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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 15 May 2001

Further to our letter dated 1 June 2001, I set out our response to items (b), (d) and (e) in your letter dated 16 May 2001.

Item (b): Overseas experience in tackling cross-border gambling (including Internet gambling)

Like Hong Kong, most overseas jurisdictions allow only authorized or exempted gambling activities to exist. However, as the challenges posed by cross-border gambling vary among jurisdictions, there has not yet been a universal approach for tackling this challenge. To uphold the integrity of their gambling policies, many countries have chosen to tackle offshore bookmaking through **legislation** by making it illegal for unauthorized bookmakers to accept bets from their residents or to promote their business within the jurisdictions. The legislative approaches will be elaborated in our response to item (d) below. Other

measures include **blocking** local access to offshore gambling websites, which is adopted by some jurisdictions. For those jurisdictions where various forms of authorized gambling exist, the main challenge is to identify ways to maintain or enhance the competitiveness of the domestic gambling industry vis-à-vis their offshore counterparts. For example, the UK has recently announced that the 6.75% betting duty (imposed on punters' bets) would be replaced by a 15% tax on bookmakers' gross profits. This would increase the competitiveness of the local authorized bookmakers, many of which have moved abroad, and help attract them back to the UK.

Given that many of the overseas jurisdictions have enacted or are about to enact new legislation to tackle cross-border gambling, there are genuine and valid concerns that Hong Kong would become one of the few remaining targets of offshore bookmakers due to the deficiency of our gambling laws. This situation is aggravated by the existence of limited legal gambling outlets in Hong Kong, the high betting turnover and the availability of efficient telecommunications facilities (see our reply dated 11 May 2001 to the Bills Committee (paragraphs 9 and 10 of Annex A)).

Items (d) and (e): Comparison between the Bill and overseas legislation and relevant prosecution cases overseas

We have researched into overseas legislation and identified provisions which are similar to the key provisions of the Bill, as well as some relevant prosecution and court cases. They are set out in **Annex**. Member may wish to note that the language used in the key provisions in our Bill is similar to that used in many overseas legislation.

The officers attending the meeting of the Bills Committee on 11 June 2001 will be as follows:

Mrs. Betty Fung	Deputy Secretary for Home Affairs (2)
Mr. Stephen Wong	Deputy Solicitor General (Advisory)
Mr. J. D. Scott	Senior Assistant Law Draftsman
Mr. Francis Lo	Principal Assistant Secretary for Home Affairs (5)
Mr. Gavin Shiu	Senior Government Counsel,

Mr. Llewellyn Mui	Prosecutions Division Senior Government Counsel, Legal Policy Division
Ms. Mabel Cheung	Government Counsel, Bilingual Drafting Unit, Law Drafting Division
Mr. Vic Yau	Assistant Secretary for Home Affairs (5)1

I should be grateful if you would kindly convey the above information to Members. We shall reply to your letter dated 6 June 2001 separately.

Yours sincerely,

(Francis Lo)
for Secretary for Home Affairs

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

**Comparison Between Major Provisions of the
Gambling (Amendment) Bill 2000 and Overseas Legislation
and Overseas Prosecution Cases**

**Provisions in the Gambling
(Amendment) Bill 2000**

1. Sections 7 and 8:

The proposed amendments to sections 7 and 8 seek to criminalize *offshore bookmaking* and *betting with an offshore bookmaker*, so long as the bettor is in Hong Kong.

("Bookmaking" is defined under section 2 as "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").

Relevant Overseas Legislations

(a) *US Federal Legislation, the Wire Act 1961 (Section 1084, Title 18, US Code)*

The Provision:

The 1961 Wire Act holds criminally liable "whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the *transmission in interstate or foreign commerce of bets or wagers* or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which *entitles the recipient to receive money or credit* as a result of bets or wagers, or for information assisting in the placing of bets or wagers." The Act has been used recently to prosecute and convict offshore bookmakers using the Internet as a medium for their bookmaking (see (ii) under "Prosecution Cases" below).

