

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, 9 February 2001 at 8:30 am
in Conference Room A of the Legislative Council Building**

Members Present : Hon Andrew CHENG Kar-foo(Chairman)
Hon Cyd HO Sau-lan
Hon James TO Kun-sun
Hon CHAN Yuen-han
Hon SIN Chung-kai
Hon Andrew WONG Wang-fat, JP
Hon YEUNG Yiu-chung
Hon Timothy FOK Tsun-ting, SBS, JP
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Audrey EU Yuet-mee, SC, JP

Members Absent : Hon David CHU Yu-lin
Hon CHOY So-yuk

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 J D SCOTT
Senior Assistant Law Draftsman, Department of Justice

Mr Gavin SHIU
Senior Government Counsel, 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

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I. Confirmation of minutes
[LC Paper No. CB(2)810/00-01]

The minutes of the meeting held on 7 December 2000 were confirmed.

II. Meeting with the Administration

2. Members noted a further submission dated 2 February 2001 from the Macau Horse Racing Company Limited (MHRC) [Paper No. CB(2)814/00-01(02)]. Members also noted the letter dated 7 February 2001 from Hon David CHU suggesting that the Bills Committee should complete deliberations of the Bill as soon as practicable in order to combat illegal gambling activities [Paper No. CB(2)814/00-01(03)].

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3. At the invitation of the Chairman, Deputy Secretary for Home Affairs (2) (DS/HA(2)) briefed members on the Administration's written response to members' concerns raised at the meetings on 7 December 2000 [Paper No.CB(2)624/00-01(01)] and 9 January 2001 [Paper No.CB(2)814/00-01(01)].

Gambling via the Internet

4. Miss Margaret NG pointed out that when the Administration briefed the Panel on Home Affairs on the legislative proposals to amend the Gambling Ordinance at its meeting on 13 December 1999, it had acknowledged that gambling via the Internet was not very prevalent in Hong Kong and that legislating against such activities was a complex matter. Hence, the legislative proposals did not seek to cover gambling via the Internet. Miss NG said that it was premature for the Administration to introduce the Bill at the present stage to combat gambling via the Internet on the grounds that -

- (a) while the Administration had recognised enforcement difficulties, it failed to specify detailed procedures for monitoring compliance and initiating prosecution against unauthorised bookmaking activities via the Internet; and
- (b) while the Administration had acknowledged that gambling via the Internet could only be resolved through international co-operation, it did not specify how such international co-operation could be achieved.

Miss NG therefore considered it inappropriate for the Bills Committee to continue deliberation of the Bill without a thorough study of the wide implications and feasibility of prohibiting gambling via the Internet.

5. In response, DS/HA(2) said that the Administration was prepared to provide further information about enforcement of relevant provisions to combat gambling via the Internet if the Bills Committee so requested. She stressed that there was an urgent need to enact the Bill, as evident by the increasing number of offshore bookmakers enticing bets from Hong Kong people. Otherwise, the Government would have no legal authority to combat unauthorised offshore gambling activities in Hong Kong in the face of a proliferation of such activities for a prolonged period of time. She pointed out that after introduction of the Bill, loopholes in the Gambling Ordinance had become widely known to offshore bookmakers, and deferring consideration of the Bill would encourage more offshore bookmakers to exploit the loopholes and start enticing bets from Hong Kong people. It would be more difficult to eradicate such activities after they had established a firm clientele in Hong Kong.

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6. Mr Abraham SHEK said that the Bill appeared to target at MHRC. He asked whether MHRC could apply to operate betting outlets in Hong Kong. DS/HA(2) responded that authorising an additional horse racing organisation to operate betting in Hong Kong would have serious implications and require careful consideration. She added that the Hong Kong Jockey Club (HKJC) currently conducted a total of 78 race meetings a year and so far there was no pressing demand for additional gambling opportunities in this regard.

7. Miss Margaret NG said that members appreciated the need for legislative amendments to combat unauthorised offshore bookmaking activities in Hong Kong. However, it would convey a far more negative message to the public if Legislative Council (LegCo) Members were to enact the Bill without sufficient understanding of the serious implications and consequences. Miss NG and Ms Audrey EU pointed out that bookmaking with offshore bookmakers was not an offence under the existing legislation and was not an uncommon practice for Hong Kong people. In addition, criminalising an act committed and authorised in the jurisdiction concerned would have complicated legal implications. They considered that as far as gambling via the Internet was concerned, the Administration should thoroughly consult the public as to whether bookmaking via the Internet should be prohibited. If the community as a whole opposed to gambling via the Internet, it should conduct an in-depth study on how the law could be fairly enforced to prosecute offshore bookmakers and Hong Kong people involved in such unlawful bookmaking activities.

