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URGENT BY FAX

30 October, 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 26 October 2001

Thank you for your letter dated 29 October 2001 enclosing the draft minutes of the captioned meeting. Our response to the points raised by Members at the meeting is set out below.

Clause by clause examination of the Bill

Section 2 – Interpretation

(a) Why “by way of trade or business” is not incorporated in the definition of “betting slip”

The expression “betting slip” was defined in the Gambling

Ordinance for the purposes of the definition of “gambling equipment”¹, and a presumption (which was subsequently repealed) that the possession of two or more betting slips was sufficient of sustaining a charge of assisting in bookmaking. The expression “betting slip” is also relevant to the provisions in section 23 which permits the Police to seize and detain any gambling equipment including betting slips. If the definition of “betting slip” was to include “the soliciting, receiving, negotiating or settling of a bet” *by way of trade or business*, this may mean the Police could not seize or detain a “betting slip” (as gambling equipment) under section 23(2)(d) without first establishing that the slip was actually used “by way of trade or business”. This would create an unnecessary hurdle for law enforcement in particular the collection of evidence.

(b) Police’s powers to enter and search the premises of the description under section 16A

Section 23 of the existing Gambling Ordinance empowers the Police to enter and search any premises suspected to be a gambling establishment. The Gambling (Amendment) Bill 2000 proposes the creation of two new sections, sections 16A and 16B, to deal with premises used for promoting or facilitating bookmaking. A reference to such premises was also incorporated into the definition of “gambling establishment”, thereby conferring on the Police the powers under section 23 to enter and search sections 16A and 16B premises.

In the latest CSAs proposed by the Administration, sections 16A and 16B have been merged and taken out from the definition of “gambling establishment”, as it may not be entirely appropriate to define the former as “gambling establishments” (premises opened, kept or used for the purposes of or in connexion with unlawful gambling or unlawful lottery). However, a consequence is that the powers conferred on the Police under section 23 will no longer apply to the section 16A premises. This will unduly restrict the Police’s enforcement actions against such premises and the activities therein. There is therefore a need to create a section similar to the existing section 23 to provide the Police with similar powers in respect of the section 16A premises. An alternative way is to revert to the original formulation by reinserting section 16A premises into

¹ “Gambling equipment” is defined in the Ordinance as to “include playing cards, dice, balls, ... betting slips, lottery tickets and any other thing which is devised or used or maintained in or for the purposes of or in connection with gambling or the operation of a gambling establishment.

the definition of “gambling establishment”. We are considering the merits of these two approaches and are prepared to listen to Members’ views.

Section 7: Bookmaking and section 8: Betting with a bookmaker

(a) to (e): Drafting of sections 7 and 8

Some Members have enquired about the rationale behind the use of the terms “transaction”, “took place or is to take place”, “were or will be outside Hong Kong” and “where there is evidence” in sections 7 and 8.

Section 7(1A)(b) provides an exemption to the section 7 offence. In order for a bookmaker to be exempted from section 7, the whole bookmaking transaction, i.e. all of the four limbs, namely, soliciting, receiving, negotiating and settling of a bet, have to be conducted outside Hong Kong and the parties to the transaction (including the bookmaker and the punter) have to be outside Hong Kong at the time of the bookmaking. In other words, if any one of the four limbs is conducted in Hong Kong, there can be no exemption.

As section 7(1A)(b) requires that all the four limbs of bookmaking have to be conducted outside Hong Kong, it is possible that some of the limbs have taken place while the other have not. For example, a bookmaker could have solicited from and negotiated a bet with a punter but has not yet received the bet from or settle the bet with him. The formulation “is to take place, as the case may be” in sub-section (b)(i) is thus necessary to cater for those limbs of a bookmaking transaction which have not yet taken place. Similarly, the term “were or will be outside Hong Kong” in section 7(1A)(b)(ii) is necessary to cover acts that may have taken place (where the parties were outside Hong Kong) and those that have not yet taken place (where the parties will be outside Hong Kong).

The phrase “where there is evidence” is consistent:

- (i) with the definition of “betting slip” (... evidences the soliciting ...);
 - (ii) with the definition of “ticket” (... evidences the claim ...);
- and

- (iii) in the presumption section, with section 19 as amended by the Bill (see clause 9 of the Bill) "... where there is evidence that ..." and "unless there is evidence that ..."

It is the prosecution's responsibility to prove that a particular gambling act is unlawful. The term "where there is evidence that" in sections 7(1A)(b) and 8(2)(b) implies that a defendant can adduce evidence to show that he/she is entitled to the exemption provided under the sections.

Some Members have also raised questions on the coverage of "competition, race, event or contest" in section 7(1A)(a)(ii) of the Bill as amended by the latest CSAs. The intention is to make clear that the controls imposed by the section apply, not only to horse, pony or dog races but also to any competition, race, event or contest (and no matter whether it is held within or outside Hong Kong). *Anything* in respect of which bookmaking is carried on by way of trade or business is covered.

Section 21: Disconnexion of telephone service

We will soon provide a written response to the points made in the submission of the Hong Kong CSL Limited. We are also considering the points raised by Members at the last Bills Committee meeting including the proposal to restrict section 21 to those provisions relating to the disconnection of telephone service provided to the premises used in or in connexion with the commission of the specified gambling offence and those provided to the defendant. We will also consult the Judiciary Administrator to find out if there are statistics on court orders issued under section 21 of the Gambling Ordinance.

Justifications for the newly proposed CSAs

Our letter to the Bills Committee on 24 October 2001 enclosed a set of latest CSAs proposed by the Administration. The CSAs contains some changes to the CSAs presented to the Bills Committee in our letter of 18 July 2001. The majority of these changes concern sections 16A and 16E. Most of them seek to improve the description of the acts to be regarded as promoting or facilitating bookmaking so as to ensure that the "knowledge" element is put in place so that a person who did the prescribed act would not be caught unless it is proved that he did so knowingly and, at the same time, not to create unnecessary hurdles for the prosecution. Others are textual changes aiming to streamline the

drafting. We will elaborate further should Members require explanation on any individual amendments.

I should be grateful if you would kindly convey the above information to Members. The officers attending the meeting of the Bills Committee on 1 November 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. Tsang Wai-hung	Chief Superintendent of Police (OCTB),
Mr. Llewellyn Mui	Senior Government Counsel, Legal Policy Division
Ms. Mabel Cheung	Government Counsel, Bilingual Drafting Unit, Law Drafting Division, and
Mr. Vic Yau	Assistant Secretary for Home Affairs (5)1.

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)
C of P (Attn.: Mr. Andy Tsang)