

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 Friday, 20 July 2001 at 9:00 am
in Conference Room A 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 Tommy CHEUNG Yu-yan, JP
Hon Audrey EU Yuet-mee, SC, JP

Members Absent : Hon James TO Kun-sun
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 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 Stephen WONG
Deputy Solicitor General (Advisory)
Department of Justice

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

Mr J D SCOTT
Senior Assistant Law Draftsman
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)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
[Paper Nos. CB(2)2110/00-01(01)-(02) and CB(2)2122/00-01(01)]

Members noted that the Administration had provided a paper setting out its responses to all the outstanding issues arising from previous meetings. At the

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invitation of the Chairman, Deputy Secretary for Home Affairs (2) (DS(HA)2) and Deputy Solicitor General (Advisory) (DSG(A)) briefed members on the salient points of the Administration's paper with a full set of Committee Stage amendments (CSAs) to be proposed by the Administration. The Chairman said that as the Administration had proposed amendments to various Clauses of the Bill, another round of clause-by-clause examination would be necessary. He invited members to discuss the issues in the Administration's paper. A gist of the discussions is summarised in the following paragraphs.

Repeal of section 7(1)(c) to remove the concept of "assisting"

2. With reference to the situation analysis provided by the Administration (see Annex B to Paper No. CB(2)2122/01-02(01)), Ms Audrey EU observed that repeal of section 7(1)(c) would have implication on the legal liabilities on the amah as well as the counsellor and procurer in the case scenario described.

3. DSG(A) responded that the job of the amah in the case scenario was only cooking. The amah was arguably assisting indirectly in the bookmakers' business since if no food was provided to them, the bookmaking operation would not be as effective. The question was whether the amah should be the target of section 7.

4. Assistant Legal Adviser 4 (ALA4) referred members to the headnote of the case of *The Queen v Fung Sik-chung*. The court held that "where the legislature provides a specific offence to cover a person who aids and abets another person to commit an offence, he can only be charged with that specific offence and not as an aider and abetter of that other person" and "a person who 'assists' another in the offence of bookmaking is not liable to conviction under section 7(1)(a)". ALA4 explained that according to the interpretation of the court, the concept of "assisting" seemed to be equivalent to the common law concept of "aiding" only. The Administration therefore might wish to consider the extent to which the scope of the common law concept of 'abetting, procuring or counselling' was covered by the concept of "assisting".

5. ALA4 further said that the scope of section 7(1)(c) of the existing Gambling Ordinance was very wide. Repeal of section 7(1)(c) by enactment of the Bill would in effect narrow the scope of section 7 since certain persons such as the amah in the case scenario who were currently caught by the section might then be excluded. He advised members to consider the proposal to repeal section 7(1)(c) from a policy perspective. The Chairman therefore sought clarifications about the policy intent of the proposal.

6. DSG(A) expressed agreement with the interpretation of ALA4 on the repeal of section 7(1)(c). DSG(A) pointed out that as a more general observation,

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"assisting" usually connoted some actual assistance to the person (the principal offender) when the offence was commissioned, while "counselling and procuring" inevitably took place before commission of the offence. After enactment of the Bill, the amah could still be prosecuted, if it was considered necessary by the Secretary for Justice on the basis of the Prosecution Guidelines, according to other common law offence. In this connection, DSG(A) stressed that the purpose of the Bill was to plug existing loopholes in the Ordinance to combat unauthorised activities of offshore bookmakers. The amah should not be the target of section 7.

7. Ms Andrey EU said that she supported the repeal of section 7(1)(c) only on the policy consideration that the persons concerned should not be held liable in law for the commission of the offence.

Use of the term "promote" in sections 9 and 16E

8. The Chairman noted that the Administration considered that the use of "籌辦" in section 9 and "推廣" in proposed section 16E as the Chinese translation of the term "promote" was appropriate and accurately reflected the policy intent of the two provisions. He suggested that the Administration should consider substituting the term "promote" in section 9 to reflect more accurately the meaning of "籌辦" in the Chinese version.

