

本局檔號 OUR REF : HAB/CR/1/17/93 Pt. 32
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11 May, 2001

Miss Flora Tai
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Miss Tai,

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

Follow-up to the meeting on 9 February 2001

Thank you for your letter of 23 February 2001. Our response to the points raised at the third meeting of the Bills Committee on 9 February 2001 are set out below seriatim.

Item (a): Effectiveness of the Bill in combating Internet gambling

In response to the request by some Members, a paper setting out the rationale of covering Internet gambling in the Bill and the effectiveness of the Bill in tackling unauthorized cross-border gambling (including Internet gambling) is attached at **Annex A** for Members' reference.

Item (b): Combating Internet gambling in the context of the Inter-departmental Working Group on Computer Related Crime

Some Members have suggested that we should consider alternative means to combat Internet gambling in the overall context of the Inter-departmental Working Group on Computer Related Crime (the

Working Group). It should be noted that the Working Group and the Bill have different foci and objectives in mind. The Working Group focuses on how the framework or environment within which law enforcement against computer crime can be strengthened. It aims to identify problems concerning crimes directed at the computer or computer system, as well as crime prevention, evidence gathering, investigation and prosecution issues associated with computer crime in general and recommend solutions that may be applied across the board. It however does not seek to deal with all specific crimes that may be committed via the computer or the Internet, e.g. unlawful Internet gambling and transmission of pornographic materials, or recommend tailor-made solutions for them. While its recommendations to strengthen and facilitate law enforcement against computer crime in general are relevant to all offences that may be committed via the computer, the individual offences have to be considered in detail in their proper policy contexts. A relevant extract from the Working Group's Report is at **Annex B** for Members' reference. In this connection, Members may wish to note that the paper at Annex A has considered a "take-down" approach which the Working Group has recommended the relevant policy Bureaux to examine in the context of specific crimes. Whether such an approach should be adopted has to be considered having regard to the specific nature of and circumstances surrounding Internet gambling.

The Working Group's recommendations are geared towards, inter alia, facilitating law enforcement against various computer crimes, including unlawful Internet gambling activities. However, the Gambling Ordinance should be, as it has always been, the legal vehicle to define what is lawful gambling (including Internet gambling) and what is not. As pointed out in Annex A, the Ordinance is "**technology neutral**", i.e. it criminalizes all unauthorized gambling activities regardless of the means through which such gambling is conducted. Insofar as Internet gambling is concerned, the Ordinance already prohibits unauthorized Internet gambling involving a local website. The purpose of the Bill is to expand the scope of the Ordinance to cover unauthorized cross-border gambling. As with the existing Ordinance, the proposed amendments in the Bill are meant to be technology neutral. If the overall principle of combating unauthorized cross-border gambling is accepted, it would be illogical and unreasonable if we specifically exempt unauthorized cross-border gambling activities on the Internet from the coverage of the Bill simply because they are conducted through a different means from the traditional ones. To do so would only encourage the unauthorized offshore

bookmakers to move on-line.

Items (c): Prosecution policy in respect of the proposed section 16F

Some Members have asked for a clear elaboration on the prosecution policy in respect of the proposed section 16F.

The “Prosecution Policy Guidance for Government Counsel, 1998 Edition” (the “Guidelines”) sets out fully and in some detail the considerations a prosecutor should take into account before exercising his or her judgement. In particular, the section on “Consent to Prosecution” (extracted at **Annex C**) is relevant in this context.

The circumstances of a particular alleged offender and his suspected offence are so varied that it would not be a fruitful exercise to imagine scenarios and to speculate whether and how a prosecution would proceed. Every prosecution is unique. That is why the prosecution policy and the Guidelines are framed in terms that allow for their application in diverse circumstances. Indeed, the exercise of prosecutorial discretion is entrenched in the common law system and the Basic Law.

Item (d): Coverage of the proposed sections 16D and 16E

A Member has asked for confirmation of whether publication of odds by printed media will be regarded as “promoting or facilitating bookmaking” under the proposed section 16E and whether it is an offence to broadcast forecasts, hints, odds or tip, etc. on an unauthorized horse or dog race at a time outside the period of 12 hours before the conduct of the race.

