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on 10 May 2002**

**Report of the Bills Committee on
Gambling (Amendment) Bill 2000**

Purpose

This paper reports on the deliberations of the Bills Committee on Gambling (Amendment) Bill 2000.

Background

2. It is the Government's policy to restrict gambling opportunities to a limited number of authorised outlets only. Horse racing organised by the Hong Kong Jockey Club (HKJC) and the Mark Six Lottery organised by the Hong Kong Lotteries Board are the main examples of such authorised outlets. Under the Gambling Ordinance (Cap. 148), all gambling activities are illegal except those expressly authorised by the Government under the Betting Duty Ordinance (Cap. 108) (i.e. the HKJC horse racing and Mark Six Lottery), those exempted under section 3 of the Gambling Ordinance (mainly social gambling) and those licensed by the Commissioner for Television and Entertainment Licensing (e.g. mahjong parlours).

3. Given the growing number of offshore bookmakers targetting the Hong Kong market and providing betting-related services and promoting their business in Hong Kong, the Administration is of the view that the existing Gambling Ordinance may be inadequate to deal with offshore bookmakers taking bets placed from Hong Kong through the widespread use of telecommunications tools. The Administration therefore proposes to amend the Gambling Ordinance to combat such activities of unauthorised offshore bookmakers.

The Bill

4. The Bill proposes -

- (a) to insert an extraterritorial element into the offence of "bookmaking" to make it explicit that unauthorised bookmaking will be illegal even when the bet is solicited or received outside Hong Kong, as long as the person who places the bet is in Hong Kong;
- (b) to insert an extraterritorial element into the offence of "betting with a bookmaker" to make it an offence for people in Hong Kong to bet with an offshore bookmaker;
- (c) to create a new offence to criminalise "promoting or facilitating bookmaking" in Hong Kong;
- (d) to criminalise keeping of premises for the purpose of promoting or facilitating the receipt of bets on horse races or other contingencies even when the transaction takes place outside Hong Kong;
- (e) to enable forfeiture of money or property used in connection with unlawful gambling taking place outside Hong Kong with the bets concerned placed from Hong Kong;
- (f) to create 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 television (TV) or radio within the 12-hour period preceding the conduct of that event; and
- (g) to reinstate the concept of "aiding, abetting, procuring or counselling" in the Gambling Ordinance by deleting references to "assisting" from the relevant offences including bookmaking.

The Bills Committee

5. The Bill was introduced into the Legislative Council (LegCo) on 22 November 2000. At the House Committee meeting on 24 November 2000, members agreed that a Bills Committee should be formed to study the Bill. The membership list of the Bills Committee is in **Appendix I**.

6. Under the chairmanship of Hon Andrew CHENG Kar-foo, the Bills Committee has held 18 meetings with the Administration. Deputations also attended two of these meetings to give their views to the Bills Committee. A list of the organisations and individuals who have made submissions to the Bills Committee is in **Appendix II**.

Main deliberations of the Bills Committee

Timing of the Bill and the Gambling Review

7. The Administration issued a consultation paper on a Gambling Review on 22 June 2001. The primary objective of the consultation paper is to solicit views from the public on whether the Government should, as a matter of principle, adhere to its existing policy of restricting gambling opportunities to a limited number of authorised outlets only, whether regulated outlets should be provided for soccer betting, and whether the Government should, in the light of research findings, implement measures to address the negative impact of gambling.

8. Some members of the Bills Committee, including Members belonging to the Democratic Party, consider that scrutiny of the Bill should be deferred until the Gambling Review is completed and the results of the consultation paper released as the two exercises are closely related to the Government's gambling policy. These members are of the view that there is no urgent need to enact the Bill before the Government decides its way forward after completion of the Gambling Review.

9. The Administration has reiterated that the Bill and the Gambling Review are two separate exercises. The Bill seeks to criminalise all unauthorised cross-border gambling activities as well as the promotion and facilitation of such unauthorised gambling activities, whereas the public consultation exercise on the Gambling Review focuses on whether the Government should regulate soccer betting through authorised outlets. As unauthorised cross-border gambling activities have created a huge drain on betting revenue, it is necessary to plug the loopholes of the existing Ordinance immediately.

10. Regarding the Gambling Review, the Administration has pointed out that if, for instance, the provision of limited local outlets for soccer betting commands public support, only amendments to the Betting Duty Ordinance will be required. It is therefore not necessary to defer scrutiny of the Bill. Moreover, given the proliferation of unauthorised bookmaking activities of offshore bookmakers, enactment of the Bill is urgently needed to give legal authority to the Government to combat unauthorised cross-border gambling activities in Hong Kong.

11. These members are not convinced by the Administration's explanation. They consider that as the Gambling Review is underway, the Administration should put forward an overall legislative proposal, if necessary, after the Review is completed. These members have expressed concern that if the results of the public consultation exercise on the Gambling Review indicate that the community, as a whole, is in favour of providing regulated outlets for soccer betting, the Administration may have to revise its gambling policy which the Bill seeks to uphold, and it will give a very confusing message to the community.

12. Some of these members also opine that the Administration should have consulted the public on the Bill as it has wide implications on individual freedom and involves complicated legal principles. They consider that the Bills Committee should not proceed with scrutiny of the Bill until the results of consultation with the public on the Bill are available.

13. Members belonging to the Democratic Alliance for Betterment of Hong Kong, the Hong Kong Progressive Alliance and the Liberal Party hold a different view. They express support for early enactment of the Bill and consider that if LegCo and the community support provision of regulated outlets for soccer betting, the Administration can propose further legislative proposals to authorise local bookmakers to accept bets on soccer. Since the Bill is consistent with the existing gambling policy, it should be deliberated and enacted as soon as possible to combat activities of offshore bookmakers in Hong Kong.