9. Deputy Law Draftsman (Bilingual Drafting and Administration) (DLD(BDA)) responded that the Department of Justice had looked through the drafting files relating to the preparation of the Gambling Bill 1976 and the authentic Chinese text of the Gambling Ordinance. It had not been able to locate in the files any material or information that explained or discussed the use of "籌辦" as the Chinese translation of "promote" in section 9. He explained that the Chinese version of the word "promote" would depend on the policy intent of the respective provisions in the Gambling Ordinance. Similar difference in Chinese version as opposed to the same "word" or "phrase" in English version, or vice versa, also existed in other legislation. In using "籌辦" as the Chinese version of "promote", the then Bilingual Law Advisory Committee should have considered the policy intent and the context of the section.

10. The Chairman remarked that the different words used in the Chinese version of section 9 and proposed section 16E in respect of the term "promote" might create debates in court and therefore should be avoided.

11. Miss Cyd HO was of the view that the use of "籌辦" was preferred than "推廣" in proposed section 16E because "推廣" carried a much wider scope in literal meaning. She considered that "籌辦" referred to earlier efforts and actions which

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took place before "推廣" in the context of "betting with a bookmaker". Mr David CHU shared the same view. He said that "籌辦" literally referred more to operation within an organisation and "推廣" more to the promotion work of an organisation to outside parties.

12. Ms Audrey EU also asked whether the meaning of "籌辦" was equivalent to "組織" in section 9, and if so, whether replacing the word "籌辦" by "推廣" would serve the policy purposes. She considered that "推廣" already incorporated the meaning of "籌辦" in the context of Chinese language.

13. Mr Tommy CHEUNG considered that the meaning of "籌辦" in the Chinese version was more close to "organise" than "promote" in the English version, and suggested that the Administration should consider replacing the term "promote" in section 9.

14. The Chairman remarked that the concept of "籌辦" and "組織" were essential under section 9 (Promoters of lotteries) of the Gambling Ordinance. He agreed with Mr Tommy CHEUNG that replacing the term "promote" would address members' concerns.

15. DS(HA)2 responded that she shared the view of Miss Cyd HO that the terms "籌辦" and "推廣" had a difference in terms of the sequence of the activities in relation to an unlawful lottery. At the Chairman's suggestion, DS(HA)2 agreed that the Administration would consider whether it was desirable to delete the term "promotes" from section 9 or to use another English word for the term "籌辦".

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16. At Miss Cyd HO's suggestion, DLD(BDA) undertook to ensure consistency in the use of the term "promotes" and "籌辦 or 推廣" in Chinese and English versions of other legislation when relevant draft amendments were prepared. However, he reiterated that the use of term would depend on the policy intent of each provision. Senior Assistant Law Draftsman (SALD) also pointed out that the term "promoted" also appeared in sections 2, 11(2) and 12(2) of the existing Gambling Ordinance. Consequential amendments to these provisions might also be required.

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The rationale of not using "promote" in section 13

17. The Chairman noted that the Administration had confirmed that they were unable to locate in the files any material or information that explained or discussed why the term "promote" was not used in section 13. Responding to the Chairman's concern, SALD explained that the term "operates" was used in section 13 because

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the provision dealt with gambling in any place not being gambling establishment or in a street. Similar word was used in section 5 which dealt with unlawful gambling establishments. When the Gambling Bill was drafted in 1976, the concept of "promote" only applied to lottery but not to gambling at that time. In his view, different terms and concepts were used because provisions had been added at different time to the Gambling Ordinance. He did not see that there was significant policy implication in term of terminology.

Draft CSAs to be proposed by the Administration

18. Members noted that the Administration had proposed various CSAs to address members' concerns about proposed sections 16A and 16B as set out in Annex A to Paper No. CB2122/00-01(01). The Administration had also taken the opportunity to propose further amendments to proposed section 16E to improve its language. Members also noted the marked-up copy of the proposed CSAs prepared by the Legal Service Division [Paper No. CB(2)2135/00-01(01)]. A gist of discussion on the Administration's CSAs is summarised in the following paragraphs.

Definitions of "gambling" and "gambling establishment"

19. Members noted that the Administration had proposed to delete Clauses 2(b) and 2(c) of the Bill to exclude new sections 16A and 16B from the definitions of "gambling" and "gambling establishment" in section 2 of the Gambling Ordinance. The Chairman sought clarifications about the policy intent of the CSAs which in effect would retain the existing definitions of "gambling" and "gambling establishment".