8. Mr SIN Chung-kai expressed similar reservation about whether it was feasible to initiate prosecution against offshore bookmakers who had received bets placed from Hong Kong. He also sought clarifications as to whether the Administration would arrest and prosecute these offshore bookmakers on their arrival to Hong Kong. Mr SIN stressed that since the Bill sought to cover offshore bookmakers receiving bets placed from Hong Kong, the Administration must explain to LegCo Members in no uncertain terms as to whether they would be prosecuted if the Bill was enacted.

9. Mr SIN Chung-kai further said that there were a number of ways to detect and combat unauthorised bookmaking activities via the Internet. For instance, the Administration could set up a special team to track Internet communications and hence put suspects under continuous surveillance. However, given that a few million Hong Kong people had access to Internet, he expressed concern about the criteria for targeting surveillance subjects, and whether such surveillance was in consistency with the Personal Data (Privacy) Ordinance. He suggested that the Inter-departmental Working Group on Computer Related Crime should explore feasible alternatives in combating unauthorised offshore bookmaking activities via the Internet. Miss Cyd HO expressed a similar view, saying that gambling via the Internet was a complex issue which should be tackled with due care. Otherwise, the

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image of Hong Kong as an international financial centre which allowed free flow of information would be jeopardised.

10. DS/HA(2) responded that she agreed with members that the Administration should consider practical issues in respect of enforcement when introducing the Bill. However, whether to initiate prosecution would hinge on availability of adequate evidence to substantiate the case. In response to Ms Audrey EU's enquiry, DS(HA)2 confirmed that existing legislation already covered local websites engaging in bookmaking activities. A local website offering gaming activities earlier this year had removed the games having sought legal advice and informed by the Administration about possible contravention of the law. The Administration could consider amending the proposed section 7 to provide for a defence similar to the proposed section 16D(6) for off-shore bookmakers who had taken all reasonable precautions with due diligence to prevent receiving bets placed from Hong Kong.

11. Senior Assistant Law Draftsman, Department of Justice (SALD) supplemented that the Police would determine prosecution based on the facts and evidence, and follow the Department of Justice's Prosecution Policy in each case. An offshore bookmaker who had knowingly and intentionally promoted bookmaking activities and accepted bets placed from Hong Kong via the Internet would be prosecuted. SALD pointed out that if the Bill was enacted, the Police would enforce the new legislation similar to what they had been doing in respect of other criminal activities committed by way of the Internet.

12. Deputy Solicitor General, Department of Justice pointed out that the primary purpose of the Bill was to plug the loopholes in existing legislation and had not incorporated any changes in Government's gambling policy. The Department of Justice would initiate prosecution in accordance with the established prosecution policy which applied to other crimes under the law. However, it was not in a position to comment as to whether a particular off-shore bookmaker would be prosecuted in the absence of a case. He added that the Department of Justice had also set up a team to examine the issue of computer crime.

13. Ms Audrey EU considered the insertion of an extraterritorial element into the Gambling Ordinance would mean a substantial change in Government's gambling policy, as it would criminalise an act which was currently not illegal. Ms EU added that the Government should specify clearly as to what would constitute an offence under the Bill in order to avoid giving the impression that prosecution would be initiated on a complete discretionary basis.

Deferring the consideration of the Bill

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14. At Miss Margaret NG's suggestion, some members proposed that consideration of the Bill should be held in abeyance, and that the Administration should -

- (a) provide detailed information as to how it intended to take enforcement action against illegal gambling via the Internet; and
- (b) consult the public on the legislative proposals in the Bill.

15. The Chairman said that some members at previous meetings had opined that deliberations of the Bill should be suspended pending the outcome of a comprehensive gambling review. In view of the uncertainties in law enforcement against gambling via the Internet, the Administration should consider deferring the consideration of the Bill until the completion of the comprehensive gambling review. He added that the Democratic Party was concerned that the outcome of the review would be inconsistent with the legislative proposals in the Bill. The Chairman reiterated that since the gambling review would be completed soon, enactment of the Bill should defer until the Administration had decided whether betting on soccer should be legalised.