The offences of "bookmaking" and "betting with a bookmaker" under clauses 4 and 5

14. Clauses 4 and 5 of the Bill propose to insert an extraterritorial element into the offences of "bookmaking" and "betting with a bookmaker" under sections 7 and 8 of the Gambling Ordinance respectively. The purpose of the amendments proposed in clauses 4 and 5 is to make it explicit that unauthorised bookmaking will be illegal even when the bet is solicited or received outside Hong Kong, as long as the person who places the bet is in Hong Kong, and that it is an offence for people in Hong Kong to bet with an offshore bookmaker. Members further note that the offence of "bookmaking" will apply, even if the offshore bookmaker is a licensed gambling operator in his own country.

15. The Administration has explained that the amendments seek to uphold the integrity of the Government's gambling policy, i.e. to restrict gambling opportunities to a limited number of authorised outlets only, given that cross-border bookmaking activities, like any other unauthorised local bookmaking activities, are not authorised gambling activities in Hong Kong.

16. Some members express concern about the scope of the amended section 7 as it criminalises the act of receiving a bet placed from Hong Kong by an offshore bookmaker who may be licensed in the jurisdiction concerned. They query the justification for the Administration to criminalise activities which are carried out in another jurisdiction, and which are lawful in that jurisdiction.

17. The Administration has responded that an increasing number of offshore bookmakers are specifically targeting the Hong Kong market. If such bookmaking and promotion activities are not made explicitly illegal, they will exist and flourish as legal or exempted activities in Hong Kong. This is contrary to the Government's policy of restricting gambling opportunities to a limited number of authorised outlets. The Administration has further pointed out that some jurisdictions have adopted a lax and non-transparent licensing regime. Allowing offshore bookmakers in these

jurisdictions to take bets from Hong Kong people will give rise to the problem of underage gambling and gambling frauds, and pose a serious threat to the betting revenue.

18. Some members also query whether the amended section 7 seeks to cover only those persons who solicit or receive bets placed from Hong Kong with intent. They have pointed out that it is very difficult, if not impossible, for an offshore bookmaker to screen out bets placed from Hong Kong. The Administration has explained that the amended provision does not rule out *mens rea* as a constituent part of the offence. There has to be evidence of knowledge or intent for an offence to be established. In this regard, the onus of proving the defendant's knowledge or intent still rests with the prosecution.

19. These members consider that there may be an uncertainty in law if it is up to the Administration to decide whether a bookmaker has taken reasonable precautions to prevent receiving bets placed from Hong Kong, and whether to initiate prosecution.

20. The Administration has explained that a bookmaker commits an offence if he engages in bookmaking or holds out in any manner that solicits, receives, negotiates or settles bets by way of trade or business with a person when that person is in Hong Kong. The normal consideration for prosecution as set out in the prosecution policy of the Department of Justice will apply in the case of any prosecution under the Bill should it be enacted.

21. Members have queried whether an offshore bookmaker offering casino chips at discounted rates through a local office to attract Hong Kong people to travel abroad to bet will commit an offence under the amended section 7. The Administration has explained that under section 2 of the Gambling Ordinance, "bookmaking" means "the soliciting, receiving, negotiating or settling of a bet". To establish an offence under the amended section 7, the prosecution has to prove that a particular bet has been solicited, negotiated, etc. It does not, *prima facie*, appear that a person offering casino chips to a prospective customer is soliciting "a particular bet". The Administration, however, added that the legality of a certain act will depend on the facts and evidence of the case.

22. Some members have expressed strong reservations about the amended section 8 because it will have the effect of criminalising the act of placing bets with an offshore bookmaker, which currently is not an offence under the Gambling Ordinance. These members consider that although illegal gambling has adverse social impacts, it may not be appropriate to impose criminal sanction on all unauthorised gambling activities including those conducted via the Internet. These members are of the view that the Administration should have conducted the public before introduction of the Bill, because betting via the Internet or telephone with offshore bookmakers may be prevalent among the general public and criminalisation of such acts will have wide implications on individual freedom.

23. The Administration has responded that bookmaking and betting involving a local website is already illegal under the existing Gambling Ordinance. Allowing people in Hong Kong to bet with unauthorised bookmakers (albeit offshore) will represent a departure from the established gambling policy. To exempt Internet gambling from the Bill will raise the question as to whether operating local gambling websites should also be exempted. If the principle of tackling illegal gambling is accepted, there is no reason to exempt certain unauthorised gambling activities simply because they are conducted through a particular means e.g. the Internet.

24. The Administration has further pointed out that with the increasing use of modern telecommunications technology such as International Direct Dialling (IDD) and roaming services and the significant decrease in the cost of IDD telephone calls, placing bets with an offshore bookmaker is almost as convenient as with a local bookmaker, but betting with the former is currently not an offence under the Gambling Ordinance. This is an anomaly and is being increasingly exploited by unauthorised/illegal bookmakers, both local and overseas. The Administration considers it imperative that the scope of the offence of "betting with a bookmaker" should explicitly cover those who bet with an offshore bookmaker in order to rectify the problem.

25. Some members have also expressed grave concern that the privacy rights of an individual may be infringed in the process of enforcement actions against Internet gambling. They consider that the amended sections 7 and 8 may confer too much powers on the Police. The Administration has pointed out that the proposal is targeted more at bookmakers than individual bettors, and the Administration will not conduct comprehensive real-time monitoring of online communication on the Internet. However, offshore bookmakers receiving bets placed from Hong Kong will face prosecution given sufficient evidence, if they arrive in Hong Kong, and assistance will be sought from the overseas jurisdiction concerned in the investigation and prosecution process where necessary.

