

**立法會**  
**Legislative Council**

LC Paper No. CB(2)1510/00-01

(These minutes have been  
seen by the Administration)

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

**Minutes of meeting  
held on Tuesday, 9 January 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  
Hon Cyd HO Sau-lan  
Hon CHAN Yuen-han  
Hon SIN Chung-kai  
Hon Andrew WONG Wang-fat, JP  
Hon YEUNG Yiu-chung  
Hon CHOY So-yuk  
Hon Timothy FOK Tsun-ting, SBS, JP  
Hon Abraham SHEK Lai-him, JP  
Hon Tommy CHEUNG Yu-yan, JP  
Hon Audrey EU Yuet-mee, SC, JP

**Member Attending** : Hon Margaret NG

**Members Absent** : Hon James TO Kun-sun  
Hon TAM Yiu-chung, GBS, 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 Gavin SHIU  
Acting 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

**Attendance by Invitation** : Macau Horse Racing Company Limited

Mr Kenneth LIANG  
Executive Director and Chief Executive

Mr Albert HO  
Executive Director and Financial Controller

The Society for Truth and Light Limited

Mr CHOI Chi-sum  
General Secretary

Mr CHEUNG Man-biu  
Board Member

Asia Television Limited

Mr KWONG Hoi-ying  
Senior Vice President - Programme

Ms WONG Tak-kwan, Judy  
Corporate Lawyer and Company Secretary

**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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The Chairman welcomed Ms Audrey EU as a new member of the Bills Committee.

**I. Meeting with deputations**

2. The Chairman welcomed representatives of deputations and the Administration to the meeting.

3. At the Chairman's invitation, representatives of the deputations briefed members on their main views and concerns about the Bill as summarised in paragraphs 4 to 11.

Macau Horse Racing Company Limited (MHRC)  
[Paper No. CB(2)596/00-01(01)]

4. Mr Kenneth LIANG, Executive Director and Chief Executive of MHRC, introduced MHRC's submission and highlighted the following points -

- (a) MHRC's did not encourage or promote gambling by any means and its operation was similar to that of the Hong Kong Jockey Club (HKJC);
- (b) Both Hong Kong and Macau were Special Administrative Regions of the People's Republic of China. In this light, betting on MHRC's horse races by Hong Kong people should not be regarded as having an extraterritorial element in the context of the Bill; and

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- (c) HKJC and MHRC should co-operate to combat against illegal gambling activities, as well as to promote the long-term development of HKJC and MHRC in the international horse racing arena.

He opined that the Bill seemed to target at the operation of MHRC in Hong Kong.

5. Mr Albert HO of MHRC said that MHRC was very concerned about the legal implications of the proposed section 7(1A) because its staff might be subject to prosecution at the discretion of Hong Kong authority when they were in Hong Kong. Mr HO added that the interpretation of "bookmaking" in the Bill was also too wide as it included the organisation, 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 any means. This would mean that all offshore bookmakers licensed in the jurisdictions concerned would have committed an offence if they inadvertently accepted a bet placed from Hong Kong. He was worried that since it was impossible that MHRC could screen out all the bets placed from Hong Kong, employees of MHRC could be prosecuted if the Bill was enacted.

6. Mr LIANG of MHRC suggested that the Administration should defer enactment of the Bill and conduct a comprehensive review on its gambling policy which should look at issues of betting on soccer and bookmaking activities via the Internet.

The Society for Truth and Light Limited (STL)

[Paper Nos. CB(2)638/00-01(01) and 655/00-01(02) and (03)]

7. Members noted the STL's written submission [Paper No. CB(2)638/00-01(01)].

8. Mr CHOI Chi-sum of STL said that before introducing the Bill to the Legislative Council (LegCo), the Administration should conduct a comprehensive review on its gambling policy which should include a thorough examination of illegal bookmaking activities via the Internet with particular emphasis on soccer. Without a detailed study of the social costs and benefits of gambling, it would be impossible to evaluate the adverse effects of authorised bookmaking activities on a wide range of social issues. He was of the view that the Administration was not determined to combat against unauthorised gambling activities and the primary purpose of the Bill was to protect the interest of HKJC and betting revenue only.