(b) *US Federal Legislation, the Travel Act (Section 1952, Title 18, US Code)*

The Provision:

The Travel Act penalizes any person who "travels in interstate or foreign commerce or uses *the mail or any facility in interstate or foreign commerce, with intent to ... further any unlawful activity*". An unlawful activity is defined as including "any

business enterprise involving *gambling*." The scope of the Act may reach offshore on-line gambling operators who use facilities, such as telephone lines, in furtherance of illegal gambling activities.

(c) ***Nevada, US, Nevada Revised Statute***

The Provision:

Nevada State has enacted gambling legislation with extraterritorial application similar to what we are proposing. The Nevada Revised Statute stipulates that "a person ... shall not knowingly, *within or outside of this state* accept or receive ... through a medium of communication a wager from another *person who is physically present within this state*" (this covers offshore bookmaking) or "*from within this state*, place, send, transmit or relay through a medium of communication a wager to another person or an establishment that is located *within or outside of this state*" (this covers betting with an offshore bookmaker). "Medium of communication" is defined as including mail, telephone and the Internet. Gambling operations licensed in the state are exempted from the above provisions.

(d) ***New South Wales, Australia, Unlawful Gambling Act 1998***

The Provision:

Section 8(3) of the Unlawful Gambling Act 1998 provides that "a person *must not make a bet* on any horse race, harness race or greyhound race that is to be held anywhere in Australia" with another person whom the bettor knows (or would be reasonably expected to know) is not an authorized bookmaker. Section 8(4A) extends the

prohibition by forbidding a person from making a bet "while in the State even though *the other person with whom the bet is made is outside the State (including outside Australia).*"

Prosecution Cases:

- (i) In 1998, an operator of a gambling website based in Grenada was found guilty in Missouri Court under Missouri State law for taking bets from people in Missouri State, US.
- (ii) In 1998, Mr. Jay Cohen, one of the founders of an Internet sports gambling website called World Sport Exchange based in Antigua, a small Caribbean nation, was arrested on his return to the US and prosecuted under the Wire Act (see (a) above) for accepting wagers from American residents over a wire communication facility. The website targets US based punters by advertising widely in the traditional US media and providing toll free telephone services to US residents to facilitate placing of bets. Cohen was convicted in February 2000. He is presently on bail pending appeal.

2. *Proposed section 16D:*

The proposed section 16D seeks to restrict the *transmission of betting information on unauthorized horse and dog races*. It contains a strict liability offence to prohibit the TV and radio broadcast of forecast, hint, odds and tips relating to an unauthorized horse or dog race during the 12-hour period before the

(a) *US Federal Legislation, the Wire Act 1961*

The provision:

The same provision mentioned in 1(a) above prohibits "the *transmission of information assisting in the placing of bets or wagers on any sporting events or contest*", but allows the transmission of such information from a state or foreign country where such betting is legal to a state or foreign country in which it is also legal.

start of that race.

(b) California, US, California Panel Code

The Provision:

California's Panel Code makes it illegal for any person who "knowingly *transmit information* as to the *progress or results of a horserace, or information as to wagers, betting odds, changes in betting odds, post or off times, jockey or player changes in any contest or trial, ...* involving humans, beasts, or mechanical apparatus by any means whatsoever ... when such information is transmitted to or by a person or persons engaged in *illegal gambling operations*".

(c) Canada, Criminal Code

The Provision:

Section 202(f) of the Criminal Code stipulates that anyone who "prints, provides or offers to print or provide *information intended for use in connection with bookmaking, pool-selling or betting on nay horse races, fight, game or sport*, whether or not it takes place in or outside Canada or has or has not taken place" commits an offence. Section 202(i) makes it illegal for anyone who "wilfully and knowingly *sends, transmits, delivers* or receives *any messages by radio, telegraph, telephone, mail or express* that conveys *any information relating to bookmaking, pool-selling, betting or wagering, or that is intended to assist in bookmaking, pool-selling or wagering*". Exemption is provided for persons who transmit betting information for the purpose of legal pari-mutuel betting (section 204(1.1)).