26. The Administration has further pointed out that the Police have been tackling crimes committed through the Internet under the existing laws in accordance with established practices and procedures. The same guiding principles will be used in enforcement measures to be taken under the Gambling Ordinance after the relevant provisions in the Bill have come into effect. The Administration has stressed that it has no plan to take additional measures specifically for the purpose of tackling Internet gambling offences, after the enactment of the Bill.

27. Some members are concerned that although the Administration has claimed that it will not conduct real-time monitoring of online communication on the Internet for enforcement actions against Internet gambling, LegCo and the public will not be able to monitor the enforcement actions, since the Administration has all along refused to disclose the number of interception warrants issued. It is the Administration's position that it is unable to comment on the work relating to interception of communications, for operational and security reasons.

28. The Bills Committee has requested the Administration to provide annual statistics on court warrants issued in relation to enforcement against gambling offences to the Panel on Security, after the Bill has come into effect. The Administration has agreed to the Bills Committee's request. The Administration has also agreed that the Secretary for Home Affairs will give an undertaking in his speech to be delivered during the resumption of the Second Reading debate on the Bill that in the process of enforcement actions against Internet gambling, the Administration will endeavour -

- (a) to strike a balance between the protection of the privacy rights of an individual and the policy to combat cross-border gambling; and
- (b) to adhere to the established practices and guidelines of the Police for the purpose of tackling offences involving the use of Internet.

29. Hon James TO and Hon Andrew WONG have queried whether betting with a bookmaker through an overseas intermediary who is either a relative or a friend of the bettor will constitute an offence under the amended section 8 in the Bill. The Administration has explained that a person in Hong Kong who asks his friend or relative in an overseas country to place a bet with an overseas bookmaker will not be caught by the provision, unless the friend or relative is a bookmaker or an agent of a bookmaker or an agent of the bettor, especially an agent who also places bets on behalf of many other people in Hong Kong. Moreover, in any event, conviction of betting with a bookmaker through an intermediary will depend on the availability of substantive evidence showing that the bet is, in substance, placed by the person in Hong Kong.

30. Some members have expressed objection to the amended section 8 because it does not provide exemptions for overseas visitors who place bets with licensed offshore bookmakers in their native countries, and local horse owners who place bets on their horses participating in overseas races. They consider that the amended section 8 is unreasonable and may have adverse effect on the tourism industry.

31. The Administration has expressed serious reservations on both principle and practical grounds to exempt any particular group(s) of persons who place bets with offshore bookmakers from the amended section 8. The Administration has explained that any such exemption will be arbitrary and can be challenged as discriminatory. The Administration also considers that it is not unreasonable to require a visitor to Hong Kong to abide by Hong Kong's law.

32. Members objecting to the Administration's proposal to insert an extraterritorial element into the offences of "bookmaking" and "betting with a bookmaker" have also expressed concern whether clauses 4 and 5 as presently drafted can adequately reflect the policy intention of the Administration. For example, they consider that separate provisions should be used for past and future acts in respect of soliciting, receiving,

negotiating and settling a bet. They also query whether it is feasible to prove that the parties concerned to the transaction of bookmaking will be outside Hong Kong. These members have suggested the Administration to improve the drafting of clauses 4 and 5 to facilitate interpretation and enforcement.

33. In light of members' concern, the Administration has come up with revised formulations for clauses 4 and 5. The Administration has explained that the Committee Stage amendment (CSA) to clause 4 is to make it clear that a person commits an offence under the amended section 7 if he receives, negotiates or settles outside Hong Kong a bet which is placed from Hong Kong, or placed by a person who is in Hong Kong when the bet is placed. The CSA to clause 5 seeks to make it clear that it is an offence under the amended section 8 for a person to bet with an unauthorised bookmaker, whether the bet is received within or outside Hong Kong.

34. Hon Andrew CHENG is of the view that since the CSA proposed by the Administration will add the phrase "whether the bet is received within or outside Hong Kong" to section 8, it should be specified that a person who places a bet with a bookmaker will commit an offence only if he is in Hong Kong at the time of placing that bet.

35. The Administration has explained that it is the usual interpretation at common law that unless there are express provisions stating that an act occurring outside Hong Kong is covered, the relevant provision only applies to an act occurring within Hong Kong. The reference to "whether the bet is received within or outside Hong Kong" merely serves to clarify that where the bet is subsequently received is irrelevant to whether an offence has been committed. The Administration has further pointed out that to specify in section 8 that only betting in Hong Kong will be covered can give rise to doubts as to the coverage of other provisions of the Gambling Ordinance.

36. Although members in general consider that the CSAs to be proposed by the Administration to clauses 4 and 5 have streamlined the drafting and improved clarity of the policy intention, the Bills Committee has divergent views on the Administration's proposal to insert an extraterritorial element into the offences of "bookmaking" and "betting with a bookmaker". Members objecting to the Administration's proposal, including Hon Andrew WONG and Hon Audrey EU, remain of the view that it has expanded the scope of the Gambling Ordinance, increases the powers of the Police, and represents a change of the existing policy.

37. Some other members agree with the Administration's view that the Bill only seeks to uphold the integrity of the gambling policy, in the light of the technological developments in communications and the increase in cross-border gambling activities. They consider that the integrity of Government's gambling policy should be upheld, given that offshore bookmaking activities, like any other unauthorised local bookmaking activities, are not authorised gambling activities in Hong Kong.