9. Mr CHOI of STL considered that imposing a strict liability offence to prohibit the broadcast of any forecast, hint, odds or tip in relation to any unauthorised horse or dog racing event via TV or radio within the 12-hour period preceding the conduct

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of that event would not jeopardise the principle of a liberal broadcasting policy. He pointed out that a large proportion of the advertisements and information on offshore horse and dog racing events, and soccer matches published in local newspapers were conducive to promoting unauthorised bookmaking activities and hence should also be restricted.

10. Mr CHEUNG Man-biu of STL informed members that STL had commissioned the City University of Hong Kong to conduct a research on the effects of gambling on adolescents. The survey results had indicated that students actively involved in gambling activities had demonstrated a number of behavioural problems which included, among other things, a stronger inclination to have fraudulent mentality, low academic performance, and a weaker sense of civic awareness. He considered that gambling should not be encouraged by any means. In particular, gambling on soccer should not be legalised because soccer was a popular sport among adolescents and legalising gambling on soccer would have wide adverse impact on them.

Asia Television Limited (ATV)  
[Paper No. CB(2)596/00-01(01)]

11. Members noted the ATV's written submission. Mr KWONG Hoi-ying of ATV highlighted that ATV as a public media was most concerned about the existence of a liberal broadcasting policy and freedom of access to information. ATV saw no difference in broadcasting information on horse races organised by MHRC or HKJC. The Administration was adopting a double standard on its broadcasting policy by imposing restriction on the former without doing the same on the latter. He considered that the proposed restriction was an encroachment of the right of access to information.

Discussion

12. Mr Tommy CHEUNG enquired about the impact of the Bill on the operation and business of MHRC. Mr Kenneth LIANG of MHRC said that enactment of the Bill would considerably reduce the betting turnover of MHRC. He pointed out that the operation of the five service centres of MHRC in Hong Kong had been suspended from March to July 2000 after the police raid. During that period, the total amount of betting turnover on MHRC's horse racing events had decreased by around 20% to 30% (around \$700 to \$800 million of MHRC's annual betting turnover of \$3.5 billion). He therefore had reasons to believe that the Bill would substantially affect MHRC's revenue and consequently the employment opportunities of its employees.

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13. The Chairman asked why MHRC expected that after enactment of the Bill, Hong Kong people who used to bet on MHRC's horse racing events would turn to unauthorised bookmakers instead of switching to betting on HKJC's horse racing events. Mr LIANG of MHRC responded that a bettor who wished to bet on a MHRC's horse racing event would anyhow find a way to place his bet with, be it an authorised or unauthorised bookmaker. In the absence of an authorised bookmaker, Hong Kong people who were interested in MHRC's horse races would have to place their bets with unauthorised bookmakers. He therefore believed that the Bill would not increase HKJC's betting turnover. Mr HO of MHRC added that illegal bookmakings on MHRC's horse races were about 1.5 times of the total betting turnover of MHRC.

14. Miss Margaret NG opined that MHRC might not be in a position to prove whether the Bill would have the effect of pushing Hong Kong people to place their bets with unauthorised bookmakers on horse racing events in Macau. Miss NG said that although she did not have a position on the Government's policy not to encourage gambling but to allow controlled legal gambling outlets to exist, she wondered whether this principle could also apply to the operation MHJC.

15. Ms Audrey EU referred to MHRC's submission and enquired about MHRC's measures in response to the Administration's proposals. Mr LIANG of MHRC responded that a lot of people in Macau and the Mainland, as well as Hong Kong citizens who had immigrated to the United States, Canada and Asian countries, would place bet on HKJC's horse races via telephone. If these countries retaliated by taking similar measures against HKJC receiving bets from punters there, HKJC would also suffer substantial loss of offshore betting turnover. Mr HO of MHRC supplemented that as a remedial measure to offset the adverse effects of the Bill on MHRC's revenue, MHRC might consider suggesting the Macau Government to adopt a similar policy against placing bets with HKJC from Macau.

