

LEGISLATIVE COUNCIL BRIEF

Gambling Ordinance (Chapter 148)

GAMBLING (AMENDMENT) BILL 2000

INTRODUCTION

At the meeting of the Executive Council on 7 November 2000, the Council ADVISED and the Chief Executive ORDERED that the Gambling (Amendment) Bill 2000 at **Annex A** should be introduced into the Legislative Council.

BACKGROUND AND ARGUMENT

General Background

2. Government's policy is not to encourage gambling but to allow controlled legal gambling outlets to exist. Horse racing organized by the Hong Kong Jockey Club (HKJC) and the Mark Six Lottery organized by the Hong Kong Lotteries Board are the main examples of such legal outlets. Under the Gambling Ordinance (Cap. 148), all gambling activities are illegal except those expressly authorized by the Government under the Betting Duty Ordinance (the HKJC horse racing and Mark Six), 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).

Present Position

3. In recent years, a number of offshore bookmakers have been

providing betting-related services and promoting their business in Hong Kong in order to induce Hong Kong people to bet with them on a wide range of racing and sporting events. These include some Macau-based bookmaking companies, some prominent bookmakers licensed in Europe and some offshore Internet gambling operators. Their activities include establishing service centres, setting up local or offshore telephone hotlines and advertising their business in the local media. Through these services, Hong Kong people can open betting accounts, make betting deposits and place bets with the offshore bookmakers fairly conveniently via telephone or the Internet. It should however be noted that in those cases, no bet has actually been “received” by offshore bookmakers within the territory of Hong Kong (i.e. bookmaking with an extraterritorial element).

4. In addition, some local broadcasting institutions have been providing live coverage of offshore unauthorized horse and dog races on a regular basis. With the concurrent provision of betting information, such live TV and radio coverage has greatly increased the appeal of the offshore races to Hong Kong residents who can place their bets by dialing the toll-free IDD numbers provided by the offshore bookmakers.

5. The Gambling Ordinance, which was first drafted in the 1970s, may not be adequate to deal with the activities of the offshore bookmaking activities in Hong Kong which contain an extraterritorial element. We are concerned that more offshore bookmakers will follow suit and adopt similar modes of operation in Hong Kong. These unauthorized activities have given rise to growing community concern and will gradually undermine the integrity of our gambling policy. If the total amount of available betting money is more or less the same for a given period, an increase in bets with the unauthorized bookmakers would mean a reduction of bets on authorized gambling activities, thus draining our betting revenue and the resources available for charity work and donation. We therefore propose to amend the Gambling Ordinance to combat the unauthorized activities of offshore bookmakers.

6. 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 accessory liability (aiding, abetting, counselling or procuring an offence as set out under section 89 of the Criminal Procedure Ordinance (Cap. 221)). It is thus necessary to reinstate the concept of “aiding, abetting, procuring or counselling” in the offence of “bookmaking”, as well as other offences containing a reference to “assisting”.

The Proposals

7. The following legislative amendments are proposed -
 - (a) to insert an **extraterritorial element** into the offence of “**bookmaking**” to make it explicit that unauthorized bookmaking will be illegal even when the bet is solicited or received outside Hong Kong. The amended provision will however not cover situations where both the conduct of the gambling transaction **and** the parties thereto are wholly outside Hong Kong (e.g. casino gambling in Las Vegas and Macau);
 - (b) to insert an **extraterritorial element** into the offence of “**betting with a bookmaker**” to make it an offence for Hong Kong people to bet with an offshore bookmaker. As with (a) above, this will not cover betting activities where the bet is made **and** the parties to the transaction are wholly outside Hong Kong (e.g. Hong Kong people gambling in casinos abroad);
 - (c) to create a new offence to criminalize “**promoting or facilitating bookmaking**” in Hong Kong even when the bookmaking takes place wholly outside the territory;
 - (d) to criminalize **keeping of premises** for the purpose of promoting or facilitating the receipt of bets on horse racing or other contingencies even when the transaction takes place outside Hong Kong. Owners or tenants who knowingly permit or suffer the use of their premises for such purposes will

also be liable;

- (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 (i.e. to insert an extra-territorial element into the provision);
- (f) to create a strict liability offence to prohibit the **broadcast of any forecast, hint, odds or tip** in relation to any unauthorized horse or dog racing event via TV or radio within the 12-hour period preceding the conduct of that event. The new provision will not apply to races on which betting is authorized by the Chief Secretary for Administration under the Betting Duty Ordinance (i.e. the HKJC races) or to coverage of betting information in TV/radio news. A defence has been included and 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 the offence; and
- (g) to reinstate the concept of **“aiding, abetting, procuring or counselling”** in the Ordinance by deleting references to “assisting” from the relevant offences including bookmaking.