Whether publication of odds or tip will be regarded as “promoting or facilitating bookmaking” would depend on matters of context, such as who was giving the odds or tips, why was he/she doing so, where the betting information appeared and the surrounding text or message. If it is mere factual reporting of odds or indication of tips in a newspaper, it is likely that it would not contravene the provisions in the Bill. The reporting of odds, tips and hints would probably have to be firmly linked to an identified offshore bookmaker or a group of bookmakers and that it is likely that by such reporting people would be encouraged to bet while in Hong Kong with the identified offshore

bookmakers, if the proposed section 16E is to apply. For instance, if the information was provided by an offshore bookmaker in the context of an advertisement with a relevant text, then it may be caught by the proposed section 16E. It should be noted that the proposed section does not apply to promotion or facilitation of a bookmaking activity where both the bookmaker and the bettor as well as the bookmaking transaction were or will be outside Hong Kong (as in the case of promotion of gambling in an overseas casino).

The proposed section 16D prohibits 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. Broadcast of the same information outside the specified 12-hour period will not contravene the proposed section 16D of the amended Gambling Ordinance as currently proposed.

Item (e): Consultation with the affected parties

Some Members have suggested that we should consult the affected parties, i.e. the relevant trade and the public on the Bill. Prior to the introduction of the Bill into the Legislative Council, we have consulted the Hong Kong Association of Banks and the DTC Association (the Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies) on the Bill particularly on the provisions to outlaw the promotion and facilitation of unauthorized bookmaking activities, as these financial institutions may be offering banking services to offshore bookmakers. We have also exchanged views with some professional organizations in the IT sector on the issue of Internet gambling and have taken into account their views in preparing the paper at Annex A. No formal consultation has been made with unauthorized offshore bookmakers taking bets from Hong Kong and local punters betting with them due to the large number of them, although they can always express their views to the Bills Committee or the Administration (as some of them have done) now that the Bill has been introduced into the LegCo and has become public information. In general, members of the public who do not bet with offshore bookmakers are less likely to be interested in the Bill but their views are always welcomed.

Item (f): Gambling Review

There has been a suggestion at the last meeting that the

Administration should expedite the conduct of the overall Gambling Review. We take this opportunity to inform Members that the review is now near completion and a public consultation exercise is scheduled for commencement in mid to late June 2001.

I should be grateful if you would convey the above information to Members. The officers attending the meeting of the Bills Committee on 15 May 2001 will be as follows:

Mrs. Betty Fung	Deputy Secretary for Home Affairs,
Mr. Stephen Wong	Deputy Solicitor General,
Mr. J. D. Scott	Senior Assistant Law Draftsman,
Mr. Gavin Shiu	Senior Government Counsel,
Mr. Francis Lo	Principal Assistant Secretary for Home Affairs,
Ms. Mabel Cheung	Government Counsel, and
Mr. Vic Yau	Assistant Secretary for Home Affairs.

Yours sincerely,

(Francis Lo)
for Secretary for Home Affairs

c.c. D of J (Attn.: Mr. Stephen Wong
Mr. J. D. Scott
Mr. Gavin Shiu
Ms. Mabel Cheung)

Tackling Cross-border Internet Gambling with
the Gambling (Amendment) Bill 2000

Purpose

In response to the comments made by some Members at the Bills Committee meeting on 9 February 2001, this note sets out the nature of the problem of Internet gambling in Hong Kong, the rationale of covering Internet gambling in the Gambling (Amendment) Bill 2000 (the Bill), the consequences of not enacting the Bill and the extent to which the Bill will achieve the objective of combating unauthorized cross-border gambling, including those conducted via the Internet.

Internet gambling: a brief introduction

2. The emergence of the Internet and its increasing popularity have enabled gambling operators to offer gambling opportunities to punters around the world by setting up websites on the World Wide Web. It is commonly estimated that the number of gambling websites lies within the range of 500 to 700 and is increasing rapidly. These websites can be broadly classified into two types:

- (1) sites that offer sports (e.g. horse racing and soccer) wagering and betting on other contingencies (e.g. election results) taking place worldwide, hosted by offshore bookmakers using the Internet as an **alternative or additional medium of taking bets** other than the traditional ones such as telephone, post or fax; and
- (2) sites that offer **virtual casinos** and other forms of **interactive games** which can only be offered through the Internet.