16. DS/HA(2) responded that sections 7 and 8 of the existing Gambling Ordinance had not specified the medium through which bookmaking and betting were conducted and thus would cover Internet gambling involving local websites. Given that the Bill sought to insert an extraterritorial element in the Ordinance, it would not be logical if the Government outlawed local gambling websites but exempted those based in other jurisdictions. She pointed out that these local website operators could easily circumvent the law by moving their bases to other jurisdictions. DS/HA(2) reiterated that the Administration considered it necessary to enact the Bill to combat unauthorised offshore gambling activities as soon as possible, and was prepared to discuss with members the details of the Bill and make revisions where appropriate.

17. DS/HA(2) further explained that the gambling review would examine a wide range of gambling related issues including the desirability and feasibility of providing legal and controlled outlets for betting on soccer. Whatever the outcome of the review would be, the Gambling Ordinance needed to be amended as currently proposed to enable the Government to combat unauthorised offshore gambling and uphold its gambling policy. In other words, the gambling review and the Bill were two separate exercises and any decision arising from the review would not affect the proposed amendments in the Bill. She added that if the community at large supported providing legal outlets for other forms of betting such as soccer betting, the Administration would need to amend the Betting Duty Ordinance only without the need to further amend the Gambling Ordinance. On the other hand, if the review

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concluded that there should not be any new form of authorised betting, the need for the Bill would be more apparent as it sought to prohibit all forms of unauthorised bookmaking activities in Hong Kong. There was therefore no need to suspend consideration of the Bill.

18. Mr TAM Yiu-chung did not agree that consideration of the Bill should be held in abeyance. He said that given the increasing number of unauthorised offshore bookmakers exploiting the loopholes of the existing legislation, the Bills Committee should continue deliberations of the Bill.

19. Mr Tommy CHEUNG expressed a similar view. He pointed out that offshore bookmakers were able to offer attractive odds to local punters because they did not need to pay betting duty. As a consequence, there was a substantial decline in the total betting turnover of HKJC.

The way forward

20. Noting some members' concerns about the feasibility and implications of the provisions of the Bill, Mr TAM Yiu-chung was of the view that while the Administration should provide more information on enforcement action against illegal gambling activities via the Internet and also consult the public on the proposals in the Bill, scrutiny of the Bill should be proceeded with at the same time. He added that the Bills Committee could consider inviting views from affected trade if necessary. In this connection, Mr YEUNG Yiu-chung suggested that the Administration should make reference to overseas experience in combating illegal gambling via the Internet.

Adm 21. In the light of divided views expressed at the meeting, Miss Margaret NG suggested that the Bills Committee should hold the next meeting when the Administration had completed its study on gambling via the Internet. DS/HA(2) said that the Administration would set out the rationale of covering unauthorised gambling activities via the Internet in the Bill and relevant enforcement measures and revert to the Bills Committee in April.

Adm 22. Ms Audrey EU said that the interpretation of "promoting or facilitating bookmaking" in the proposed section 16E should be clearly defined in the Bill. She pointed out that the Administration's response had not answered her query at the last meeting about whether publication of information relating to odds in newspapers would constitute an act of "promoting or facilitating bookmaking" under the Bill. She requested the Administration to clarify in its response to be submitted to the Bills Committee in April 2001.

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23. Some members held a strong view that the Administration should conduct a thorough study and consultation on the implications of inserting an extraterritorial element in the offence of bookmaking with a bookmaker. Mr James TO pointed out that prohibiting Hong Kong people to place bets with offshore bookmakers would in effect impose a restriction on their freedom. Miss Margaret NG stressed that the Administration should have conducted a public consultation exercise before introducing the Bill which carried wide and complicated legal implications particularly on freedom of individuals. She held the view that while the Bills Committee could consult the public on the Bill, the onus of conducting a public consultation exercise rested with the Administration.

Adm 24. In summing-up, the Chairman expressed appreciation of the Administration's undertaking to provide further information on the issue of Internet gambling and revert to the Bills Committee sometime in April 2001. He also requested the Administration to provide a written response to members' other concerns expressed at the meeting.

III Any other business

25. There being no other business, the meeting ended at 10:10 am.

Legislative Council Secretariat
11 May 2001