8. In devising the proposal in para.7(f) above, we are mindful of the need to strike a balance among the different policy objectives of combating unauthorized gambling activities, preserving freedom of expression and maintaining a liberal broadcasting policy. Accordingly, we have adopted a narrow and focussed approach in constructing the offence. Firstly, we propose to prohibit the broadcast of betting information relating to horse and dog races, rather than the races themselves, as it is difficult to prove that the broadcast of events is solely for the purpose of promoting or facilitating unlawful gambling or has resulted in an increase in such activities. Secondly, by confining the application of the offence to TV and radio broadcast, we have exempted the printed media which are less capable of disseminating up-to-date and instant betting information to facilitate the placing of bets. Thirdly, the provision will not apply to the Internet and other telecommunications

means (e.g. pagers and mobile phones) partly because they are at present not popular ways for disseminating betting information and partly because offshore bookmakers can still evade the law by setting up websites outside Hong Kong over which we have no jurisdiction. Fourthly, services of non-domestic television licensees not receivable in Hong Kong will not be caught by the provision. Fifthly, free-to-air television programmes uplinked and radio broadcast transmitted from places outside Hong Kong and freely receivable in Hong Kong will also not be covered because such broadcasters are not required to be licensed or regulated by any Hong Kong authority. Lastly, we propose to exempt some internationally prestigious horse races, to be specified by notice in the Gazette, from the application of the provision as they are not regularly or frequently featured and in order not to reduce the attractiveness of Hong Kong as the regional broadcasting hub.

9. We believe that the proposed legislative amendments set out in paragraph 7 above taken together will significantly reduce the activities and services of offshore bookmakers in Hong Kong, as well as the attractiveness of and ease with betting with such bookmakers.

THE BILL

10. The main provisions of the Bill are as follows:

- (a) Clause 4 amends Section 7 to insert an extraterritorial element into the offence of “bookmaking”, but exempting bookmaking where the transaction and the parties to the transaction are outside Hong Kong;
- (b) Clause 5 amends Section 8 to insert an extraterritorial element into the offence of “betting with a bookmaker”. As with (a) above, it is not an offence if the bet is made outside Hong Kong and the parties to the transaction are outside Hong Kong;
- (c) Clause 8 creates the following offences:

- (i) 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 (Sections 16A and 16B);
 - (ii) as owners or tenants, knowingly permitting or suffering the use of their premises for the purposes mentioned in (i) above (Section 16C);
 - (iii) broadcasting of forecast, hint, odd or tip in relation to any unauthorized horse or dog racing event via TV or radio within the 12-hour period before the event (Section 16D); and
 - (iv) promoting or facilitating bookmaking (Section 16E);
- (d) Clause 13 amends Section 26 to enable forfeiture of money or property used in connection with unlawful gambling with an extraterritorial element; and
- (e) Clause 14 reinstates the concept of “aiding, abetting, procuring or counselling” in Sections 5, 7, 9 and 13 of the Ordinance.

The relevant sections in the existing Ordinance to be amended are at **Annex B**.

PUBLIC CONSULTATION

11. Except for paragraph 7(f) above which is a new proposal from the Administration, the LegCo Panel on Home Affairs was consulted in December 1999 on the parameters of the legislative proposals and had indicated its support. We will consult the Panel further on the latest proposals at its next meeting on 14 November 2000.

12. We have written to the Hong Kong Association of Banks

(HKAB) and the DTC Association (the Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies) to consult them particularly on the provisions to outlaw the promotion and facilitation of unauthorized bookmaking activities. The Associations have generally indicated no objection. The HKAB has nonetheless considered that the proposed amendment in paragraph 7(d) above may impose too much of a burden on the owners of the premises concerned. We have explained to the HKAB that it is reasonable to hold the owners liable if he knowingly permits or suffers the premises to be used for the purpose of unlawful gambling or promoting or facilitating it. Similar liability is imposed on owners insofar as keeping of gambling establishments is concerned. The HKJC welcomes the legislative proposals.

BASIC LAW IMPLICATIONS

13. The Department of Justice advises that the Bill does not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

14. The Department of Justice advises that the restriction of TV/radio broadcasts of forecast, hint, odds or tip at any time within a period of 12 hours before any unauthorized horse or dog races is consistent with the right to freedom of expression including the freedom to receive and impart information of all kinds as the restriction is necessary and proportionate to combating unauthorized gambling activities. The other provisions in the Bill are consistent with the human rights provision of the Basic Law.

BINDING EFFECT OF THE LEGISLATION

15. The amendments will not affect the current binding effect of the Ordinance.

FINANCIAL AND STAFFING IMPLICATIONS

16. The activities of offshore bookmakers in Hong Kong have siphoned off betting money from authorized betting channels. This has led to a considerable loss of betting duty receipts and reduced surplus available for charity work and donation. The proposed amendments will reduce the ease with which Hong Kong people bet with offshore bookmakers which will in turn help channel part of the betting dollar on unauthorized activities back to the authorized avenues. As a result, our betting duty receipt will increase, so will surplus available for charity work and donation. The magnitude of the increase is however difficult to predict.

17. The Police will be able to implement the proposals within existing resources.

ECONOMIC IMPLICATIONS

18. The legislative proposals should help divert part of the betting money on unauthorized activities back to the authorized channels, thereby increasing betting revenue and benefiting the Hong Kong community at large. On the other hand, the local broadcasting institutions carrying unauthorized horse and dog races may have to terminate their contracts with the race organizers and programme providers and thus lose an important source of income. Business of Hong Kong-based companies acting as agents for offshore bookmakers and promoting their business in Hong Kong may contract but the overall economic impact on Hong Kong cannot be ascertained as there is little transparency on the business operations of these companies.

LEGISLATIVE TIMETABLE

19. The legislative timetable will be as follows -

Publication in the Gazette	10 November 2000
First Reading and commencement of the Second Reading Debate	22 November 2000
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

PUBLICITY

20. A press release will be issued on 8 November 2000. A spokesman will be available to handle media and public enquiries.