20. DS(HA)2 explained that the proposed CSA to new section 16A had specified the activities and circumstances for the offence of operating premises for promoting betting, etc. These premises were not "gambling establishments" per se and the activities conducted therein were not bookmaking activities. The CSA to proposed section 2 was a consequential amendment arising from the two CSAs to proposed sections 16A and 16B. Under the two CSAs, proposed section 16A was re-titled from "Keeping premises for betting on horse, pony or dog races, etc." to "Operating places for promoting or facilitating betting on horse races, etc." and proposed section 16B was repealed. In essence, the proposed section 16A as revised would incorporate the element of "knowingly" and "by way of trade and business" in the conduct of promoting or facilitating bookmaking activities, and include keeping premises for promotion or facilitation of betting on the results of any future events, etc., originally covered by section 16B.

21. ALA4 said that the CSA to proposed section 16A(1) had specified the types of activities and circumstances for the offence of operating premises for promoting

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betting, etc. In contrast, the context for the offence of bookmaking in section 7 was broad and not specifically defined. He pointed out the possibility that the scope of revised section 16A(1) might not be as wide as that of section 7.

22. DLD(BDA) responded that different types of evidence would be required to constitute the offences under section 7 (bookmaking) and proposed section 16A (operating places for promoting or facilitating betting on horse races, etc.) He pointed out that operating a place for promoting or facilitating betting did not necessarily involve the conduct of bookmaking activities. DS(HA)2 added that the CSAs were proposed having regard to the views of members expressed at previous meetings to narrow the scope of "promoting or facilitating".

Definition of "bookmaking"

23. Ms Audrey EU asked about the reason for replacing the word "means" with "included" in the definition of "bookmaking". SALD explained that the word "included" carried a meaning of "not restricted to" and using such word provided a flexibility in interpretation of "bookmaking". DS(HA)2 added that the word "include" was also used in the definitions of "gambling", "gambling establishment" and "lottery".

The offence of bookmaking

24. Members noted that the Administration had proposed to replace the phrase "any horse, pony or dog race or other event" in proposed section 7(1A)(a)(ii) with "any horse, pony or dog race or any competition, race, event or contest". ALA4 pointed out that the rephrase might be interpreted as referring to two separate categories of bookmaking activities, namely, "any horse, pony or dog races" and "any competition, race, event or contest". By such interpretation, one might argue that animal races other than horse, pony or dog races were not included under the section. DLD(BDA) responded that the court would have to consider whether such animal races would fall into the category of "any competition, race, event or contest". At the request of the Chairman, ALA4 undertook to liaise with DLD(BDA) to refine drafting of proposed section 7(1A)(a)(ii).

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Betting with a bookmaker

25. DLD(BDA) explained that a CSA was proposed to divide proposed section 8(2)(b) into two parts to provide for bets which had been and would be made outside Hong Kong. Ms Audrey EU pointed out that the word "or" should be added between proposed sections 8(2)(b)(ii)(A) and 8(2)(b)(ii)(B). DLD(BDA) agreed to follow up.

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Promoting or facilitating bookmaking by way of printed media

26. The Chairman asked whether advertising bookmaking facilities in printed media would constitute the offence of promoting or facilitating bookmaking after enactment of the Bill. He pointed out that printed media might publish information on bookmaking features and events in the form of reports and articles to avoid contravening the provision. Miss Cyd HO expressed support for prohibiting publication of betting information on unauthorised bookmaking activities in printed media on the condition that press freedom would not be compromised.

27. DLD(BDA) responded that both the bookmaker and the printed media would commit the offence of promoting or facilitating bookmaking for publishing an advertisement publicising the availability of unauthorised bookmaking facilities and related information. As regards prosecution against newspaper reports containing bookmaking information, the Administration would have to prove that the reporter had exhibited, distributed or disseminated such information with the intention to promote betting with a bookmaker. In other words, the facts and circumstances in each case would determine whether prosecution should be instituted.