16. The Chairman sought clarifications about STL's views on the impact of the Bill on freedom of information and a liberal broadcasting policy. Mr CHOI of STL said that information which would promote or facilitate bookmaking should be differentiated from media reports on results of events itself. He considered that the report of any forecast, hint, odds or tip in relation to any illegal gambling activities including betting on soccer in printed media should also be prohibited. Such a restriction would carry no implication on freedom of information. Mr CHOI of STL added that since Government's policy was not to encourage gambling but to allow authorised outlets to accept bets, possible loss of betting turnover and revenue should not have much bearing on the consideration of the Bill. Members should give due consideration to the possible adverse effect of gambling on the community.

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17. In response to Mr Andrew WONG's enquiry about their position on the Bill, Mr KWONG of ATV said that ATV put the right of audience to access information in the first place and strongly objected to prohibiting the broadcast of betting information via TV or radio within the 12-hour period preceding the conduct of any horse or dog racing events. ATV did not have a strong view on other parts of the Bill. Mr LIANG of MHRC reiterated his view that the Bill was not comprehensive and was proposed to combat against the operation of MHRC in Hong Kong. He suggested that considerations of the Bill should be deferred until the Government had completed an overall review of its gambling policy which should include betting on soccer. Mr CHOI of STL said that the Bill was inadequate because it did not have provisions dealing with betting on soccer and "promoting or facilitating bookmaking" by printed media. In this connection, Ms Audrey EU pointed out that the phrase "or other event" in subsection 7(1A)(a)(ii) should imply that betting on soccer was also covered by the Bill.

18. Mr Andrew WONG pointed out that while the Bill contained provisions which would prohibit overseas visitors in Hong Kong from placing bets on soccer matches with authorised bookmakers in their native countries, Hong Kong people staying in overseas countries were allowed to place bets on HKJC's horse racing events via telephone. Mr WONG asked whether STL supported these provisions. Mr CHOI of STL responded that it was a reasonable requirement that tourists should abide by local laws, and it was natural that a country should not intervene with another country's system of law. He did not consider that the Bill should be amended to exempt betting by a tourist with a bookmaker in his or her home country via the telephone or the Internet.

## **II. Meeting with the Administration**

[Paper Nos. CB(2)619/00-01(01) and CB(2)624/00-01(01)]

19. Members noted that the Administration had responded to members' question raised at the meeting on 7 December 2000 [Paper No CB(2)624/00-01(01)].

### *Liability of offshore bookmakers*

20. Mr SIN Chung-kai referred to proposed section 7(1A) and asked whether offshore bookmakers, including MHRC and its management staff, who had accepted a bet placed from Hong Kong, whether intentionally or inadvertently, would be arrested and prosecuted.

21. Deputy Secretary for Home Affairs (2) (DS/HA(2)) responded that there would be no offence if the defendant could show that he had taken reasonable precautions to prevent receiving bets from Hong Kong. The proposed amendment to

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section 7 did not rule out *mens rea* as a constituent part of the offence. In this regard, the onus of proving the defendants' knowledge or intent rested with the prosecution.

22. Acting Senior Assistant Director of Public Prosecutions (SAD(PP) (Atg)) said that the Department of Justice (D of J) would determine prosecution based on the facts and evidence in each case. The normal consideration for prosecution as set out in D of J's Prosecution Policy would apply in the case of any prosecution under the Gambling (Amendment) Ordinance should it be enacted.

23. Mr SIN Chung-kai expressed reservations about the uncertainty in law if it was up to the Administration to decide whether a bookmaker had taken reasonable precautions to prevent receiving bets from Hong Kong and whether to initiate prosecution. He questioned how licensed offshore bookmakers could identify the countries from which the bets were made and ascertain whether offshore bookmaking was prohibited in the jurisdictions concerned. While he did not support relaxing regulation of gambling activities, he considered it essential to set out the necessary conditions in legislation, rather than to give D of J complete discretion. Mr Tommy CEHUNG shared the view, saying that it was in practice very difficult, if not impossible, for offshore bookmakers to screen out bets placed from Hong Kong.