ENQUIRY

21. Enquiries on this Legislative Council brief may be directed to Mr. Francis Lo, Principal Assistant Secretary for Home Affairs at tel. no. 2835 1484.

Home Affairs Bureau
8 November 2000
HAB CR 1/17/93 Pt. 29

GAMBLING (AMENDMENT) BILL 2000

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PART IIIA

**KEEPING PREMISES FOR BETTING, ETC., RESTRICTION
ON BROADCASTING, AND PROMOTING OR FACILITATING
BOOKMAKING**

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A BILL

To

Amend the Gambling Ordinance so as to further discourage and prevent unlawful gambling.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Gambling (Amendment) Ordinance 2000.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Home Affairs by notice published in the Gazette.

2. Interpretation

Section 2 of the Gambling Ordinance (Cap. 148) is amended -

(a) by repealing the definition "bookmaking" and substituting -

""bookmaking" (收受賭注) includes -

- (a) the soliciting, receiving, negotiating or settling of a bet by way of trade or business whether personally or by letter, telephone, telegram or by any other means;
- (b) the organization, management or control of any act of the description mentioned in paragraph (a);"

(b) by repealing the definition "gambling" and substituting -

""gambling" (賭博) includes -

- (a) betting;
- (b) bookmaking;
- (c) gaming;
- (d) any activity of the description mentioned in section 16A(1) (a), (b), (c), (d) or (e);
- (e) any activity of the description mentioned in section 16B (1) (a), (b) or (c);"

(c) by repealing the definition "gambling establishment" and substituting -

""gambling establishment" (賭場) includes -

- (a) any premises or place, whether or not the public or a section of the public is entitled or permitted to have access thereto, opened, kept or used, whether on one occasion or more than one occasion, for the purposes of or in connexion with unlawful gambling or an unlawful lottery;
- (b) any premises or place of the description mentioned in section 16A(1) (a), (b), (c),

(d) or (e);

(c) any premises or place of the description mentioned in section 16B(1) (a), (b) or (c);".

3. Unlawful gambling establishments

Section 5 is amended -

- (a) in paragraph (a), by adding "or" at the end;
- (b) in paragraph (b), by repealing"; or" and substituting a comma;
- (c) by repealing paragraph (c).

4. Bookmaking

Section 7 is amended -

- (a) in subsection (1) -
 - (i) in paragraph (a), by adding "or" at the end;
 - (ii) in paragraph (b), by repealing"; or" and substituting a comma;
 - (iii) by repealing paragraph (c);
- (b) by adding -

"(1A) Subsection (1) -

 - (a) shall apply whether or not -
 - (i) any bet that was made was solicited, received, negotiated or settled wholly or partly outside

Hong Kong; or

(ii) any horse, pony or dog race or other event in respect of which the bet was or is to be made, was organized or took place or is to be organized or to take place, as the case may be, within or outside Hong Kong;

(b) shall not apply where there is evidence that -

(i) the transaction, namely, the bookmaking took place or is to take place, as the case may be, wholly outside Hong Kong; and

(ii) all of the parties to the transaction were or will be outside Hong Kong at the time that it took place or is to take place, as the case may be.";

(c) by repealing subsection (2).

5. Betting with a bookmaker

Section 8 is amended -

(a) by renumbering it as section 8(1);

(b) by adding -

"(2) Subsection (1) -

(a) shall apply whether or not -

(i) any bet that was made was solicited, received, negotiated or settled wholly or partly outside Hong Kong; or

(ii) any horse, pony or dog race or other event in respect of which the bet was or is to be made, was organized or took place or is to be organized or to take place, as the case may be, within or outside Hong Kong;

(b) shall not apply where there is evidence that -

(i) the bet was made or is to be made, as the case may be, wholly outside Hong Kong; and

(ii) both the person who made the bet and the bookmaker, were at the time that the bet was made, or will be

at the time that it is to be made, as the case may be, outside Hong Kong."

6. Section substituted

Section 9 is repealed and the following substituted -

"9. Promoters of lotteries

Any person who promotes, organizes, conducts or manages, or otherwise has control of, an unlawful lottery commits an offence and is liable -

- (a) on summary conviction to a fine of \$5,000,000 and to imprisonment for 2 years; or
- (b) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 7 years."

7. Gambling in any place not being a gambling establishment or in a street

Section 13(1) is repealed and the following substituted -

"(1) Any person who operates or manages or otherwise controls unlawful gambling in any place whatsoever (not being a gambling establishment) whether or not the public have or are permitted to have access thereto, or in any street, commits an offence and is liable on conviction to a fine of \$50,000 and to imprisonment for 2 years."

8. Part added

The following is added -

"PART IIIA

KEEPING PREMISES FOR BETTING, ETC., RESTRICTION
ON BROADCASTING, AND PROMOTING OR
FACILITATING BOOKMAKING**16A. Keeping premises for betting on horse,
pony or dog races, etc.**

(1) Save under and in accordance with the written permission of the Chief Secretary for Administration given under the Betting Duty Ordinance (Cap. 108), no person shall open, keep or manage or assist in the management of any premises or place opened, kept or managed, where, whether on one occasion or more than one occasion -

- (a) cash-sweeps are conducted on horse, pony or dog races;
- (b) chances are allocated in cash-sweeps that are conducted on horse, pony or dog races;
- (c) totalizator or pari-mutuel betting is conducted on horse, pony or dog races;
- (d) bets on horse, pony or dog races, whether for or in connexion with a cash-sweep or totalizator or pari-mutuel betting or otherwise, are solicited, received, negotiated or settled; or
- (e) any activity which promotes or facilitates any activity of the description mentioned in paragraphs (a), (b), (c) or (d) is carried on.