Many of these operators are licensed in offshore jurisdictions where their operations are legal. A significant number of them are registered/licensed in tax havens - the lower costs of operation have enabled them to offer better odds than others on the same events. Apart from the occasional illegal gaming activities operated by Hong Kong-based websites (which would normally be removed after they come to public notice and the operators have been informed about the possible legal implications), we are not aware of

any local gambling websites.

3. To bet with an Internet bookmaker, a punter usually has to register with the bookmaker to open a betting account. He then has to deposit money, usually with a preset minimum amount, to his betting account. The deposits could be made by credit cards, cheques, bank drafts or wire transfer, with credit card being the most convenient means. Some offshore bookmakers may open accounts with banks in Hong Kong to facilitate Hong Kong punters to make deposits through bank transfer. Winnings are paid to punters by transferring the money to the bank accounts designated by the punters or credited to specified credit card accounts. Sometimes more troublesome methods may be used by bookmakers, such as sending cheques or bank drafts by mail or express delivery or by wire transfer, which usually take several days or even weeks to reach the punters and incur service charges (e.g. in some cases US\$30 is charged for express delivery of a cheque). A minimum withdrawal limit is usually set.

Legal position of Internet gambling

4. The existing Gambling Ordinance is “**technology neutral**”. It criminalizes all form of **unauthorized** gambling activities, regardless of the means through which the gambling is conducted. The fact that a gambling activity takes place on the Internet would not absolve the persons concerned of criminal liabilities. It follows that operating a gambling website in Hong Kong and betting with such a local website would contravene the existing law.

5. The existing Gambling Ordinance, first drafted in 1976, is however inadequate to tackle unauthorized cross-border gambling, which has become increasingly prevalent in recent years. The Ordinance does not apply to bookmaking or betting with a bookmaker where the bookmaker is situated outside Hong Kong. It also fails to stop promotional activities and betting-related services provided in Hong Kong by offshore bookmakers. As far as Internet gambling is concerned, the existing Gambling Ordinance does not criminalize unauthorized gambling involving an offshore website, and the related promotional activities and services in Hong Kong. That is understandable as the drafters of the Ordinance could not have anticipated the prevalence of cross-border gambling activities in the 21st century. Back in the 1970s, cross-border gambling activities, if any, were very limited in scale and did not pose a problem to our society. It was a time when IDD

call service was expensive and not widely available, when the development of the Internet was in its infancy and generally unheard of, and when overseas lottery tickets could only be bought by post. All these have changed with the rapid technological advancement in telecommunications and payment methods in the past decade, as cross-border gambling becomes increasingly technologically feasible, economically viable and popular.

6. To the extent that all of the known websites are offshore and that many traditional offshore bookmakers have started taking bets via the Internet, the issue of Internet gambling should be seen and considered as part of the broader issue of cross-border gambling.

Why unauthorized cross-border gambling (including those conducted via the Internet) should be tackled

7. Hitherto, the Government's gambling policy is to **restrict gambling opportunities to a limited number of controlled authorized gambling outlets only**. One major rationale behind this policy is that unauthorized and unregulated gambling activities will give rise to a host of social and law and order problems, including:

- (a) unauthorized operators can offer **unlimited gambling opportunities** with a wide range of gambling products and accept **credit betting** which are conducive to pathological gambling behaviours and not in the overall interest of the community;
- (b) unauthorized gambling operators are not obliged to verify a punter's age before accepting his bet. Such operations are thus more conducive to **underage gambling**;
- (c) unauthorized gambling activities are often **connected with crimes** such as loan-sharking, corruption and bribery, and provide a lucrative source of income for triad and criminal operations;
- (d) punters may be **cheated** by unauthorized operators and with little recourse; and
- (e) unauthorized gambling operators compete with authorized ones, resulting in **loss of revenue and funding for charity** generated by authorized gambling.

8. With the increasing use of modern telecommunications technology such as IDD and the Internet, the decreasing costs of using them, as well as the increasing use of credit cards and convenience of cross-border transfer of payment, an offshore bookmaker can now take bets from punters in Hong Kong as easily as a local bookmaker. In other words, an unauthorized bookmaker does not have to be physically located and operating in Hong Kong in order to receive bets from punters in Hong Kong. To punters, placing bets with an offshore bookmaker is almost as convenient as with a local bookmaker (or indeed an authorized local bookmaker). However, due to the legislative loophole mentioned in paragraph 5 above, unauthorized cross-border gambling is not illegal under the existing Gambling Ordinance.