24. DS/HA(2) explained that the D of J's Prosecution Policy applied to prosecutions instituted under all ordinances. She pointed out that many licensed bookmakers in the United States would place a notice on their web-sites specifying that they did not accept bets placed from places outside the permitted area in the country as well as those countries where the bookmaking with offshore bookmakers was prohibited. She added that the Administration would be prepared to consider refining the language of the proposed amendments to section 7 to address members' concerns in respect of liability of offshore bookmakers.

25. Miss Margaret NG sought clarifications as to whether a resident in Macau who had committed an offence under the proposed section 7(1A) would be arrested and prosecuted upon arrival in Hong Kong.

26. Senior Assistant Law Draftsman (SALD) confirmed that the proposed amendments to sections 7 and 8 of the Gambling Ordinance (the Ordinance) would mean that a person in Hong Kong placing a bet with an offshore bookmaker would most probably have committed an offence. An offshore bookmaker accepting a bet from a person in Hong Kong would also fall within the scope of the proposed section 7(1A).

27. Ms Audrey EU said that the Bill would amend section 8 of the Ordinance to incorporate an extraterritorial element into the offence of "betting with a bookmaker". Upon enactment of the Bill, it would be an offence for Hong Kong people to bet with

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an offshore bookmaker, unless the bet was made and the parties to the transaction were wholly outside Hong Kong.

28. DS/HA(2) said that Ms Audrey EU's interpretation was correct. However, she pointed out that the Administration would not prosecute an offshore bookmaker unless there was evidence that the bookmaker had knowingly and intentionally promoted his bookmaking activities and accepted bets from Hong Kong people. She said that the proposed amendments to section 7 of the Ordinance were reasonable and necessary for the protection of the interest of Hong Kong. DS/HA(2) reiterated that an increasing number of offshore bookmakers, licensed in their own jurisdictions, were now offering gambling opportunities to Hong Kong people. A conservative estimation was that there were at least 500 gambling websites. It was likely that these website companies were licensed in the jurisdictions concerned. These bookmakers were actively promoting their business in Hong Kong and targeting the Hong Kong market. If such bookmaking and promotional activities were not made illegal explicitly, they would exist and flourish as legal or exempted activities in Hong Kong, which was contrary to the Government's policy of restricting gambling opportunities to a limited number of controlled authorised outlets.

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29. Miss Margaret NG asked the Administration to identify the provisions in the Bill which required evidence of knowledge or intent to establish the offence of bookmaking. SAD(PP) (Atg) said that the phrase "any bet that was solicited, received, negotiated or settled" in proposed subsection 7(1A)(a)(i) carried the meaning that only bookmakers knowingly and intentionally invited bets from punters from Hong Kong would commit an offence. Miss Margaret NG did not agree with the Administration's interpretation. She requested that the Administration should provide clarification on the liability of offshore bookmakers under proposed section 7. She also requested the Administration to provide examples of overseas legislation prohibiting betting with offshore bookmakers.

*Legislation criminalising an act committed in another jurisdiction although that act was lawful in that jurisdiction*

30. Miss Margaret NG and Ms Audrey EU considered that the scope of section 7 was too wide. They expressed strong reservations about criminalisation of the act of receiving a bet placed from Hong Kong by an offshore bookmaker who was licensed in the jurisdiction concerned. Ms EU was of the view that under the existing Ordinance, placing bets with offshore bookmakers was not unlawful. Enactment of the Bill would have the effect of criminalising all unauthorised bookmaking activities, including those wholly conducted outside Hong Kong. Miss NG cautioned that there should be strong justification for criminalising a behaviour or conduct which was currently not a criminal offence. They requested the

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Administration to reconsider the scope of the Bill. DS/HA(2) noted that given the lax licensing regimes adopted by some overseas jurisdictions, there were numerous “licensed” bookmakers all over the world. Exempting licensed offshore bookmakers from the coverage of the Bill would de facto open up a wide range of lawful gambling opportunities to Hong Kong people which would be a major departure from the existing gambling policy and would not be in the interest of Hong Kong.