(2) Subsection (1) shall apply whether or not the horse, pony or dog races of the description mentioned in that subsection or, any transactions relating to them, are

organized or take place or are to be organized or are to take place, as the case may be, within or outside Hong Kong.

(3) Any person who contravenes subsection (1) commits an offence and is liable -

- (a) on summary conviction to a fine of \$5,000,000 and to imprisonment for 2 years; or
- (b) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 7 years.

16B. Keeping premises for competitions on results of future events, etc.

(1) Save under and in accordance with the written permission of the Chief Secretary for Administration given under the Betting Duty Ordinance (Cap. 108) or under and in accordance with a licence granted by the Commissioner for Television and Entertainment Licensing under section 22 of this Ordinance, no person shall open, keep or manage or assist in the management of any premises or place opened, kept or managed, where, whether on one occasion or more than one occasion -

- (a) competitions, for money or other property, involving the guessing or the estimating of the results of future events or of past events, the results of which are not generally known, are promoted, conducted or managed by way of trade or business;
- (b) bets for or in connexion with competitions of the description mentioned in paragraph (a) are solicited, received, negotiated or settled; or

- (c) any activity which promotes or facilitates any activity of the description mentioned in paragraph (a) or (b) is carried on.

(2) Subsection (1) shall apply whether or not the future events or the past events of the description mentioned in that subsection or, any transactions relating to them, are to take place or took place, as the case may be, within or outside Hong Kong.

(3) Any person who contravenes subsection (1) commits an offence and is liable -

- (a) on summary conviction to a fine of \$5,000,000 and to imprisonment for 2 years; or
- (b) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 7 years.

**16C. Responsibility of owners, tenants, etc.
under this Part**

No person shall -

- (a) being the owner, tenant, occupier or person in charge of any premises or place, knowingly permit or suffer such premises or place or any part thereof to be opened, kept or used for the promotion, conduct or management of any activity of the description mentioned in section 16A(1) (a), (b), (c), (d) or (e) or 16B(1) (a), (b) or (c);
- (b) let or agree to let, whether as principal or agent, any premises or place with the knowledge that such premises or place or any

part thereof is to be opened, kept or used for the promotion, conduct or management of any activity of the description mentioned in section 16A(1) (a), (b), (c), (d) or (e) or 16B(1) (a), (b) or (c).

(2) Any person who contravenes subsection (1) commits an offence and is liable -

(a) on summary conviction to a fine of \$5,000,000 and to imprisonment for 2 years; or

(b) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 7 years.

16D. Restriction on broadcasts of forecasts, hints, odds or tips as to results of horse, pony or dog races

(1) A person who for the purposes of dissemination or distribution in Hong Kong to the public or, to a section of the public broadcasts any forecast, hint, odds or tip relating to guessing or foretelling the result of, or contingency regarding any horse, pony or dog race at any time within a period of 12 hours before the conduct of that horse, pony or dog race and, in respect of which the condition referred to in subsection (2) has not been satisfied, commits an offence and is liable -

(a) on summary conviction to a fine of \$1,000,000 and to imprisonment for 2 years; or

(b) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years.

(2) The condition referred to in subsection (1) is that

the horse, pony or dog race is a horse, pony or dog race on which totalizator or pari-mutuel betting is conducted under and in accordance with the written permission of the Chief Secretary for Administration given under section 3 of the Betting Duty Ordinance (Cap. 108) (authorization of totalizator or pari-mutuel betting on horse or pony races).

(3) Subsection (1) -

- (a) shall apply whether or not the horse, pony or dog race is organized or takes place or is to be organized or is to take place, as the case may be, within or outside Hong Kong;
- (b) shall not apply to any horse, pony or dog race that is organized or takes place or is to be organized or is to take place, as the case may be, within or outside Hong Kong as part of any event that is specified by name, by notice published in the Gazette, by the Secretary for Home Affairs for the purposes of this paragraph.

(4) A notice published in the Gazette under subsection (3) (b) shall not be subsidiary legislation within the meaning of those words in section 34 of the Interpretation and General Clauses Ordinance (Cap. 1).

(5) In this section, "broadcasts" (廣播) -

- (a) means broadcasts by means of a broadcasting service as defined in section 2(1) of the Broadcasting Ordinance (48 of 2000);
- (b) and means broadcasts by transmitting sound for

general reception by means of radio waves under and in accordance with a licence granted under section 13C of the Telecommunications Ordinance (Cap. 106);

- (c) but does not mean broadcasts, by any means, of news or any remarks, observations or comments in relation to such news.

(6) In proceedings for an offence under this section, it shall be a defence for the accused to show that he used all due diligence and took all reasonable precautions to avoid the commission of the offence.

16E. Promoting or facilitating bookmaking

(1) Any person who promotes or facilitates bookmaking commits an offence and is liable -

- (a) on summary conviction to a fine of \$5,000,000 and to imprisonment for 2 years; or
- (b) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 7 years.