Enforcement difficulties in respect of offences of "bookmaking" and "betting with a bookmaker"

38. Some members have expressed concern whether enactment of the Bill will achieve the intended purpose of combating gambling activities conducted via the Internet as the Administration is seeking extraterritorial jurisdiction over Internet users. These members are of the view that there will be problems with investigation, evidence collection and its satisfactory production in court, because betting with an offshore bookmaker is mostly conducted via the Internet or telephone.

39. The Administration has responded that the law should reflect the Government's policy intention, i.e. betting with an unauthorised bookmaker (including an offshore bookmaker) is not allowed. Despite the Bill's limitations, enactment of the Bill will render cross-border gambling less convenient and less attractive. The Bill will deprive offshore bookmakers of two popular media, i.e. TV and radio to disseminate updated betting information before the start of a race. The Bill will also make it more difficult for offshore bookmakers to entice bets from Hong Kong people, as promoting or facilitating bookmaking will be prohibited.

40. The Administration has further pointed out that local banks will stop providing banking services to offshore bookmakers, and credit card-issuing institutions will not allow cardholders to use their cards in cross-border gambling. Moreover, the amended sections 7 and 8 will empower the Police to investigate into Internet gambling activities involving cash or credit card transactions processed by a local bank or financial institution. The Police will investigate the problem in the same way as they are doing in respect of other criminal activities which may take place across the border. The Bill also provides the legal basis for the Police to seek co-operation and assistance from the jurisdictions concerned in investigation or instituting prosecution.

41. Some members are not satisfied with the Administration's explanation. They note that of the 140 cases (out of the 180 Internet-related crime cases) in 2001 in which overseas co-operation was sought in the investigation process, only about 20% met with positive response from the relevant overseas authorities. These members are disappointed that the Administration has failed to put forward concrete measures regarding enforcement of the Bill to tackle cross-border gambling activities, particularly those conducted via the Internet. These members have pointed out that it is unacceptable for LegCo to enact a piece of legislation, knowing that its provisions are not enforceable, and only represents a policy statement of the Administration.

42. Some other members, however, are of the view that although there are limitations to the effectiveness of the proposed provisions in the Bill, there is a need to plug the loopholes in existing law to combat cross-border gambling which has become prevalent through the widespread use of telecommunication tools.

43. Given the enforcement difficulties to combat Internet gambling, some members have suggested that the Administration should narrow the scope by focusing on specific problem areas e.g. unauthorised operation of outlets and promotion activities of offshore bookmakers in Hong Kong. They take the view that the offence provisions relating to keeping premises for betting, and promoting or facilitating bookmaking as proposed under clause 8 of the Bill (to be discussed in paragraphs 46 - 72 below) should be adequate to address the problem.

44. Representatives of the Internet service providers (ISPs) who met with the Bills Committee have indicated their willingness to co-operate with the Administration to combat unlawful Internet gambling by means of blocking access to/taking-down gambling websites. Hon Audrey EU has suggested that the Bill should provide for a general enabling provision to empower ISPs to block access to gambling websites and to remove them.

45. The Administration, however, does not consider a general enabling provision for blocking access to gambling websites desirable and necessary because this may give rise to freedom of information and censorship concerns. According to the Administration, the "take-down" provision will only be useful when the website is hosted by a local ISP, but at present all the known gambling websites are based outside Hong Kong. The Administration has also pointed out that even if a local gambling website site is found, the Police should be able to track down the operator and take enforcement actions without the need for the local ISP concerned to remove the website. Some members have expressed support for the Administration's position. They consider that it is important to preserve freedom of information, and ISPs should have discretion to determine their marketing strategies.

Keeping premises for betting, etc., restriction on broadcasting, and promoting or facilitating bookmaking under clause 8

New offences

46. Clause 8 of the Bill proposes to create the following offences -

- (a) new sections 16A and 16B -- keeping any premises for the conduct of bookmaking on horse racing or other contingencies, and for the promotion or facilitation of such conduct, even when the transaction takes place outside Hong Kong;
- (b) new section 16C -- as owners or tenants, knowingly permitting or suffering the use of their premises for the purposes referred to in (a) above;
- (c) new section 16D -- 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 of that event. The new provision will however not apply to races on which betting is authorised by the Chief Secretary for Administration under the Betting Duty Ordinance (i.e. the HKJC races) or to coverage of betting information as news. It also does not cover electronic communications via the Internet. A defence can be invoked by the accused if he can show that he has used all due diligence and took all reasonable precautions to avoid the commission of an offence; and

- (d) new section 16E -- promoting or facilitating bookmaking. An exclusion has been included under new section 16E(2)(b) that the offence provision will not apply if there is evidence that the transaction, namely, the bookmaking took place or is to take place wholly outside Hong Kong and all the parties to the transaction were or will be outside Hong Kong.

New sections 16A and 16B

47. Members have suggested that an exclusion clause similar to the new section 16E(2)(b) should be provided for in the new sections 16A and 16B, so that premises which are kept to provide services for bettors who intend to bet with an offshore bookmaker outside Hong Kong will be exempted. They have also suggested that the new sections 16A and 16B which both deal with keeping of premises for illegal betting should be combined to simplify the drafting and interpretation of the Bill.

48. The Administration has agreed to move CSAs to clause 8 to create a revised new section 16A by combining new sections 16A and 16B, and repealing 16B. The Administration has also agreed to add a subsection (2) to the revised new section 16A to make it clear that the offence provision shall not apply if the bet in question can only be placed or is placed by a person outside Hong Kong.

