adm 17. Mr James TO requested the Administration to provide information on the legislative intention for section 8 of the Gambling Ordinance which criminalized

Action

betting with an unauthorized bookmaker. He queried whether the original legislative intent of the provision was in line with the spirit of existing gambling policy.

18. DS/HA(2) said that section 8 of the Gambling Ordinance was first proposed in the Gambling Bill 1976 and was enacted in 1977. The overall objective of Government's gambling policy was to restrict gambling opportunities to limited authorized outlets. Such policy had remained more or less the same over the years. She referred members to the existing provisions of the Gambling Ordinance and said that it was clear that gambling and lotteries were unlawful except those exempted or authorized under the law. She stressed that inserting an extraterritorial element into the offence of betting with a bookmaker was in line with the original policy intent.

19. Mr James TO was of the view that it was doubtful whether existing provisions of the Gambling Ordinance which sought to outlaw all gambling activities except those specified in the law were compatible with the Bill of Rights. Mr TO further pointed out that while HKJC was allowed to accept bets on internationally prestigious horse racing events through its local outlets, it appeared unfair that the Bill sought to prevent licensed offshore bookmakers from accepting any bet placed from Hong Kong on these events. He was of the view that it seemed that the Bill was proposed primarily to protect betting revenue instead of upholding the policy of not encouraging gambling. Mr TO therefore suggested that the Administration should revisit its gambling policy before introducing any legislative proposal.

20. DS/HA(2) reiterated that the proposed amendments to sections 7 and 8 sought to rectify the anomaly and plug the loopholes of the Gambling Ordinance. She pointed out that if enactment of the Bill was delayed, more and more offshore bookmakers, licensed or otherwise, would exploit the loopholes and start enticing bets from Hong Kong people.

21. Mr Andrew WONG pointed out that there were allegations that the Administration had, in response to HKJC's request, proposed the Bill to prohibit MHRC from accepting offshore bets from Hong Kong people. The Chairman asked the Administration to clarify whether MHRC was the target of the proposed amendments. DS/HA(2) said that the Bill would inevitably affect MHRC but she reiterated that the Administration did not target MHRC. She emphasized that the Bill would help uphold the integrity of the gambling policy and protect betting revenue and charity donations.

22. The Chairman asked why the Administration allowed HKJC to accept offshore bets on its horse racing events from authorized outlets in Beijing and

Action

Guangzhou but not allow MHRC to accept bets on its horse racing events placed from Hong Kong.

23. DS/HA(2) explained that the Mainland Authority had before the change of sovereignty approved the establishment of two centres in the Mainland for Hong Kong people only to bet on HKJC horse racing events through these centres. Prior approval by Hong Kong Government should be obtained if the MHRC were to run such cities in Hong Kong.

Exemption for tourists or persons staying in Hong Kong

24. Mr SIN Chung-kai enquired whether the Administration would consider amending the proposed new section 8 to provide exemption to tourists or businessmen staying in Hong Kong so that they could place bets with licensed bookmakers in their home countries via telephone or the Internet without committing the offence under the provision.

25. SAD/PP responded that the Bill had not incorporated provisions for exemption of any particular group(s) of bettors or unauthorized bookmakers from the proposed new section 8 of the Gambling Ordinance. In other words, tourists or persons of other nationalities staying in Hong Kong for various reasons would not be exempted in case they committed the offence of betting with an unauthorized offshore bookmaker.

26. In view of its adverse impact on individual freedom, the Chairman queried the need for such a wide scope of application for the proposed new section 8. Mr Andrew WONG shared the same view. They urged the Administration to seriously consider the issue.

Adm 27. DS/HA(2) responded that the Government's gambling policy had all along prohibited punters from betting with unauthorized bookmakers. She pointed out that strong justifications were required for exempting tourists or any class of persons from the ambit of the Bill. However, in view of members' concerns, DS/HA(2) undertook to examine the feasibility of providing certain such exemptions under the Bill. In this connection, Deputy Solicitor General cautioned that in considering exemptions for certain classes of persons, the Administration had to be mindful of not giving preferential treatment on the basis of nationality, race or other arbitrary criteria lest the law would be challenged as discriminatory.

Betting on soccer

28. Mr Andrew WONG was of the view that after enactment of the Bill, it was still difficult to prosecute licensed offshore bookmakers in overseas countries for

Action

receiving bets placed from Hong Kong. He considered that the Bill was proposed to pave the way for legalizing betting on soccer in the future.

29. DS/HA(2) responded that while it was difficult to prosecute licensed bookmakers in overseas countries, the Bill could enable the Administration to prosecute local banks and agents who had assisted bookmakers by promoting or facilitating offshore bookmaking activities such as opening of accounts for acceptance of betting deposits, etc. From a policy point of view, the Administration considered it imperative to state clearly in law the Government's policy intention that such betting would not be allowed or condoned by the Government.