(2) Subsection (1) -

- (a) shall apply whether or not -
 - (i) any bet that was made or is to be made was or will be solicited, received, negotiated or settled wholly or partly outside Hong Kong; or
 - (ii) any horse, pony or dog race or other event in respect of which the bet

was or is to be made, was organized or took place or is to be organized or to take place, as the case may be, within or outside Hong Kong;

- (b) shall not apply where there is evidence that -
 - (i) the transaction, namely, the bookmaking took place or is to take place, as the case may be, wholly outside Hong Kong; and
 - (ii) all of the parties to the transaction were or will be outside Hong Kong at the time that it took place or is to take place, as the case may be.

(3) In the prosecution of any person for an offence under subsection (1), it shall not be necessary to show, in relation to the circumstances or set of facts in respect of which that offence is prosecuted, that any other person has committed or been found guilty of an offence under section 7 in relation to the same circumstances or the same set of facts.

16F. Consent to prosecutions under this Part

No prosecution for an offence under this Part shall be instituted without the consent in writing of the Secretary for Justice, but this section shall not prevent the arrest, or the issue of a warrant for the arrest, of a person for any

such offence, or the remand in custody or on bail of a person charged with any such offence.".

9. Section substituted

Section 19 is repealed and the following substituted -

"19. Presumptions

- (1) Where in any proceedings under this Ordinance there is evidence that -
 - (a) the entry of a police officer to any premises or place under section 23(2) (a) was prevented, obstructed or delayed;
 - (b) any premises or place entered under section 23(2) (a) were or was provided with any means for concealing, removing or destroying gambling equipment;
 - (c) gambling equipment was found in any premises or place entered under section 23(2) (a) or on any person found in any such premises or place,

it shall, unless there is evidence to the contrary, be presumed that the premises or place are or is a gambling establishment.

- (2) Where in any proceedings under section 6 there is evidence that a person was found in a gambling establishment or that a person escaped from a gambling establishment on the occasion of its being entered under section 23(2) (a), such person shall, unless there is evidence to the contrary, be presumed to have been gambling therein.

(3) If in any proceedings under this Ordinance there is evidence that any money was found in any premises or place or was found on any person in such premises or place on the occasion of its being entered under section 23(2) (a) where entry was prevented, obstructed or delayed, it shall, unless there is evidence to the contrary, be presumed that such money has been used in or for or in connexion with unlawful gambling."

10. Admissibility of evidence

Section 20 is amended -

- (a) in subsection (1), by adding "or 8" after "7";
- (b) by repealing subsection (2) and substituting -

"(2) In any proceedings under this Ordinance a report in a newspaper circulating in Hong Kong that a particular person, horse, pony, dog, team, contestant, entrant or participant was entered as a participant in or participated in a particular competition, race, event or contest, whether or not the competition, race, event or contest is to be or was held in Hong Kong, shall be admissible in evidence and shall be prima facie evidence that the person, horse, pony, dog, team, contestant, entrant or participant was so entered or did so participate."

11. Disconnexion of telephone service

Section 21 is amended -

- (a) in subsections (1) and (2), by repealing "Hong Kong Telephone Company Limited" wherever it appears and substituting "telecommunications service provider";
- (b) in subsection (2), by repealing "the Company" and substituting "the telecommunications service provider";
- (c) in subsection (3), by repealing "Company" and substituting "telecommunications service provider"; (d) by adding -

"(4) In this section, "telecommunications service provider" (電訊服務提供者) means a licensee as defined in section 2(1) of the Telecommunications Ordinance (Cap. 106).".

12. Bookmaking on racing club premises

Section 25(1) and (2) is amended by adding "or 8" after "7".

13. Forfeiture

Section 26 is amended by repealing everything after "with" and substituting -

"or is or represents the proceeds of or is derived from -

- (a) unlawful gambling or an unlawful lottery;
- (b) any activity of the description mentioned in section 16A(1) (a), (b), (c), (d) or (e); or
- (c) any activity of the description mentioned in section 16B(1) (a), (b) or (c),

the court shall order that it be forfeited to the Government,

whether or not any person has been convicted of an offence under this Ordinance."

14. Saving as to aiding and abetting

(1) The amendments made by -

- (a) section 3 of this Ordinance to section 5 of the principal Ordinance;
- (b) section 4(a) of this Ordinance to section 7 of the principal Ordinance;
- (c) section 6 of this Ordinance to section 9 of the principal Ordinance;
- (d) section 7 of this Ordinance to section 13 of the principal Ordinance,

shall not be construed so as to prevent any person who aids, abets, counsels or procures the commission by another person of an offence under section 5, 7, 9 or 13 of the principal Ordinance, as the case may be, being found guilty of any such like offence.

(2) In this section, a reference to "the principal Ordinance" means the Gambling Ordinance (Cap. 148) prior to its amendment by this Ordinance.