(d) Australia State Legislation

The Provision:

- (i) Section 29(1) of the Racing Administration Act of **New South Wales** 1998 makes it an offence for any person other than a licensed bookmaker to *publish any betting information*, including *betting odds* on any race meeting held in any part of Australia or any other place.
- (ii) Section 67 of the Racing and Betting Act of **Northern Territory** provides that any person who "prints, publishes, sells, circulates, distributes, exhibits or posts up ... *information which directly or indirectly relates to an intended [racing] meeting which it is unlawful to conduct is guilty of an offence.*"
- (iii) Section 21 of the Unlawful Betting Act of **North Territory** makes it an offence for anyone who "publishes in a newspaper, by wireless broadcasting, television or by any other means the odds on the results of a contingency."

3. Proposed section 16E:

The proposed section 16E seeks to criminalize any deliberate acts which *promote or facilitate bookmaking*, whether the bookmaking is conducted within or outside Hong Kong.

(a) United Kingdom (UK), Betting and Gaming Duties Act 1981

The Provision:

Section 9(1) of the Betting and Gaming Duties Act 1981 provides that any person who "conducts in [the UK] any business or agency for the negotiation, receipt or transmission of bets" (section 9(1)(a)) or "knowingly *issues, circulates or distributes* in [the UK] ... *any advertisement or other document inviting or otherwise relating to the making of such bets*" (section 9(1)(b))

shall be guilty of an offence. Section 9(2) makes the prohibitions in section 9(1) applicable to all bets placed with a bookmaker outside the UK, with some exceptions.

(b) *US Federal Legislation, the Travel Act (Section 1952, Title 18, US Code)*

The Provision:

The Travel Act holds criminally liable anyone who "travels in interstate or foreign commerce or use the mail or any facility in interstate and foreign commerce, with intent to ... *promote*, manage, establish, carry on, or *facilitate* the promotion, management, establishment, or carrying on, of any unlawful activities." An unlawful activity is defined as including any business enterprise involving *gambling*."

(c) *US Federal Legislation, the Interstate Transportation of Wagering Paraphernalia Act (Section 1953, Title 18, US Code)*

The Provision:

The Interstate Transportation of Wagering Paraphernalia Act prohibits individuals or entities from "knowingly *carrying or sending* in interstate or foreign commerce any *record, paraphernalia, ... or other device...* to be used, ... or designed for use" in unauthorized gambling. A broad interpretation could include the website or software necessary to place wagers online that is shipped by companies to their potential customers.

(d) *Canada, Criminal Code*

The Provision:

Section 202(h) of the Criminal Code makes it illegal for anyone who "*advertises, prints... or otherwise gives notice of any offer, invitation or inducement to bet on, to guess or to foretell the result of a contest, or a result of or contingency relating to any contest*".

(e) *Australia State Legislation*

The Provision:

- (i) Section 30 of the Racing Administration Act 1998 of **New South Wales** makes it illegal for any person other than a licensed bookmaker to *publish an advertisement* that is designed to induce a person to obtain betting information or that invites any person to make a bet.
- (ii) Section 16(2) of the Interactive Gambling (Player Protection) Act of **Queensland** contains a broad prohibition on any person in Queensland from participating in, *encouraging or facilitating participation* by another in an interactive game knowing that the game is not an authorized game. A similar restriction is contained in section 14(2) of the Interactive Gambling act of the **Australian Capital Territory**.

(f) *France, 2nd June 1891 Law*

The Provision:

Articles 4 to 6 of the 2nd June 1891 Law charge with complicity any person by means of whom illegal bets are received. This includes *intermediaries, agents who receive stakes or any person who would facilitate, under any form, the exploitation of bets*.

Prosecution Cases:

- (i) In the UK, the English Court of Appeal held in the case Victor Chandler International Limited v Customs & Excise Commissioners [2000] that Victor Chandler International's proposals to broadcast advertisements and odds on Teletext, a UK broadcast company, for viewing on TV in the UK by direct electronic transmission from a terminal in Gibraltar would constitute a breach of the prohibition in section 9(1)(b) of the Betting and Gaming Duties Act 1981 (see (a) above).
- (ii) In France in 1994, an executive officer of 2 companies having their registered offices outside France (Guernsey and London), was convicted of organising an illegal lottery in France by inviting the public to send sums of money to England to participate in gambling. The French court held that even the residence of the accused and other related addressees were not in the French territory, it could exercise competent jurisdiction.