9. The situation has worsened in the past few years as more and more offshore bookmakers specifically target the Hong Kong market, by adopting the following measures:

- (a) providing betting-related services in Hong Kong such as opening betting accounts, taking betting deposits, providing information as to how to place a bet, facilitating betting by opening bank accounts with local banks;
- (b) setting up service centres, promotion booths and service hotlines in Hong Kong;
- (c) advertising in the mass media in Hong Kong including popular newspapers and sports magazines and even on buses, handing out leaflets to the public and sending information to the media to promote their business and attract bets;
- (d) employing Chinese-speaking telephone operators to handle Hong Kong customers and displaying Chinese on their websites;
- (e) setting up on local websites hyperlinks to gambling websites;
- (f) broadcasting on local TV or radio stations offshore events (and related betting information) on which they take bets;
- (g) offering betting on Hong Kong events such as horse racing (often with higher payouts) and the Mark Six; and

- (h) providing betting information (e.g. odds on overseas soccer matches) in the local media to stimulate betting interest.

10. A number of factors may explain why Hong Kong is increasingly being targetted. First and foremost, unlike some other jurisdictions such as the US, Hong Kong does not have laws in place prohibiting unauthorized cross-border gambling or the related promotional activities. This legal position has become increasingly clear to offshore bookmakers after several successful attempts by some of them to advertise or provide betting-related services in Hong Kong. Second, Hong Kong appears to offshore bookmakers as a large market, as evident by the turnover on authorized gambling activities which is high by international standard. In addition, Hong Kong is a compact city where dissemination of information through local media and advertisements is highly effective, which is conducive to the promotion of the bookmakers' business. Also, the high penetration rates of the Internet and IDD and the low costs of using them in Hong Kong make cross-border betting easy and cheap.

11. The central problem is that such unauthorized offshore bookmaking and cross-border gambling activities, though very similar in nature to the locally based ones – both being unauthorized and unregulated by Hong Kong authorities, with similar degrees of convenience – are not illegal under the current law. From the policy point of view, there is no justification why it is an offence to conduct bookmaking in Hong Kong or to bet with a local bookmaker, but not if the bookmaker is based outside Hong Kong (even though the punter is in Hong Kong). It would also render our gambling policy to restrict gambling opportunities to limited authorized outlets largely ineffective, as there will be no “restriction” whatsoever on the offshore bookmakers and on Hong Kong people betting with them. The mushrooming of offshore bookmakers taking bets from Hong Kong people is bound to cost the society dearly. Indeed, all the problems mentioned in paragraph 7 above would apply to unauthorized cross-border gambling as much as to unauthorized local gambling. Furthermore, it is highly likely that the offshore bookmakers will launch large-scale and high-profile promotional activities to entice bets from Hong Kong people if it is decided that the Gambling Ordinance would not be extended to cover cross-border gambling.

12. The fact that some offshore bookmakers targetting Hong Kong have obtained licences from their local authorities is not a reason for legalising their activities in Hong Kong. First, to allow an unlimited number of offshore bookmakers to operate legally in Hong Kong would make a mockery of our gambling policy of providing a limited number of authorized outlets. This will also put the authorized operators, who have to pay tax and cannot offer discount/higher dividends or accept credit betting, in a highly disadvantaged position. Eventually, the punters who used to bet with the authorized outlets will turn to the offshore bookmakers who are able to offer more attractive prize money and are also legal under the law. Second, given the lax and non-transparent licensing regimes adopted by some jurisdictions, there is no guarantee that these offshore licensed bookmakers are free from criminal connections, that they can and will screen out underage gamblers, that the games offered are fair, or that dividends will duly be paid to winners. Third, to a certain extent, these offshore licensed bookmakers pose an even greater threat to our gambling regime than the local illegal bookmakers because the former could openly and actively promote their business and offer betting-related services in Hong Kong under the current law, whereas the local bookmakers would only do it in a more discreet manner. Indeed, many offshore bookmakers now pose themselves as the “lawful alternatives” to the Hong Kong gambling public, and are increasingly perceived by them as such. This is a worrying trend that should be put to a halt.