Powers conferred on the Police to enter and search premises under the Gambling Ordinance

49. Section 23 of the Gambling Ordinance empowers the Police to enter and search any premises suspected to be a gambling establishment. Members note that the powers conferred on the Police under section 23 will not apply to the premises referred to in the revised new section 16A. The Administration has therefore proposed to move a CSA to add a new clause to the Bill. The purpose of the CSA is to create a new section 23A to empower the Police to enter and search premises suspected to be where unlawful gambling is promoted or facilitated. The Administration has confirmed that the powers conferred on the Police and the conditions under which such powers can be invoked are essentially the same as those under existing section 23.

50. Members note that the exclusion proviso of "until the contrary is proved" is used in the existing section 23 and the new section 23A, whereas another exclusion

proviso of "unless there is evidence to the contrary" is used in the amended section 19 relating to presumptions. Hon Audrey EU and Hon Margaret NG have queried the rationale for imposing a more stringent condition for the presumptions under the existing section 23 and the new section 23A to be overturned. Ms EU is concerned that the more stringent exclusion proviso of "until the contrary is proved" may have the effect of passing the burden to the accused.

51. The Administration has explained that clause 9 seeks to amend section 19 by revising the exclusion proviso from "until the contrary is provided" to "unless there is evidence to the contrary" so as to provide for a less stringent test for the presumptions concerned to be overturned, having regard to the nature of the presumptions in question. The amendment aims to enhance the provisions' consistency with the Human Rights provisions of the Basic Law.

52. The Administration has further explained that it is necessary to adopt the more stringent exclusion proviso of "until the contrary is proved" in the existing section 23 and the new section 23A having regard to both the nature of the presumptions in these two sections and their importance in the process of investigating suspected gambling offences. Specifically, the presumptions provided for under sections 23 and 23A are that a person delaying the entry of any police officer into premises suspected to be a gambling establishment, or premises suspected to be where unlawful gambling is promoted or facilitated, is presumed to have delayed entry for the purpose of obstructing such police officer from entering such premises. Since the causal link between the action taken to be the basis of the presumption (delaying the entry of any police officer) and the presumed offence (obstructing the entry of such police officer) is a relatively direct and obvious one (such as when compared with those under section 19), it is considered necessary to require the defendant to go through a relatively stringent test if he wishes to overturn the presumption.

53. The Administration has also pointed out that another reason underlying the adoption of a more stringent exclusion proviso to the presumptions in existing section 23 and the new section 23A is that according to operational experience, the timely entry of police officers in suspected unlawful gambling premises for the purpose of evidence collection is an essential factor in the entire investigation process relating to illegal gambling activities. The reason is that in many cases, while the entry of police officers is delayed, the evidence is usually destroyed and the destruction of evidence is difficult to prove as the actions of the suspect(s) were not witnessed by anyone willing to be a prosecution witness.

54. It is an offence under existing section 27 for a person to obstruct a police officer in the exercise of the powers conferred on him by the Gambling Ordinance. The Administration has proposed to add a new clause to the Bill to the effect that the expression "Subject to section 23(4) or 23A(4)" is added to the beginning of section 27, as it considers that section 27 overlaps with the existing section 23 and the new section 23A, but different levels of penalty are imposed.

New section 16C

55. Some members have expressed concern that owners of pubs, bars and restaurants operating in commercial premises will be caught by the offence under the new section 16C, if their customers or employees are found betting with one another in these premises. The Administration has explained that section 3(7) of the Gambling Ordinance provides that betting is lawful if the bet is made between persons none of whom is committing an offence of bookmaking. According to the existing definition of "bookmaking" in the Gambling Ordinance, only a person who engages in bookmaking by way of trade or business will be caught. In other words, gambling on a social occasion in commercial premises not involving bookmaking is not unlawful. The responsibility of owners, tenants, etc. of the premises has been set out under the new section 16C.

56. Hon TAM Yiu-chung has suggested that a defence provision similar to the one in the new section 16D should be provided for in new section 16C. He is concerned that it is possible that the owner or tenant honestly does not know that his premises has been used for the promotion or facilitation of unlawful gambling.

57. The Administration has explained that new section 16C prohibits owners, tenants, etc. from knowingly permitting or suffering their premises to be used as premises where unlawful gambling is promoted or facilitated. The word "knowingly" should provide sufficient safeguards for owners or tenants because they will not commit an offence if they do not know that their premises have been so used. Furthermore, the onus is on the prosecution to prove that the owner or tenant concerned does have such knowledge.

58. Members have questioned whether the maximum level of fine under the new section 16C, i.e. \$5,000,000, is reasonable given that the maximum level of fine under existing section 15 of the Gambling Ordinance for owners or tenants knowingly permitting or suffering their premises to be used as gambling establishment, is only \$500,000. The Administration has agreed to move a CSA to clause 8 to bring the maximum level of fine under new section 16C in line with that under existing section 15.

New section 16D

59. Some members have questioned the need for the new section 16D as it constitutes an undue encroachment on the right of access to information. The Administration has explained that the proposed strict liability offence under the new section 16D is necessary to enable effective prohibition of live broadcast of odds and tips on horse and dog races which are conducive to betting. The Administration is mindful of the need to strike a balance between the different policy objectives of combating unauthorised gambling activities and preserving freedom of expression and maintaining a liberal broadcasting policy.

60. Some members are not satisfied with the Administration's explanation on the need for new section 16D, having regard to the fact that the other provisions in the Bill should suffice to achieve the purpose of combating unauthorised activities of offshore bookmakers and unlawful gambling activities.