28. The Chairman asked about the policy intent of proposed section 16E in respect of publication of advertisements and articles on unauthorised bookmaking information in printed media. Miss Cyd HO also sought clarifications about the impact of the offence of promoting or facilitating bookmaking on the public media and their reporters. With reference to the phrase "exhibits, distributes or disseminates advertisements calculated to promote betting with bookmaker;" under the proposed new section 16E(1A)(a), she asked about the definition of "advertisement". Miss HO considered that it was difficult for the media reporters to decide whether publishing a report or an article on a betting event would constitute the offence of promoting or facilitating bookmaking activities.

29. DS(HA)2 stressed that the policy intent of proposed section 16E was not to target media publishing mere information on bookmaking activities offered by local or offshore bookmakers. She pointed out that whether publication of advertisements or reports containing information such as odds or tip on betting events would be regarded as promoting or facilitating bookmaking would depend on the relevant contexts. Factors such as who was giving the odds or tips, why he/she was doing so, where the betting information appeared and the surrounding text or message would be considered for establishment of the offence. In general, a news report in a printed media was not an advertisement, regardless of whether it contained information on horse, pony or dog races or any other competitions. However, if a printed media received financial benefits from a bookmaker for publishing information which served to promote bookmaking activities, the media might well be caught under the section. DLD(BDA) supplemented that the prosecution authority would need to

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prove that the article or report printed by the media was in effect an advertisement which was written to promote bookmaking.

30. Ms Audrey EU asked whether publication of betting information such as odds provided by different bookmakers in a public media in respect of a betting event would commit the offence of promoting or facilitating bookmaking. DLD(BDA) responded that no offence would be committed under proposed section 16E as long as the publication of betting information did not encompass an element of "advertising".

31. DS(HA)2 pointed out that while publication of betting information in printed media was not unlawful, the Bill prohibited broadcasts of betting information as to results of horse, pony or dog races under specified conditions. Specifically, proposed section 16D imposed restriction on television and radio broadcasts of forecast, hints, odds or tips as to results of unauthorized horse, pony or dog races at any time within a period of 12 hours before the conduct of the related races. To preserve freedom of expression and maintain a liberal broadcasting and telecommunications policy, proposed section 16D(5)(c) provided that the definition of "broadcasts" under the section did not mean broadcasts, by any means, of news or any remarks, observations or comments in relation to such news. Subject to the views of the Bills Committee, the Administration might consider the need for providing a similar exemption for publishing betting-related news in printed media under proposed section 16E. Miss Cyd HO requested the Administration to put forward proposal to include such an exemption for consideration by the Bills Committee.

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32. Mr Tommy CHEUNG asked whether an offshore bookmaker would commit the offence of promoting or facilitating bookmaking if he managed to own a local newspaper which published information solely on his bookmaking business.

33. DLD(BDA) responded that if the information printed in the newspaper was merely factual reporting of odds or indication of tips for certain betting events, it was unlikely that the printed media had contravened the provisions of promoting or facilitating bookmaking.

34. DS(HA)2 supplemented that if the information was firmly linked to the offshore bookmaker and it was likely that such reporting were able to attract people in Hong Kong to bet with the offshore bookmaker, the bookmaker might be prosecuted for promoting or facilitating bookmaking.

35. Miss Cyd HO considered that the printed media should not be caught as long as it had not published any information which would encourage local punters to place bets with the offshore bookmaker. Ms Audrey EU echoed that in considering

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whether the printed media had committed the offence of promoting or facilitating bookmaking, the intention to encourage people to bet was more crucial than how the betting information was presented. She considered that the intention of a bookmaker to promote or facilitate bookmaking was apparent if he owned and operated a print media to publish information exclusively on his bookmaking business. In the light of members' concerns, the Chairman requested the Administration to review the drafting of proposed section 16E in order to avoid possible confusion about the term "promotes".

36. In concluding the discussion, the Chairman asked and DS(HA)2 agreed that the Administration would prepare a set of revised CSAs incorporating members' views expressed for discussion at the next meeting to be scheduled in October 2001. The Chairman also requested that the Administration should highlight any amendments in the revised CSAs for members' easy reference. DS(HA)2 agreed to follow up the request.

II. Any other business

37. There being no other business, the meeting ended at 12:00 noon.

Legislative Council Secretariat
7 January 2001