31. Miss Margaret NG and Mr Andrew WONG enquired about existing legislation which had the effect of criminalising an act committed in another jurisdiction even though that act was legitimate and lawful in that jurisdiction. Deputy Solicitor General (DSG) pointed out that the Criminal Jurisdiction Ordinance (Cap.461) had specified a set of offences carrying an extraterritorial element and most of them were related to fraud. At Miss Margaret NG’s request, DSG undertook to provide examples of offences in Hong Kong which had the effect of criminalising lawful acts committed in other jurisdictions.

32. Mr Andrew WONG asked whether the law should allow Hong Kong residents and visitors from overseas who were horse owners to place bets with offshore bookmakers on their own horses in other countries. DS/HA(2) responded that exemption of certain classes of persons or types of activities from the coverage of the Bill would need to be supported by sound and strong justifications.

*Clarity of the definition of "promoting or facilitating bookmaking" (Proposed section 16E)*

33. Ms Audrey EU considered that the meaning of "promoting or facilitating bookmaking" under proposed section 16E in respect of an act or behaviour which might constitute a criminal offence should be clearly defined in the Bill. Ms EU pointed out that there were a lot of activities which would be amounted to facilitating bookmaking, such as provision of free meal and transport by MHRC to prospective punters from Hong Kong and publication of information relating to odds in newspapers.

34. SALD explained that proposed section 16E was one of the many provisions in the Bill which sought to combat unlawful gambling activities in Hong Kong. It covered any activity which deliberately promoted or facilitated bookmaking, but a person who engaged in a particular activity without knowledge of or intention to promote or facilitate a particular act of bookmaking would not be prosecuted. Sufficient evidence would be required to institute prosecution in respect of the offence of promoting or facilitating bookmaking. He opined that a mere isolated incident of giving comments on a particular horse racing event or publication of odds in newspapers would not be considered as promoting or facilitating bookmaking.

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35. DS/HA(2) supplemented that depending on the facts and evidence in each case, a number of acts might fall within the category of "promoting or facilitating bookmaking" under the proposed section 16E. These include advertising on betting with an offshore bookmaking company, opening betting accounts for punters, collecting betting deposit for offshore gambling purposes, operating telephone hotlines for Hong Kong punters, etc.

36. Notwithstanding the Administration's response, Ms Audrey EU remained of the view that the definition of "promoting or facilitating bookmaking" was unclear. Miss Margaret NG opined that the acts or behaviours which would constitute criminal offences under proposed section 16E should be specified in the Bill.

*Prohibiting transmission of betting information*

37. Miss CHAN Yuen-han referred to ATV's views that prohibiting the broadcast of any forecast, hint, odds or tip relating to any unauthorised horse or dog racing event via TV or radio within the 12-hour period preceding the conduct of that event was in effect supporting a monopolistic policy for the interest of HKJC. She asked the Administration to respond to the accusation. Miss CHAN also added that such prohibition was not in line with the Government's policy objective of maintaining a liberal broadcasting policy.

38. DS/HA(2) responded that the Administration was mindful of the need to strike a balance between the policy objectives of combating unauthorised gambling activities and maintaining a liberal broadcasting policy. She stressed that the Administration had adopted a very narrow and focussed approach in constructing the offence under the new section 16D. Only betting information relating to horse and dog racing events, rather than the races themselves, would be prohibited.

39. DS/HA(2) said that the Administration held the view that the proposed prohibition was necessary and proportionate to combating unauthorised gambling activities which could be facilitated by live broadcast of betting information, and was not inconsistent with freedom of expression including the freedom to receive and impart information of all kinds. She added that the United States and Canada had far more stringent provisions in place for regulating the transmission of betting information relating to unauthorised events.

40. Miss CHAN Yuen-han said that the Administration should ensure consistency in gambling policy and enforcement action against unauthorised bookmaking activities on horse racing events and soccer matches. She suggested that the Administration should conduct a comprehensive review on its gambling policy and legislative measures against unauthorised bookmaking activities.