New section 16E

61. The new offence of "promoting or facilitating bookmaking" in the new section 16E covers any activity which deliberately promotes or facilitates bookmaking. The Administration has explained that any person who engages in a particular activity without knowledge of or intention to promote or facilitate a particular act of bookmaking will not be prosecuted.

62. Some members have expressed concern that the definition of "promoting or facilitating bookmaking" lacks clarity and is too wide in scope. These members have queried how the knowledge of the accused or his intent to promote or facilitate bookmaking can be proved. The Administration has explained that the prosecution is required to prove the defendant's knowledge of or intent to commit the act which can be characterised as promoting or facilitating bookmaking, before an offence can be established. To address members' concerns, the Administration has agreed to move a CSA to clause 8 to add the word "knowingly" before "promote or facilitate bookmaking" in the new section 16E.

63. Some members are of the view that adding the word "knowingly" will not sufficiently narrow the scope of the new section 16E. They stress that the term "promoting or facilitating bookmaking" must be more clearly defined because it will be applied in a very wide context, given that the Bill seeks to criminalise all unauthorised bookmaking activities. These members have requested that the acts and behaviours which will constitute the offence of promoting or facilitating bookmaking should be specified.

64. In light of members' strong view on the matter, the Administration has agreed to put forward CSAs to clause 8 to the effect that any person who knowingly provides certain services, as specified under the new section 16E, for the purpose of promoting or facilitating bookmaking or betting with a bookmaker, except bookmaking or betting which is lawful by virtue of the provisions of the Gambling Ordinance, will commit an offence of "promoting or facilitating bookmaking".

65. Some members have further suggested that the terms "promoting" and "facilitating" should not be used in the new section 16E as it will be difficult to give these terms a clear definition. The Administration maintains that the terms "promoting" and "facilitating" are necessary because they are used to specify the purposes for which an act, e.g. advertising or providing services, can be construed as illegal. Deleting the term "facilitating" will substantially narrow the scope of the offence by excluding the intermediaries in bookmaking transactions who provide

services for the purposes of "facilitating bookmaking", but not for the purposes of "bookmaking". For example, a company opening and maintaining an account knowing that it is used to take betting deposit for cross-border gambling is providing services "for the purposes of facilitating bookmaking", rather than "for the purposes of bookmaking". The application of the new section 16E will likewise be severely restricted if the notion "for the purpose of facilitating bookmaking" is removed therefrom.

66. Members note that the term "promote" is used in the new section 16E, but the Chinese version of the term is different from that of the same term used in existing section 9 relating to promoters of lotteries. Members further note that the term "promotes" in the new section 16E is meant to carry a broader meaning than that of the same term in existing section 9. They have therefore suggested to delete the word "promotes" from section 9, or revise the one in the new section 16E.

67. The Administration has responded that it is not uncommon for an English word to denote different meanings in different contexts. In the present case, the word "promote" in existing section 9 and the new section 16E deals with two different types of activities, i.e. the launching, planning and organisation of an unlawful lottery in existing section 9, and the publicity and advertisement of cross-border gambling activities in the new section 16E. Under the new section 16E, the meaning of "promote" is defined and restricted by listing out the activities to be regarded as "promoting or facilitating bookmaking/betting with bookmaker". On the other hand, deleting the word "promote" from existing section 9 may be interpreted as a deliberate attempt by the legislature to narrow down the scope of the section, implying that it will no longer be an offence to promote (e.g. to plan) an unlawful lottery in the absence of evidence of the organising, conducting, managing or otherwise controlling. This is certainly not the intention of the Bill. The Administration therefore considers that the present formulation should be retained.

68. Some members have also expressed worries that the printed media may be caught by the new section 16E, if they report or publish information about unauthorised bookmaking activities. The Administration has responded that the policy intent of the new section 16E is not to target the media for publishing mere information on bookmaking activities offered by local or offshore bookmakers. Whether the publication of advertisement or reports containing information, such as odds or tip on betting events, will be regarded as promoting or facilitating bookmaking depends on matters of context. 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 will be considered for establishing the offence. In general, a report in a printed medium is not an advertisement, regardless of whether it contains bookmaking information on horse, pony or dog races or any other competitions. However, if a printed medium receives financial benefits from a bookmaker for publishing information which serves to promote or facilitate bookmaking activities, the medium may be caught under the section.

69. Members note that for the purpose of preserving freedom of expression and maintaining a liberal broadcasting and telecommunications policy, the new section 16D provides that the definition of "broadcasts" under the section does not mean broadcasts, by any means, of news or any remarks, observations or comments in relation to such news. Some members have requested the Administration to consider providing a similar exclusion for publishing betting-related news in the printed media under the new section 16E.

70. The Administration has responded that the exclusion in the new section 16D is necessary because the section deals specifically with the broadcast of certain types of information (forecast, hint, odds and tip relating to an unauthorised horse or dog race), and there is a remote possibility that such information may be covered by normal news broadcast for legitimate purposes. On the other hand, the new section 16E deals with promotional activities and betting-related services in relation to unlawful gambling. Normal news broadcast will not be caught. The Administration therefore does not consider it necessary to include a similar exclusion in the new section 16E.

71. To facilitate reading, the Administration has proposed CSAs to revise the order of the sections proposed in clause 8 as follows -

- (a) the proposed new section 16A and 16B to be combined to become revised new section 16A (paragraph 48 above refers);
- (b) as the proposed new section 16B in the Bill is to be deleted, the proposed new section 16E relating to promoting or facilitating bookmaking, etc is to be renumbered as revised new section 16B. The proposed new section 16E(3) in the Bill is to be deleted from the provision which will be discussed in paragraph 72 below;
- (c) the proposed new section 16C relating to responsibilities of owners, tenants, etc. is to be renumbered as revised new section 16D; and
- (d) proposed new section 16D relating to restriction on broadcasts of forecasts, hints, odds or tip as to results of horse, pony or dog races is to be renumbered as revised new section 16E.