13. In updating the law, we do not consider that we should make a distinction between cross-border gambling through the Internet and those through other means. As with the existing Gambling Ordinance, the Bill should be “technology neutral”. To do otherwise would only result in the bookmakers resorting to the exempted medium to transact their business. We see no justification why we should exempt unauthorized gambling activities through the Internet simply because they are conducted through a different means from the traditional ones. In fact, the offshore bookmakers mentioned in paragraphs 8 to 11 above are in many cases Internet gambling operators. More importantly, the problems mentioned in paragraph 7 above not only exist but are often exacerbated in the case of Internet gambling. For example, the potential for fraud is higher in the Internet environment: operators may tamper with the gambling software to manipulate the games to their benefits (in the case of virtual casinos), and even alter or remove the sites within minutes. Internet gambling is also believed to be more conducive to pathological gambling since it is often credit-based and offers

non-stop gambling experience and instant gratification to punters. Underage gambling is more difficult to prevent on the Internet. Internet gambling also provides an additional and easy means for criminals to launder money.

Effectiveness and limitations of the Bill

(a) Effectiveness

14. We note Members' concerns about the effectiveness of the Bill in tackling cross-border gambling activities, particularly those conducted through the Internet. We believe that the proposed amendments in the Bill taken together as a package will at least stop the proliferation of and significantly **reduce** cross-border gambling, as well as the related promotional activities in Hong Kong. First and foremost, the legislative amendments, if enacted, represent **an unequivocal policy statement** made by the Government that cross-border gambling will not be allowed or condoned in Hong Kong. Failure to enact the Bill will effectively and officially give a green light to all interested offshore bookmakers who are eyeing the Hong Kong market.

15. The proposed amendments to sections 7 and 8 of the Gambling Ordinance seek to criminalize offshore bookmakers taking bets from Hong Kong people and Hong Kong people betting with them. For offshore bookmakers and credit-offering institutions, if punters default on their debts, they would **not be able to enforce the debts** through the Hong Kong courts because the gambling transactions would then be illegal. The amendments to the two sections would also provide a solid basis for other proposed amendments including the new sections 16D and 16E which prohibit live broadcast via TV or radio of betting information on unauthorized horse and dog racing and promoting or facilitating bookmaking respectively.

16. More importantly, it is expected that the proposed new section 16E, which seeks to prohibits promoting or facilitating bookmaking, would make it more difficult for the offshore bookmakers, including Internet gambling, to entice bets from Hong Kong people. On the other hand, Hong Kong people will also find it more inconvenient to bet with offshore bookmakers. The new offence would outlaw promotion, advertisements, betting-related services and other deliberate acts to facilitate offshore bookmaking. Offshore bookmakers will be prohibited from **advertising or marketing**

their business in Hong Kong including the mass media. Moreover, **local banks** would stop providing banking services to offshore bookmakers (e.g. by closing the accounts of the offshore bookmakers if known to them) and **credit card-issuing institutions** would not allow their card-holders to use their cards in cross-border gambling. Without the services of local bank accounts and credit cards, bookmakers and bettors would have to resort to other means such as cheques, bank drafts and wire transfer for collection of deposits and bets and for payment of winnings, which, as explained in paragraph 3 above, would make betting with offshore bookmakers much less convenient and costly. We are glad to note that a number of banks in Hong Kong have recently notified their customers that they would not process credit card transactions arising from illegal gambling. The enactment of the Bill, which renders cross-border gambling illegal, will provide a firm legal basis for such administrative measures.

17. Under the amended section 26, money used in connection with unlawful gambling activities (including bets and winnings) or with promoting or facilitating offshore bookmaking could be **forfeited** in future. In addition, if the Bill is enacted and the offence of “bookmaking” expanded to cover offshore bookmaking, the relevant provisions in the Organized and Serious Crimes Ordinance (Cap. 455) can be invoked to give enhanced powers to the Police to investigate into an offence of offshore bookmaking and confiscate the offender’s assets, as “bookmaking” is listed as a “specified offence” under the Ordinance. Section 4 of OSCO permits the Secretary for Justice to apply for an order from the Court of First Instance to assist an investigation into the proceeds of a specified offence of any person who has committed or is suspected of having committed that specified offence. Subsequently on prosecution and conviction of the person who committed the specified offence a confiscation order under section 8 of OSCO may be applied for and ultimately assets to the extent of that person’s benefit from the specified offence may be confiscated.

18. Separately, the proposed new section 16D would to some extent help reduce punters’ interest in betting with offshore bookmakers on offshore races. It would deprive offshore bookmakers of two popular media (TV and radio) to **disseminate updated betting information** before the start of a race, which is essential to the placing of bets.