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41. DS/HA(2) responded that the Government's gambling policy had all along been very consistent. Under the Ordinance, all gambling activities were illegal except those expressly authorised by the Government under the Betting Duty Ordinance (Cap. 108) which included horse racing organised by the HKJC and the Mark Six Lottery organised by the Hong Kong Lotteries Board, those exempted under Section 3 of the Ordinance (mainly social gambling) and those licensed by the Commissioner for Television and Entertainment Licensing (e.g. mahjong parlours). However, unauthorised gambling involving an offshore bookmaker was currently not illegal under the Ordinance, which was a loophole in the law. In the face of an increasing number of offshore bookmakers enticing bets from Hong Kong people, the Bill was proposed to rectify the anomaly and plug the loopholes of the Ordinance.

*Internet gambling*

42. Members noted that Hon Margaret NG had set out some questions on betting via the Internet in respect of the Bill in the letter of 4 January 2001 to the Administration [Paper No. CB(2)619/00-01(01)]

43. Miss Margaret NG referred to the fact that the Administration had once said at the meeting of the Panel on Home Affairs held on 13 December 1999 that gambling on the Internet was not very prevalent in Hong Kong and that legislating against such activities was a complex matter. She asked whether the Administration had changed its position since it now proposed to amend the legislation to cover gambling via the Internet.

44. DS/HA(2) confirmed that as with the existing sections 7 and 8, the proposed amendments to sections 7 and 8 covered offshore bookmaking and betting with an offshore bookmaker via the Internet, and indeed through any other means. At the request of Miss Margaret NG, she undertook to provide a written response to Miss NG's letter.

[*Post meeting note* : The Administration's response was set out in item 11 of its letter to the Clerk dated 8 February 2001 [Paper No. CB(2)814/00-01(01)].

*Deferring the consideration of the Bill*

45. The Chairman reminded members that in view of the controversial implications and the impending gambling review, some members at the meeting on 7 December 2000 had suggested that there was no urgency to enact the Bill and that consideration of the Bill should be deferred. He considered that the Administration should put forward an overall legislative proposal after the review was completed.

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46. Ms Audrey EU expressed support for deferring the consideration of the Bill on the grounds that the Bill proposed to criminalise bookmaking with an offshore bookmaker even though the bookmaker was authorised in the jurisdiction concerned and the bookmaking was transacted wholly outside Hong Kong. She stressed that placing bets with offshore bookmakers which was not an uncommon practice was currently not an offence. The Administration should re-examine the serious implications of creating such an offence.

47. DS/HA(2) responded that the Administration did not agree that consideration of the Bill should be deferred pending the completion of the gambling review. She clarified that the comprehensive gambling review would look at a wide range of issues under the prevailing social circumstances and explore the desirability and feasibility of providing legal and controlled outlets for other forms of betting. She stressed that the Administration had no foregone conclusion as to whether legal outlets should be provided for betting on soccer.

48. DS/HA(2) stressed that in view of the increasing number of offshore bookmakers who exploited the loopholes of the Ordinance and invited Hong Kong people to place bets, there was an urgent need to enact the Bill. She pointed out that Government at present had no legal basis to take any action against these offshore bookmakers. In fact, some offshore bookmakers were aware of the loopholes and had adopted high profile tactics to lure Hong Kong people to bet with them even on Hong Kong horse racing events, promising higher payouts. These unauthorised bookmakers would welcome any suggestion to defer consideration of the Bill. She explained that the Bill and the review were two separate exercises which were independent of each other. The review would take six to nine months to complete and was not intended to revert the current policy which the Bill sought to uphold. If the review concluded that betting on soccer was accepted by the community at large, the Administration would only need to propose appropriate amendments to the Betting Duty Ordinance without the need to further amend the Gambling Ordinance.

49. In summing up discussion, the Chairman requested and the Administration undertook to provide a written response to the views and concerns of deputations and members expressed at the meeting.

### **III Any other business**

50. Members agreed that the Clerk would consult members on the date of next meeting.

[*Post-meeting note* : The next meeting was subsequently scheduled for Friday, 9 February 2001 at 8:30 am]

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51. There being no other business, the meeting ended at 12:55 pm.

Legislative Council Secretariat

11 May 2001