Explanatory Memorandum

The objects of this Bill are -

- (a) to add an extraterritorial element to the offence "bookmaking" under section 7 (clause 4, new section 7(1A) (a));
- (b) to not make it an offence under section 7 if the transaction which constitutes the bookmaking and

the parties to the transaction are outside Hong Kong (clause 4, new section 7(1A) (b));

- (c) to add an extraterritorial element to the offence "betting with a bookmaker" under section 8 (clause 5, new section 8(2) (a));
- (d) to not make it an offence under section 8 if the person who makes the bet and the bookmaker with whom the bet is made are outside Hong Kong (clause 5, new section 8(2) (b));
- (e) to make it an offence to keep any premises or place -
 - (i) for the conduct of cash-sweeps, totalizator or pari-mutuel betting or the soliciting, receiving, negotiating or settling of bets on horse, pony or dog races or, for any activity which promotes or facilitates such conduct, save under and in accordance with the written permission of the Chief Secretary for Administration given under the Betting Duty Ordinance (Cap. 108);
 - (ii) for the conduct of competitions for money or the soliciting, receiving, negotiating or settling of bets for competitions for money involving the guessing or the estimating of the results of future events or of past events, the results of which are not generally known or, for any activity which promotes or facilitates

such conduct, save under and in accordance with permission similarly given under the Betting Duty Ordinance (Cap. 108) or under section 22 of the principal Ordinance,

(clause 8, new sections 16A and 16B).

2. It will also be an offence for any person -

- (a) being the owner, tenant, occupier or person in charge of any premises or place to knowingly permit or suffer such premises or place or any part thereof to be opened, kept or used for the promotion, conduct or management of any activity which constitutes an offence under new section 16A or 16B;
- (b) to let or agree to let any premises or place with the knowledge that such premises or place or any part thereof is to be opened, kept or used for such purposes,

(clause 8, new section 16C).

3. A restriction is placed on broadcasts of forecasts, hints, odds or tips as to the results of horse, pony or dog races, unless the horse, pony or dog races are those in respect of which totalizator or pari-mutuel betting is conducted under and in accordance with the written permission of the Chief Secretary for Administration given under the Betting Duty Ordinance (Cap. 108). Provision is made for the restriction not to apply in the case of named events specified by the Secretary for Home Affairs by notice published in the Gazette (clause 8, new section 16D).

4. A new offence, namely, promoting and facilitating bookmaking is created (clause 8, new section 16E).

5. Persons who commit offences under new section 16A, 16B, 16C or 16E are liable on summary conviction to a fine of \$5,000,000 and to imprisonment for 2 years and on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 7 years. An offence under new section 16D is punishable on summary conviction with a fine of \$1,000,000 and imprisonment to 2 years. On conviction on indictment, a fine of \$1,000,000 and 7 years imprisonment may be imposed.

6. A prosecution for an offence may not be instituted under new section 16A, 16B, 16C, 16D or 16E without the written consent of the Secretary for Justice (clause 8, new section 16F).

7. Amendments are also made to the definitions "bookmaking", "gambling" and "gambling establishment" in section 2 and to section 26 ("forfeiture") so as to bring any activity which constitutes an offence under new section 16A or 16B within the scope of those definitions and that section.

8. The concept of "assisting" is removed from the principal Ordinance having regard to recent court decisions which suggest that the concept may exclude the application of section 89 of the Criminal Procedure Ordinance (Cap. 221) insofar as it enables persons who assist to be charged with aiding and abetting the commission of the principal offence (clauses 3, 4(a), 6 and 7). A saving provision appears in clause 14.

9. The opportunity is taken to amend section 19 relating to presumptions to enhance the provisions' consistency with the Human Rights provisions of the Basic Law (clause 9).

CHAPTER 148

GAMBLING

To amend the law relating to gambling.

[17 February 1977] *L.N. 44 of 1977*

PART I

PRELIMINARY

1. Short title

This Ordinance may be cited as the Gambling Ordinance.

2. Interpretation

In this Ordinance, unless the context otherwise requires—

"betting slip" (投注單) includes the whole or any part of a document or thing, or a copy or other reproduction of the whole or any part of a document or thing, which, either alone or in conjunction or combination with—

- (a) any other document or thing or a copy or other reproduction of any other document or thing; or
- (b) part of any document or thing or a copy or other reproduction of part of any document or thing,

evidences the soliciting, receiving, negotiating or settling of a bet; (*Added 53 of 1981 s. 2. Amended 42 of 1990 s. 2*)

"bookmaking" (收受賭注) means the soliciting, receiving, negotiating or settling of a bet by way of trade or business whether personally or by letter, telephone, telegram or by any other means; (*Amended 42 of 1990 s. 2*)

"contract for differences" (差價合約) means an agreement the purpose or effect of which is to obtain a profit or avoid a loss by reference to fluctuations in the value or price of property of any description or in an index or other factor designated for that purpose in the agreement; (*Added 84 of 1993 s. 2*)

"gambling" (賭博) includes gaming, betting and bookmaking;

"gambling equipment" (賭博設備) includes playing cards, dice, balls, counters, dominoes, tiles, betting slips, lottery tickets, and any other thing which is devised or used or maintained in or for the purposes of or in connexion with gambling or the operation of a gambling establishment;

"gambling establishment" (賭場) includes any premises or place, whether or not the public or a section of the public is entitled or permitted to have access thereto, opened, kept or used, whether on one occasion or more than one occasion, for the purposes of or in connexion with unlawful gambling or an unlawful lottery; (*Amended L.N. 184 of 1992*)

"game" (博彩遊戲) means a game of chance and a game of chance and skill combined and a pretended game of chance or chance and skill combined, and also means any game whatever in which—

- (a) a bank is kept by one or more of the players exclusively of the others; or
- (b) the chances of the game are not equally favourable to all the players, including among the players, the banker or other person by whom the game is managed or against whom the players stake, play or bet;

"gaming" (博彩) means the playing of or at any game for winnings in money or other property whether or not any person playing the game is at risk of losing any money or other property;