72. The Administration has also proposed to create a revised new section 16C to set out the acts which are regarded as promoting or facilitating bookmaking or betting with a bookmaker for the purposes of the revised new sections 16A and 16B. The Administration has explained that the revised new section 16C(2) expressly states that a person may be convicted of an offence under the revised new section 16A or 16B whether or not any person is convicted under the amended section 7 or 8 of bookmaking or betting with a bookmaker that is promoted or facilitated. Since the revised new section 16C(2) seeks to achieve a similar effect as that of the proposed

new section 16E(3) in the Bill, the Administration has proposed to delete the subsection (3) from the proposed new section 16E when it is to be renumbered as the revised new section 16B.

Definition of "bookmaking"

73. Members note that clause 2 of the Bill proposes to expand the definition of "bookmaking" to cover "organisation, management or control of bookmaking" to facilitate enforcement actions against offshore bookmaking activities. The Administration has advised that since the revised new section 16A relating to operating premises or places for promoting or facilitating bookmaking, etc. and the revised new section 16B relating to promoting or facilitating bookmaking, etc. are adequate to cover the type of activities of offshore bookmakers in Hong Kong which the Administration intends to target, the proposed expansion of the definition of "bookmaking" to cover "organisation, management or control of bookmaking" is considered unnecessary. The Administration will move a CSA to clause 2 accordingly.

74. The Administration has also proposed to introduce a CSA to amend the definition of "bookmaking" by including "online medium (including the service commonly known as the Internet)" as another medium, in addition to the existing channels stated, i.e. letter, telephone, telegram in the existing section 2 of the Gambling Ordinance, by which the soliciting, receiving, negotiating or settling of a bet is conducted. The Administration has pointed out that it is arguable that the existing wording, with a reference to "by other means", already covers bookmaking via the Internet. In the light of the emergence of Internet gambling in the past few years, the proposed CSA is only intended to make it clear that bookmaking via the Internet is covered by the definition and the relevant offence provisions in the Gambling Ordinance. This is also in line with the Government's policy intention to tackle cross-border gambling regardless of the medium through which it is conducted.

Definitions of "gambling" and "gambling establishment"

75. Members note that clause 2 of the Bill also proposes amendments to the definitions of "gambling" and "gambling establishment" in order to bring any activity which constitutes an offence under the proposed new sections 16A and 16B in the Bill within the scope of these two definitions.

76. The Administration has explained that as a result of the CSAs to be proposed to clause 8, there is no need to refer to the activities specified under the proposed new sections 16A and 16B in the definitions of "gambling" and "gambling establishment". The Administration will move a CSA to clause 2 to retain the existing definitions of "gambling" and "gambling establishment".

Reinstating the concept of "aiding, abetting, procuring or counselling"

77. Section 7(1)(c) of the Gambling Ordinance provides that "assisting", either directly or indirectly, another person in bookmaking" is an offence. However, the Court ruled in 1985 that the enactment of the specific offence of "assisting in bookmaking" under this section has displaced the common law doctrines of accessorial liability (aiding, abetting, counselling or procuring an offence as set out under section 89 of the Criminal Procedure Ordinance (Cap. 221)). Clause 14 seeks to reinstate the concept of "aiding, abetting, procuring or counselling" in existing section 5 relating to unlawful gambling establishment, section 7 relating to bookmaking, section 9 relating to promoters of lotteries and section 13 relating to gambling in any place not being a gambling establishment or in a street. Any reference to "assists" or "assisting" will be deleted from these provisions.

78. The legal adviser to the Bills Committee has pointed out that the phrase "assist in the operation, management or other control of any premises" or "assisting in the operation or in the management or other control" has been used in the revised new section 16A, existing section 23 and the new section 23A. The inclusion of such phrase seems to be inconsistent with the proposed deletion of section 5(c) under clause 3 which seeks to criminalise those who "assist in the operation or in the management or control of a gambling establishment". After consideration, the Administration has advised that it is necessary to retain section 5(c), since the actions covered by the concept of "assisting in the operation, management or control of premises" may not be adequately covered by the common law offence of "aiding and abetting". The Administration therefore will propose a CSA to clause 3 and to clause 14 relating to saving as to aiding and abetting to such effect.

Disconnection of telephone service

79. The Court is empowered under section 21 of the Gambling Ordinance to make an order for the Hong Kong Telephone Company Limited 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 and to prohibit the company from providing further telephone service to the convict when the order is in force. Clause 11 of the Bill seeks to replace the Hong Kong Telephone Company Limited with telecommunications service providers (TSPs), which are licensees as defined in section 2(1) of the Telecommunications Ordinance (Cap. 106). Hon SIN Chung-kai has queried the effectiveness and the need of the section in the light of technical development. He has pointed out that telecommunication service providers very often provide service through the sale of prepaid SIM cards and the identity of the customer is neither registered nor recorded. Any measure to prohibit the provision of future telephone services to a convict will not be effective.

80. The Administration has responded that section 21 is still useful because it will create a certain degree of inconvenience for a convicted bookmaker, particularly if his

telephone number is well used and publicised to his patrons. He will also lose telephone services provided to the premises if they are found to have been used in connection with the commission of a gambling offence. The Administration has stressed that as far as TSPs are concerned, the amended section 21 does not impose on them any additional obligation, other than that was imposed on the then Hong Kong Telephone Company Limited.

