



Hong Kong Chapter

Submission to the LegCo Bills Committee: Gambling (Amendment) Bill 2000

By The Information Systems Audit and Control Association, Hong Kong Chapter ("ISACA")

The ISACA wishes to submit the following comments on the Gambling (Amendment) Bill 2000 (the Bill), which seeks to amend the Gambling Ordinance to tackle the increasingly widespread unauthorized offshore gambling and the related promotional activities in Hong Kong.

Our comments specifically focused on the following areas relating to the proposed legislation:

- the effectiveness of the proposed legislative amendments in reducing Internet gambling;
- views on other relevant issues, such as the prospects of enforcement against Internet and other electronic-based gambling and its future development.

The growth of Internet gambling

Like many other industries, the development of the Internet has given rise to significant changes to the Gambling Industry, as well as presented new opportunities. Internet gambling is one of the ways that the Gambling Industry has harnessed current technology, effectively breaking down the barriers of time and distance, as well as regulatory constraints.

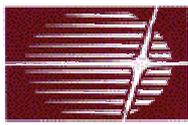
This phenomena is true to gambling in much the same way as to education: technology allows us to gamble or learn at a time and place of our own choosing through accessing a service provider, who may be located anywhere in the world.

With the pace of technological advancement, particularly in the area of mobile technology, and the increasing popularity of end user computing devices such as the PDA, it is quite conceivable that online gambling operators will explore new technologies to further extend the reach and appeal to potential customers on a global scale. It is therefore reasonable to expect that the delivery channels for gambling services will, over time, be extended beyond the PCs and the Internet.

The need for change to current legislation

Given this future trend, we believe that Internet gambling, if left unchecked, will only proliferate further. This may increase the ways and means and scope of events over those currently authorised on which Hong Kong people can gamble in Hong Kong. This may have far-reaching social and law and order problems. For example, given that credit cards are a popular payment mechanism for Internet gambling, the continued growth of such gambling may increase the risk of credit card frauds in the future.

We are therefore supportive of the Government's plan to introduce changes to existing gambling laws. With the pace of technological development, it is essential for such laws to be technology independent. Further, we also believe that it is important for the law to be practical and enforceable. In this respect, we have considered the effectiveness and the practical aspects of the proposed legislative amendments. Our comments are set out in the following sections.



Comments on proposed legislative amendments

[Section 8(2)(a)] Introduce 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.

We are uncertain how effective this will be from a policing and enforcement point of view. Unlike traditional gambling activities, where people have to congregate at a specific location (e.g. a gambling establishment), Internet Gambling can take place at home, cyber cafes, offices, even schools and libraries. We believe that from a law enforcement viewpoint, this aspect will be difficult to police and enforce. The Government may wish to further consider this aspect.

[Section 13(1)] Gambling in any place not being a gambling establishment or in a street.

[Section 16B/16C] Keeping premises for betting, etc., and responsibility of owners, tenants, etc.

It will be necessary to consider whether, say, a cyber cafe that allows its customers to access on-line gambling sites tantamount to “keeping premises for betting” or “facilitating bookmaking” and as a result commits an offence under Section 13(1), 16B or 16C. From a practical perspective, if such acts were to be prosecuted, then it is essential for the Government to work closely with relevant industry bodies to establish appropriate codes of practice.

[16D(5)] Offence to prohibit the broadcast of any forecast via TV or radio within the 12-hour period preceding the conduct of that event.

It is important to note that the broadcast of such forecast, etc., needs not be via TV or radio. Internet and mobile computing technology is sufficiently advanced to enable such broadcasting to be transmitted other than via TV or radio.

Offshore gambling operators will be quick to spot any gaps within the legal framework and react accordingly. With the pace of technological advancement, it is probable that current limitations, such as the small size of displays on mobile devices, could be overcome. In time, therefore, the disseminating of betting information could migrate to mobile telecommunication devices.

It is therefore probable that the effectiveness of this clause cannot be maintained in the medium term. The Government should consider adhering to the general principle of technology neutral in this respect.

Other considerations

Role of financial institutions

We understand that one of the objectives of the amendments is to make it an offence for anyone to facilitate offshore gambling. Specifically, it is intended that local banks will stop providing services to offshore bookmakers, and for local credit card issuers not to process transactions arising from illegal gambling. [LegCo Paper No. CB(2)1524/00-01(01), Annex A, paragraph 16]

It is important to ensure that the onus of identifying offshore bookmakers (or their local representatives) should not rest entirely with financial institutions. To do so would effectively require local banks and credit-card issuers to establish a mechanism that continuously detects and monitors



customers' transactions. Putting aside privacy considerations, such a mechanism would also be difficult to establish and maintain. It would therefore be important for law enforcement agencies to notify banks and credit-card companies of organisations that are known to have played a part in organising or facilitating off-shore gambling.

The use of filtering tools

With Internet gambling, we are looking at a potential situation where, short of total blockade, it may not be possible to control or prevent such activities from taking place. However, given the resource that needs to be devoted to maintain such blockade, its effectiveness is doubtful. Consequently, Internet gambling is in our view very difficult to control or police. While the proposed legislative amendments will go some way to address this matter, they may not be totally effective for the reasons already stated above.

However, from a practical viewpoint, we would suggest that other active steps should be taken to support the proposed legislation. An effective starting point is for schools and libraries with Internet access to be equipped with appropriate filtering tools. We know that such tools exist in relation to pornographic sites, but probably have not been extended to include gambling sites. We feel that such a level of protection could be justified for schools and libraries given their specific nature. This practice could over time be adopted by other providers of public Internet access, such as cyber cafes, perhaps on a voluntary basis. Of course, someone needs to promote such practice in the first place, and the Government should consider playing a leading role in this.

Conclusion

In Hong Kong, we are seeing a culture where the public has become increasingly captivated by speculative activities, including gambling. This situation cannot be addressed simply by enacting a single piece of legislation that outlaws "unauthorised" forms of gambling activities.

The challenge to the Government is therefore more a philosophical one: should activities such as gambling be controlled at all, given that in time it may increasingly be difficult to do so. In this respect, the Government's gambling policy of restricting gambling opportunities does present a practical way forward. At a minimum, it provides a platform from which to educate and guide the public in acceptable gambling practices.