19. All of the above would help contain the proliferation of offshore bookmakers’ activities in Hong Kong and reduce the attractiveness and ease

of betting with them. Experience elsewhere suggests that clear laws would help deter activities of offshore bookmakers, as evidenced by the following:

- (a) offshore bookmakers do not advertise in the UK and refrain from taking bets from the US citizens, as such are in contravention of the laws of the respective countries;
- (b) many Internet gambling websites carry warning notices about the need to observe the laws of the jurisdiction where the punter is situated; and
- (c) some card-issuing banks in the US have prohibited the use of their credit cards for unlawful Internet gambling purposes.

It is believed that the Bill will create a much less “business-friendly” and more risky environment in Hong Kong for offshore bookmakers (including Internet gambling operators), and make it less convenient for local punters to bet with them. We hope that the package of measures embodied in the Bill will contain the size of the problem of unauthorized cross-border gambling.

(b) Limitations

20. It would be unrealistic to expect that all offshore gambling activities will be **eliminated** following the enactment of the Bill. Regarding the proposed amendments to sections 7 and 8, which would criminalize both the bookmaker and the bettor in a cross-border gambling transaction, the **enforcement** agencies may have difficulties in investigating into the offence and tracking down the identities of the parties concerned. While prosecution will be instituted where sufficient evidence is collected, in some cases it may require substantial resources and police power to discharge the duties effectively. This is because cross-border gambling usually takes place via the Internet or telephone (IDD). For Internet gambling, the nature of the Internet and the increasingly sophisticated computer technology also allow the operator to hide his/her identity in the cyberworld. It should however be noted that such problems are not unique to Hong Kong – many other jurisdictions are also wrestling with the problem of cross-border gambling.

21. To improve the prospects of enforcement against cross-border gambling and Internet gambling, some possible measures are set out below for Members' consideration:

- (a) **real-time monitoring:** this approach is highly controversial and will give rise to privacy concerns. Moreover, the resources devoted to extensive real-time monitoring would be substantial and may not be proportionate to the objectives we seek to achieve. As far as Internet gambling is concerned, the effectiveness is doubtful given that most gambling transactions conducted via the Internet are encrypted;
- (b) **the “take-down” approach:** the Inter-departmental Working Group on Computer Related Crime has recommended that the relevant policy Bureaux should consider the feasibility of adopting “take-down” procedures in dealing with Internet crimes including transmission of pornographic materials, copyright infringement and Internet gambling. Under the proposal, Internet Service Providers (ISPs) would be empowered to remove an offending site, in our case, a gambling website or a website featuring a hyperlink to a gambling site (which will be prohibited under the new section 16E), upon notice that it is under criminal investigation. However, this approach would be useful only when the concerned ISP is the content provider or the host of the website. At present, all the known gambling websites are based outside Hong Kong which cannot be removed by local ISPs. In any event, in the case of local gambling websites or a local website featuring a hyperlink to an offshore gambling site, it should be possible for the Police to track down the operator and take prompt action without the need to resort to the “take-down” approach;
- (c) **blocking access to gambling websites:** as we understand it, this approach is currently adopted by some jurisdictions where the ISPs, as information carrier, are required under the licensing conditions to screen out “prohibited materials” transmitted via the Internet, including offshore gambling websites. This approach may give rise to concerns about freedom of information and censorship if adopted in Hong Kong unless there are sound justifications for blocking access to particular

sites. As far as Internet gambling is concerned, the existence of a large number of gambling websites around the world also renders the option less practicable. Even if the access to a web address is blocked, the operator can easily evade the blockage, for example, by moving to a new address.

In view of the sensitivity and the limited effectiveness of the above measures, they have been adopted by few jurisdictions. Insofar as Hong Kong is concerned, we do not propose that they should be pursued for the time being. We would however continue to closely monitor the developments in other jurisdictions on this front.

22. An alternative approach to tackle Internet gambling is to promote the use of Internet **filtering tools**. We can start with schools, libraries and government-run cyber centres and may encourage students' parents to install the software in their computers at home. This measure would not prevent determined punters from engaging in Internet gambling or hamper such conduct, but would be useful in preventing minors' access to gambling websites. We will consider the desirability and feasibility of this approach further.