81. Hon SIN Chung-kai has proposed that the scope of section 21 should be restricted to the disconnection of telephone services provided to the premises used in or in connexion with the commission of the specified gambling offence and those provided to the convict. The Administration has eventually agreed to delete existing section 21(1)(c) by amending clause 11 to the effect that the concerned TSP will not be prohibited from providing to the convict any future telephone service.

82. Hon Audrey EU is of the view that it is unreasonable to empower the Court under existing section 21(1) to order disconnection of telephone service provided to premises used in or in connection with the commission of the offence of betting with a bookmaker under section 8, or to a person convicted of that offence. She has suggested that the reference to section 8 in section 21(1) should be deleted.

83. The Administration has explained that the reference to section 8 should be retained in existing section 21(1) as an additional deterrent against betting with an unauthorised bookmaker, in the same way as section 21(1) currently serves to deter unauthorised bookmaking and operating an illegal gambling establishment. The reference to section 8 is particularly important in the event that a bookmaker is only convicted of an offence under section 8 (e.g. for laying off bets to a larger bookmaking syndicate, which bookmakers normally do for business or trade reasons every day), but not an offence under section 7. On the basis of the evidence seized, it may not be able to distinguish the act of betting and bookmaking. In such cases, the disconnection of telephone service seeks to cause inconveniences to bookmaking operation even though the bookmaker has not been convicted of the offence of bookmaking.

84. Hon Audrey EU considers that the punishment as imposed under existing section 21(1) on the person convicted of placing a bet with a bookmaker is out of proportion to the seriousness of the offence, given the fact that the bet placed by that person may only be of a nominal amount.

Forfeiture of money or property under clause 13

85. Clause 13 proposes to amend section 26 of the Gambling Ordinance to enable forfeiture of money or property used in connection with unlawful gambling with an extraterritorial element. The Administration has proposed to move consequential amendment to clause 13 to delete any reference to the activity of the description referred to in the revised new section 16A (previously new sections 16A and 16B).

Date of commencement of the Bill

86. The Administration has urged that the Bill be enacted as early as possible, given that the 2002 World Cup Finals are scheduled to start on 31 May 2002. A majority of members has agreed that early enactment of the Bill will facilitate the enforcement actions of the Police against unauthorised gambling activities which will become more prevalent during the period of the World Cup Finals.

87. As resumption of the Second Reading debate on the Bill is expected to take place on a date which is fairly close to the commencement of the 2002 World Cup Finals, the Administration proposes to delete clause 1(2) from the Bill so that the Amendment Ordinance shall come into operation on the day on which the Ordinance is gazetted, instead of through a commencement notice to be made by the Secretary for Home Affairs. The Administration has explained that the amendment seeks to ensure that the various provisions aiming to combat cross-border gambling activities can take effect at the earliest possible date after the passage of the Bill in LegCo.

Committee Stage amendments

88. The CSAs to be proposed by the Administration are in **Appendix III**. They include -

- (a) the CSAs as discussed in paragraphs 33, 48, 49, 54, 58, 62, 64, 71-74, 76, 78, 81, 85 and 87;
- (b) various consequential amendments; and
- (c) some minor textual amendments.

89. The Bills Committee has not proposed any amendments. If the resumption of Second Reading debate on the Bill is to take place on 22 May 2002, the deadline for giving notice of CSAs is Saturday, 11 May 2002.

Follow-up actions by the Administration

90. The Administration has agreed that -

- (a) annual statistics on court warrants issued in relation to enforcement against gambling offences will be provided to the Panel on Security after the Bill has come into effect (paragraph 28 above refers); and
- (b) the Secretary for Home Affairs will give an undertaking in his speech to be delivered during the resumption of the Second Reading debate on the

Bill that in the process of enforcement actions against Internet gambling, the Administration will endeavour to strike a balance between the protection of the privacy rights of an individual and the policy to combat cross-border gambling, and to adhere to the established practices and guidelines of the Police for the purpose of tackling offences involving the use of Internet (paragraph 28 refers above).

Recommendation

91. The Bills Committee recommends that, subject to the CSAs to be moved by the Administration, the Second Reading debate on the Bill be resumed on 22 May 2002. Hon Andrew WONG and Hon Audrey EU have indicated that they do not object to the resumption of Second Reading debate on the Bill, but they object to the Bill itself.

Advice sought

92. Members are invited to note the recommendation of the Bills Committee in paragraph 91 above.

Council Business Division 2
Legislative Council Secretariat
9 May 2002

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

Membership List

Chairman	Hon Andrew CHENG Kar-foo
Members	Dr Hon David CHU Yu-lin, JP Hon Cyd HO Sau-lan 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 Hon Tommy CHEUNG Yu-yan, JP Hon Audrey EU Yuet-mee, SC, JP (Total : 14 Members)
Clerk	Miss Flora TAI Yin-ping
Legal Adviser	Mr Stephen LAM Ping-man
Date	3 July 2001

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

**List of organisations/individuals who have made submissions
to the Bills Committee**

Organisations

1. "Alliance on concern for the proliferation of gambling activities" (關注賭風蔓延聯盟)
2. American Express International, Inc
3. Asia Television Limited
4. Hong Kong Computer Society
5. Hong Kong CSL Limited
6. Hong Kong Internet Service Providers Association
7. Hong Kong Tourism Board
8. Information Systems Audit and Control Association, Hong Kong Chapter
9. Internet Professionals Association
10. Macau Horse Racing Company, Limited
11. The Hong Kong Jockey Club
12. The Society for Truth and Light Limited

Individuals

13. Mr Raymond CHUNG
14. Mr Sunny YAM