"lottery" (獎券活動) includes—

- (a) a raffle;
- (b) a sweepstake;
- (c) tse fa (字花);
- (d) hung piu (紅票);
- (e) po piu (舖票);
- (f) any competition for money or other property success in which—
 - (i) involves guessing or estimating the results of future events, or of past events the results of which are not generally known; or
 - (ii) does not depend to a substantial degree upon the exercise of skill by the competitors; and
- (g) any game, method, device or scheme for distributing or allotting prizes by lot or chance,

whether promoted, conducted or managed in or outside Hong Kong; (*Amended 38 of 1994 s. 2*)

"owner" (擁有人) in relation to premises means any person holding the premises direct from the Government, whether under lease, licence or otherwise, any mortgagee in possession and any person receiving the rent of the premises, solely or with another and on his behalf or that of any person or who would receive the same if such premises were let to a tenant, and, where such owner as above defined cannot be found or ascertained or is absent from Hong Kong or is under disability, also means the agent of such owner; (*Amended 29 of 1998 s. 105*)

"place" (場所) includes any ship, aircraft or vehicle, and any spot on land or water;

"private gain" (私有收益) does not include the private gain of any charitable institution or trust of a public character exempt from tax under section 88 of the Inland Revenue Ordinance (Cap. 112);

"private premises" (私人處所) means premises to which the public have access (whether on payment or otherwise) only by permission of the owner, tenant or occupier of the premises;

"racing club" (賽會) means any club, association or other body of persons established for the purpose of promoting and conducting bets on totalizators or pari-mutuels and for the purpose of promoting cash-sweeps under the authority of the Betting Duty Ordinance (Cap. 108);

"racing club premises" (賽會處所) means any land or premises used by a racing club for or in connexion with the purposes of a racing club;

"tape recording" (錄音帶) means any tape, disc, sound track or other device in which sounds are embodied so as to be capable with or without the aid of some other equipment of being reproduced therefrom;

"tenant" (租客) includes sub-tenant and "tenancy" (租賃) includes sub-tenancy;

"ticket" (彩票), in relation to a lottery or proposed lottery, includes the whole or any part of a document or thing, or a copy or other reproduction of the whole or any part of a document of thing, which, either alone or in conjunction or combination with—

- (a) any other document or thing or a copy or other reproduction of any other document or thing; or
- (b) part of any document or thing or a copy or other reproduction of part of any document or thing,

evidences the claim of any person to participate in the lottery;

"trade promotion competition" (推廣生意的競賽) means a competition or other scheme promoted, conducted or managed for the purpose of promoting a trade or business or the sale of any product; (*Amended 84 of 1993 s. 2*)

"Unified Exchange" (聯合交易所) has the same meaning as in the Stock Exchanges Unification Ordinance (Cap. 361). (*Added 84 of 1993 s. 2*)

(*Amended L.N. 110 of 1980*)

PART III

OFFENCES RELATING TO GAMBLING AND LOTTERIES

5. Unlawful gambling establishments

Any person who on any occasion—

- (a) operates a gambling establishment;
- (b) manages or otherwise has control of a gambling establishment; or
- (c) in any capacity assists, either directly or indirectly, in the operation or in the management or other control of a gambling establishment,

commits an offence and is liable—

- (i) on summary conviction to a fine of \$5,000,000 and to imprisonment for 2 years; or
- (ii) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 7 years.

(*Amended 42 of 1990 s. 3*)

7. Bookmaking

(1) Any person who— (*Amended 53 of 1981 s. 4*)

- (a) engages in bookmaking, whether on one occasion or more than one occasion;
- (b) holds out in any manner that he solicits, receives, negotiates or settles bets by way of trade or business; or
- (c) in any capacity assists, either directly or indirectly, another person in bookmaking,

commits an offence and is liable—

- (i) on summary conviction to a fine of \$5,000,000 and to imprisonment for 2 years; or
- (ii) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 7 years.

(2) No prosecution shall be instituted under subsection (1)(c) without the consent of the Secretary for Justice but if on the trial of any person for an offence under subsection (1)(a) or (1)(b), it is not proved that the accused is guilty of an offence under either one of those subsections but it is proved that the accused is guilty of an offence under subsection (1)(c), the accused may, notwithstanding the absence of consent of the Secretary for Justice to the institution of a prosecution under subsection (1)(c), be convicted of an offence under subsection (1)(c) and dealt with accordingly, (*Added 53 of 1981 s. 4. Amended L.N. 362 of 1997*)

(*Amended 42 of 1990 s. 5*)

8. Betting with a bookmaker

Any person who bets with a bookmaker commits an offence and is liable—

- (a) on first conviction to a fine of \$10,000 and to imprisonment for 3 months;
- (b) on second conviction to a fine of \$20,000 and to imprisonment for 6 months;
- (c) on third or subsequent conviction to a fine of \$30,000 and to imprisonment for 9 months.

(Amended 42 of 1990 s. 6)

9. Promoters of lotteries

Any person who—

- (a) promotes, organizes, conducts or manages, or otherwise has control of, an unlawful lottery; or
- (b) in any capacity assists, either directly or indirectly, in the promotion, organization, conduct, management or other control of an unlawful lottery,

commits an offence and is liable—

- (i) on summary conviction to a fine of \$5,000,000 and to imprisonment for 2 years; or
- (ii) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 7 years.