30. The Chairman said that he understood that whether to legalize betting on soccer would be an issue to be considered in the forthcoming review on gambling. He asked whether the Administration had already taken a position on the issue since the Bill sought to combat gambling with unauthorized bookmakers including betting on soccer. DS/HA(2) said that the review on gambling would include the subject for extensive consultation. The Administration had no foregone conclusion as to whether legal outlets should be provided for betting on soccer. It would consider introducing relevant legislative proposal if there was a consensus in the community that such legal outlets should be provided.

Overseas legislation prohibiting transmission of betting information

31. The Chairman questioned the need to create a strict liability offence to prohibit the broadcast of any forecast, hint, odds or tip in relation to any unauthorized horse or dog racing event via television or radio within the 12-hour period preceding the conduct of that event. He expressed concern that the proposed provision would impose an undue encroachment on the right of access to information. The Chairman cautioned that the Administration would have set a dangerous precedent if the proposed provisions were enacted. He requested the Administration to provide the Committee with examples of similar overseas legislation.

32. DS/HA(2) responded that the proposed strict liability offence under the new section 16D was necessary to enable effective prohibition of live broadcast of odds and tips on horse or dog races which were conducive to betting. She stressed that in making the proposal, the Administration had been mindful of the need to strike a balance between combating unauthorized gambling activities and maintaining a liberal broadcasting policy. She undertook to provide examples of overseas legislation prohibiting the transmission of similar information.

Deferring the consideration of the Bill

Action

33. Mr James TO was of the view that consideration of the Bill should be deferred until the completion of the comprehensive review on gambling unless the Administration could provide sufficient justification to prove that there was an urgent social need to enact the Bill. In this connection, the Chairman recalled that at the meeting of the Panel on Home Affairs on 14 November 2000, the Police had advised that illegal bookmaking activities on horse and dog racing events in Hong Kong were not serious.

34. DS/HA(2) reiterated that the primary purpose of the Bill was to plug the loopholes of the existing Gambling Ordinance. Deferring enactment of the Bill would leave the Government with no legal authority to combat offshore gambling activities in Hong Kong, in the face of a proliferation of such activities for a prolonged period of time. She stressed that the Bill was independent of the comprehensive review. The review would look at a wide range of gambling related issues under the prevailing circumstances and explore the desirability and feasibility of providing legal and controlled outlets for other forms of betting such as betting on soccer.

35. DS/HA(2) further said that illegal bookmaking activities on HKJC's horse races did exist in Hong Kong and it was very likely that such activities had been carried out in nearby cities. With the increasing use of modern telecommunications technology such as the Internet, placing bets with an offshore bookmaker was almost as convenient as with a local bookmaker. Since betting with an offshore bookmaker was currently not an offence under the Gambling Ordinance, there was an urgent need to examine and enact the Bill to prevent more and more offshore bookmakers from exploiting the loopholes and enticing bets from Hong Kong people. Any suggestion to defer consideration of the Bill would only be welcomed by unauthorized bookmakers.

36. The Chairman enquired about the timetable for the review. DS/HA(2) responded that the review on gambling would need six to 12 months to complete. The Chairman pointed out that if LegCo Members supported the Bill as presently proposed, the Bill would likely be enacted around the time when the review on gambling was completed. If the results of the review indicated that the community as a whole was in favour of legalizing betting on soccer, the Administration would have to revise its gambling policy. He expressed concern that it would give a very confusing message to the community. Given that the review would start soon, he suggested that the Administration should put forward an overall legislative proposal after the review was completed. He added that the Administration should give priority to addressing the problem of illegal betting on soccer since it was more serious than offshore betting on horse or dog racing events. Mr Andrew WONG shared the view.

Action

37. Mr TAM Yiu-chung and Miss CHOY So-yuk expressed support for early enactment of the Bill to rectify the loopholes in the Gambling Ordinance. They pointed out that if LegCo and the community supported betting on soccer, the Administration could propose further legislative amendments to authorize local bookmakers to accept bets on soccer. Mr TAM pointed out that during the debate on the legalization of gambling on football matches at the Council meeting on 15 December 1999, the majority of Members had not expressed support for legalization. Miss CHOY added that since the proposed amendments were consistent with existing gambling policy, the Bill should be deliberated and enacted as soon as possible to enhance the Administration to combat offshore bookmaking activities in Hong Kong.

Adm 38. The Chairman requested the Administration to consider members' views and concerns expressed about the timing for enacting the Bill.

III. Submissions on the Bill

39. Members agreed that the Bills Committee should invite submission from the public and deputations who had already made written submission to give their views on the Bill at the next meeting.

IV. Date of next meeting

40. Members agreed to hold the next meeting at 10:45 am on Tuesday, 9 January 2001.

41. The meeting ended at 6:25 pm.

Legislative Council Secretariat
5 February 2001