Conclusion

23. The loopholes of the existing legislation, together with the rapid development in technology and payment methods, have resulted in increasingly widespread cross-border gambling activities and in Hong Kong being increasingly targetted by offshore bookmakers. We consider it necessary to tackle the problem urgently through updating the law. In doing so, we consider that a "technology neutral" approach should be adopted and that Internet gambling should be considered and dealt with as part of the wider problem of cross-border gambling.

24. We acknowledge that there would be limitations to the effectiveness of the Bill in tackling cross-border gambling including Internet gambling. However, we believe that the enactment of the Bill would render cross-border gambling less convenient and more risky, thereby reducing its attractiveness. As we see it, the package of legislative amendments embodied in the Bill represent the best possible policy options available at the moment, unless we are prepared to adopt draconian measures. The Government will continue to monitor closely and vigilantly the international

developments and propose further and more effective measures as and when they are available. On the other hand, failure to enact the Bill would effectively legalise all forms of cross-border gambling in Hong Kong, giving a green light to all interested offshore bookmakers who are eyeing the Hong Kong market and creating a “gambling free-for-all” situation. All the problems mentioned in paragraph 7 above would ensue, at the cost of the society in general. Exempting Internet gambling operators would bring very much the same result, now that an increasing number of offshore bookmakers have launched their Internet operations, and more and more cross-border gambling activities take place on the Internet.

25. The longer we tolerate the activities of offshore bookmakers (including Internet bookmakers), the more difficult it would be to tackle them when they have built up their client base in Hong Kong. They may even argue that since they have been allowed to take Hong Kong bets for so long, they have a legitimate right to continue their operation. As argued above, Hong Kong, a city without the relevant law and with high betting turnover, will become increasingly vulnerable and targeted by offshore bookmakers. We therefore see a genuine and urgent need to enact the proposed legislative amendments to the Gambling Ordinance. Meanwhile, we will continue to monitor developments on the international front and explore ways to enhance our enforcement capability. Tackling illegal bookmakers is a “cat-and-mouse game” which requires rigorous and continuous efforts from both the Government and the legislature.

Home Affairs Bureau
May 2001

Extract from the Report by the Inter-departmental Working Group on Computer Related Crime on the Working Group's Approach

Approach

1.5 The Working Group's focus is strengthening the framework or environment within which law enforcement against computer crime may be carried out. We have therefore attempted to identify problems and recommend solutions, legislative or otherwise, regarding crime prevention, evidence gathering, investigation and prosecution arising from computer crime. Our ultimate aim is to contribute to the total effort of providing an environment conducive to the legitimate use of the computer and the Internet.

1.6 Our approach is a macro one by identifying solutions that may be applied across the board as far as possible. We therefore do not seek to deal with all crimes that may be committed via the computer or the Internet. These should continue to be considered in the relevant policy context. For example, consideration of Internet gambling is part of the overall policy consideration of gambling in general, and should appropriately be dealt with in that context. However, in so far as our recommendations will strengthen or facilitate law enforcement against computer crime, they also have a bearing on these specific crimes.

Extract from the "Prosecution Policy, Guidance for Government Counsel, 1998 Edition"

Consent to Prosecution

29. A number of Ordinances provide that a prosecution for an offence under the Ordinance cannot be commenced or, if commenced, cannot proceed except with the consent of the Secretary for Justice. There are a variety of reasons for the inclusion of such consent requirements in legislation, but all are basically intended to ensure that prosecutions are not brought in inappropriate circumstances.

30. By various means, the Director of Public Prosecutions has been authorized to give consent to prosecutions for offences under a number of Ordinances. In some instances, consent to prosecute rests with the Secretary for Justice personally but in appropriate cases the power to give consent has been delegated to senior Prosecutions Division lawyers where that course is lawful.

31. Often the reason for the requirement for consent is a factor which will ordinarily be taken into account in deciding whether to prosecute. For example, consent may be required to ensure that mitigating factors are taken into account or to prevent prosecutions in trivial matters. In such cases the question of consent is really bound up in the decision whether to prosecute. In some cases the consent provision will have been included as it was not possible to define the offence so precisely that it covered the mischief aimed at and no more. Other cases may involve a use of the criminal law in sensitive or controversial areas, or must take account of important considerations of public policy. In appropriate cases the decision whether to consent to a prosecution is made after consultation with a relevant department or agency.