(Amended 42 of 1990 s. 7)

13. Gambling in any place not being a gambling establishment or in a street

(1) Any person who—

- (a) operates or manages or otherwise controls unlawful gambling; or
- (b) in any capacity, either directly or indirectly, assists another person in the operation, management or other control of unlawful gambling,

in any place whatsoever (not being a gambling establishment) whether or not the public have or are permitted to have access thereto, or in any street, commits an offence and is liable on conviction to a fine of \$50,000 and to imprisonment for 2 years.

(2) Any person who gambles unlawfully in any such place or in any street commits an offence and is liable—

- (a) on first conviction to a fine of \$10,000 and to imprisonment for 3 months;
- (b) on second conviction to a fine of \$20,000 and to imprisonment for 6 months;
- (c) on third or subsequent conviction to a fine of \$30,000 and to imprisonment for 9 months. *(Amended 42 of 1990 s. 9)*

19. Presumptions

- (1) Where in any proceedings under this Ordinance it is proved that—
 - (a) the entry of a police officer to any premises or place under section 23(2)(a) was prevented, obstructed or delayed;
 - (b) any premises or place entered under section 23(2)(a) were or was provided with any means for concealing, removing or destroying gambling equipment;
 - (c) gambling equipment was found in any premises or place entered under section 23(2)(a) or on any person found in any such premises or place,

it shall be presumed until the contrary is proved that the premises or place are or is a gambling establishment.

(2) Where in any proceedings under section 6 it is proved that a person was found in a gambling establishment or that a person escaped from a gambling establishment on the occasion of its being entered under section 23(2)(a), such person shall until the contrary is proved be presumed to have been gambling therein.

(3) For the purposes of any proceedings under section 7(1)(c) any person who is proved to have had in his possession one or more than one betting slip shall, until the contrary is proved, be presumed to have been assisting another person in bookmaking. (*Added 53 of 1981 s. 3*)

(4) If in any proceedings under this Ordinance it is proved that any money was found in any premises or place or was found on any person in such premises or place on the occasion of its being entered under section 23(2)(a) where entry was prevented, obstructed or delayed, it shall be presumed, until the contrary is proved, that such money has been used in or for or in connexion with unlawful gambling. (*Added 53 of 1981 s. 3*)

20. Admissibility of evidence

(1) Where in any proceedings under this Ordinance a court is satisfied that a tape recording machine or a tape recording was used in or in connexion with the commission of an offence under section 7, then a tape recording produced by that machine or the tape recording, as the case may be, shall be admissible in evidence and shall be prima facie evidence of any matter recorded thereon.

(2) In any proceedings under this Ordinance a report in a newspaper circulating in Hong Kong that a particular horse, pony or dog is or was entered as a participant in a particular race, whether or not the race is to be or was held in Hong Kong, shall be admissible in evidence and shall be prima facie evidence that the horse, pony or dog was so entered.

(3) If in any proceedings under this Ordinance a court is satisfied that by experience or otherwise a police officer has expert knowledge of any practice or device used in or for the purpose of the commission of any offence under the Ordinance, the court may receive evidence from that police officer as to the nature, effect or purpose of the practice or device.

PART V

MISCELLANEOUS

21. Disconnexion of telephone service

(1) Where a person is convicted of an offence under section 5, 7 or 8 the court may in addition to any penalty imposed for the offence make an order, which shall continue in force for such period not exceeding 12 months as the court may specify— (*Amended 42 of 1990 s. 10*)

- (a) requiring the Hong Kong Telephone Company Limited to disconnect any telephone service provided to such premises used in or in connexion with the commission of that offence as may be specified in the order;
- (b) requiring the Hong Kong Telephone Company Limited to disconnect any other telephone service provided to the defendant;
- (c) prohibiting the Hong Kong Telephone Company Limited from providing to the defendant any further telephone service while the order is in force.

(2) The Registrar of the High Court shall notify the Hong Kong Telephone Company Limited of the making of an order under subsection (1) and the Company shall take such steps as may be necessary to give effect to it. (*Amended 25 of 1998 s. 2*)

(3) An order under subsection (1) shall have effect notwithstanding that the defendant is not the subscriber to the telephone service or a party to the agreement with the Company.

25. Bookmaking on racing club premises

(1) A racing club shall use all reasonable and lawful means (including the removal of persons from racing club premises under subsection (2)) to prevent the commission of offences under section 7 on the racing club premises.

(2) A person authorized for the purpose of this section by a racing club may, if he has reason to suspect that a person is committing an offence under section 7 on the racing club premises, require such person to leave the premises and, if he fails to do so, remove him therefrom.

(3) Any person who, having left or been removed from racing club premises after being required to leave the same under subsection (2), re-enters the premises on the same day commits an offence and is liable on conviction to a fine of \$50,000 and to imprisonment for 2 years.

(4) Nothing in this section shall affect any other right of a racing club to exclude or remove a person from racing club premises.

26. Forfeiture

If in any proceedings under this Ordinance or otherwise on application by or on behalf of the Commissioner of Police, a court is satisfied that any money, gambling equipment or other property, not being immovable property, has been used in or for or in connexion with unlawful gambling or an unlawful lottery, the court shall order that it be forfeited to the Government, whether or not any person has been convicted of an offence under this Ordinance.

(Amended L.N. 110 of 1980; 42 of 1990 s. 12; 34 of 1999 s. 3)