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9 June, 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 Meeting on 5 June 2001**

Thank you for your letter dated 6 June 2001. Our response to the points raised therein is set out below.

**Item (a): Collaboration with information technology bodies and financial institutions and statutory protection for them**

We support the suggestions made by some deputations at the last meeting that collaboration between the Government and the relevant professional bodies and trade associations should be initiated particularly in areas such as public education and investigation into unlawful Internet gambling activities. We shall discuss with the information technology (IT) industry further on the detailed arrangements.

As regards financial institutions, we have consulted the Hong Kong Association of Banks and discussed with their representatives.

They expressed general support for the Bill and agreed to stop providing banking services for illegal gambling transactions and refuse to authorize credit-card transactions, provided they know or are informed that unlawful gambling activities are involved. They would implement these measures following the enactment of the Bill. We will keep in touch with the trade and help them prepare for the implementation where necessary and appropriate.

Regarding the criminal liability of the IT industry and financial institutions, as explained at the last meeting, the proposed section 16E (“promoting or facilitating bookmaking”) as currently drafted requires the prosecution to prove the defendant’s *knowledge* of or *intent* to commit the act which can be characterized as promoting or facilitating bookmaking, before an offence can be established. A person who engages in a particular activity *without the knowledge of or intention to* promote or facilitate a particular act of bookmaking would *not* be prosecuted.

**Items (b), (c), (d) and (e): Proposed new section 16E**

While section 16E as presently drafted already requires the prosecution to prove the knowledge of the accused or his/her intent to commit the crime, in view of the concerns of some Members and deputations, the Administration agrees to move a Committee Stage Amendment (CSA) to the Bill to state expressly in the section the “state of mind” the prosecution has to prove in order to convict a person under this section. Accordingly, we propose to insert the word “*knowingly*” before “promoting and facilitating bookmaking” in section 16E(1).

We have considered a deputation’s suggestion to exempt certain classes of service providers such as the financial institutions, credit card issuers and the money transmitting business from the liability of the Bill even if their services are used for settling debts arising from illegal gambling. We are concerned that giving a blanket exemption for certain classes of individuals or organizations may be challenged by the non-exempted groups as arbitrary and discriminatory. More importantly, such an exemption would virtually prevent prosecution to be taken against the exempted classes of individuals/organizations even if they have knowingly engaged in acts of promoting or facilitating bookmaking. We understand that the deputation’s concern stems from the need to give

greater certainty to the service providers. We believe that our proposed CSA to section 16E as mentioned above would help address the deputation's concern about any unknown or unintended facilitation of bookmaking. In other words, a person who engages in a particular activity, whether it be broadcasting, credit transactions or Internet service providing, without knowledge of, nor intention to promote or facilitate a particular act of bookmaking, has nothing to fear.

There are suggestions by a Member and a deputation that the term "promoting or facilitating" should be more clearly defined. As explained in our letter to the Bills Committee of 8 February 2001, one way to do it is to list out in the section the acts that would be regarded as "promoting or facilitating bookmaking". These would include advertising on betting with an offshore bookmaker, opening betting accounts for punters, collecting betting deposit for cross-border gambling purposes, operating telephone hotlines for Hong Kong punters, and other means which we may not be aware of at the time of enacting the legislation. While this would provide clearer guidance as to what constitutes an illegal act under section 16E, we are concerned that the new legislation may become outdated quickly as offshore bookmakers would soon find new ways to promote or facilitate their business in Hong Kong without being caught by the stated provisions. This is why we prefer to stick to the formulation of "(knowingly) promoting or facilitating bookmaking" to characterize the state of mind and the act in question. From the policy angle, we consider that a balance has to be struck between giving greater certainty to the service providers and ensuring that a legislative amendment will not be unduly short-lived. As explained above, an innocent party who has unintentionally promoted or facilitated an illegal act of bookmaking would not be liable under the law. Also, as stated in the Annex to our earlier letter of today, similar wording has been used in the legislation of a number of overseas jurisdictions (e.g. "*with intent to promote... or facilitate...*" "*encouraging or facilitating participation in an unauthorized game*").

#### **Item (f): Prosecution of offshore bookmakers**

A Member enquired whether it is feasible to prosecute offshore bookmakers and whether the Government would arrest these bookmakers on their arrival at Hong Kong. We should reaffirm that anyone who engage in bookmaking, i.e. anyone who solicit, receive,

negotiate or settle bets with a person in Hong Kong *by way of trade or business*, commits an offence. Where sufficient evidence (including that relating to the intent to commit the offence) is collected, prosecution will be initiated. The offender may be arrested if he/she is in Hong Kong or on his/her arrival at Hong Kong. If the offender is located outside Hong Kong, we will seek cooperation and assistance from the jurisdictions concerned in instituting prosecution.

### **Item (g): Narrowing the scope of the Bill**

A member has suggested that we should consider narrowing the scope of the Bill by focusing on combating special illegal gambling activities. For example, the Government should reconsider whether gambling via the Internet should be tackled in view of the enforcement difficulties. In our 11 May 2001 letter to the Bills Committee, we have explained the rationale for not excluding Internet gambling from the ambit of the Bill. First, under the existing Gambling Ordinance, bookmaking and betting involving a local website is already illegal. To exempt Internet gambling from the Bill would raise the question as to whether operating local gambling websites should also be exempted. If the principle of tackling illegal gambling is accepted, there is no reason why we should exempt certain unauthorized gambling activities simply because they are conducted through a different means (the Internet). Secondly, to exclude Internet gambling from the Bill would only encourage the bookmakers to shift their business to the Internet. Hence, we consider that as with the existing Ordinance, the Bill should remain “technology neutral”. We note that this principle is generally supported by the deputations at the meeting on 5 June 2001.

The enclosed CSAs include the proposed amendment to section 16E(1) mentioned above. We have also taken the opportunity to propose an amendment to Clause 8, section 16C so that the maximum levels of penalty provided under this section would be in line with those under the existing section 15, given the similar gravity of the offences. Both sections deal with the responsibility of owners, tenants, etc. for permitting or suffering their premises for unlawful gambling purposes. The enclosed CSAs also include proposed amendments to sections 7(1A), 8(2) and 16E(2). We shall elaborate these proposed amendments in our reply to Mr. Stephen Lam's letter dated 7 June 2001.



GAMBLING (AMENDMENT) BILL 2000

**COMMITTEE STAGE**

Amendments to be moved by the Secretary for Home Affairs

<u>Clause</u>	<u>Amendment Proposed</u>
4	In proposed new section 7(1A)(a)(ii), by deleting "other event" and substituting "any competition, race, event or contest".
5	In proposed new section 8(2)(a)(ii), by deleting "other event" and substituting "any competition, race, event or contest".
8	(a) In proposed new section 16C(2)(a) and (b), by deleting "\$5,000,000" in both places and substituting "\$500,000".
	(b) In proposed new section 16E(1) by adding "knowingly" after "who".
	(c) In proposed new section 16E(2)(a)(ii), by deleting "other event" and substituting "any competition, race, event or contest".