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URGENT BY FAX

26 November, 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 1 November 2001

Thank you for your letter dated 3 November 2001 enclosing the draft minutes of the captioned meeting. Our response to the points raised by Members at the meeting is set out below.

Section 7: Bookmaking

(a) and (c): Policy intent and drafting of the proposed amendments to section 7

The policy intent of the amended section 7 is to criminalize a bookmaking act if at least one part of the bookmaking process takes place in Hong Kong or if the bettor who places the bet with the bookmaker is in Hong Kong.

We are considering the comments made by some Members over the drafting of section 7(1A), which involves certain complex legal issues. We will propose amendments as necessary.

(b) Offering casino chips to Hong Kong people for gambling outside Hong Kong

Some Members enquired at the last meeting whether the offer of casino chips at discounted rates in Hong Kong to attract Hong Kong people to travel outside Hong Kong to bet would commit an offence under the amended section 7. Under section 2 of the Gambling Ordinance, “bookmaking” means “the soliciting, receiving, negotiating or settling of *a bet...*”. To establish an offence under section 7, the prosecution has to prove that *a particular bet* has been solicited, negotiated, etc. It does not, prima facie, appear that a person offering casino chips to a prospective customer as in the above example is soliciting “a particular bet”. That said, the legality of a certain act would depend on the facts and evidence of the case.

Section 16A: Operating premises or places for promoting or facilitating betting on horse races, etc.

(a) Opening overseas bank account through a financial institution in Hong Kong for cross-border gambling purposes

Some Members enquired whether opening or holding an overseas bank account through a local branch of the bank or financial institution which is used for settling gambling transactions with an offshore bookmaker would contravene the proposed section 16A. Section 16A deals with the operation of premises for promotion or facilitation of bookmaking and therefore does not cover the above-mentioned acts (i.e. opening or holding of accounts). However, a person who knowingly operates in Hong Kong premises where services for opening or holding an overseas bank account for settling cross-border gambling transactions are provided, would likely commit an offence under section 16A.

(b) Drafting of the new section 16A

We are considering Members’ comments on how to further

improve the drafting of the section to facilitate reading.

(c) Adding the notion of “maintaining an account” to section 16A(2)(b)(vi)

We agree to a Member’s suggestion to add the notion of “maintaining an account” to section 16A(2)(b)(vi). This has been reflected in the proposed CSAs attached. The same has been added to section 16E(1A)(b)(vi).

(d) The impact of adding the word “knowingly” to section 16A(1) on prosecution of other similar offences

The word “knowingly” is used in some Ordinances to specify a requirement for prosecution and having regard to the relevant contexts of legislation. The addition of the word “knowingly” to section 16A(1) should not have any impact on prosecution of other similar offences (e.g. operation of vice establishments) because the contexts in which the word appears are different from one another.

Section 16C: Responsibility of owners, tenants, etc.

(a) Reasonableness of the maximum penalty

The levels of maximum penalty under section 16A (on operating premises for promoting or facilitating betting) and section 16C (on responsibility of owners, etc. of section 16A premises) are in line with those under section 5 (on operation of a gambling establishment) and section 15 (on responsibility of owners, etc. of a gambling establishment) respectively.

Until 1990, the same maximum penalty, both in terms of the level of fine (\$500,000) and years of imprisonment (2 and 7 years), was imposed on offences under sections 5 and 15. In 1990, amendments were made to section 5 of the Ordinance to increase the maximum level of fine from \$500,000 to \$5,000,000 to enhance the deterrent effect against the operation of gambling establishments. The maximum years of imprisonment remained unchanged. As a result of this conscious decision taken by the Administration and agreed by the legislature, there has been a difference in the maximum levels of fine under sections 5 and 15. As the

proposed section 16A is similar in nature to section 5 and the proposed section 16C to section 15, we consider it reasonable to adopt the same maximum levels of penalty respectively. The disparity between the maximum penalty levels under sections 16A and 16C should be considered in this perspective.

Section 21: Disconnexion of telephone service

We have considered some Members' concerns over the effectiveness of section 21(1)(c) in today's world and CSL's concerns over the enforcement of the court orders made under this sub-section. Our response is as follows:

- (i) in view of the concerns over the effectiveness of the measure to prohibit the provision of future telephone services to a convict by the concerned telephone service provider, we will delete section 21(1)(c) and propose CSAs shortly;
- (ii) regarding CSL's enquiry about the details that would be included in a order, we have consulted the Judiciary Administrator and understand that both the name and the ID number of the defendant to whom the order applies will be specified in the order;
- (iii) as regards CSL's suggestion to specifically exclude mobile telephone services from section 21(1)(a) (on disconnexion of telephone service to premises), we do not consider this necessary because mobile telephone services are normally not provided to premises;
- (iv) we do not intend to require telephone service providers to disconnect "pre-paid" mobile telephone service provided to convicts, because a service provider has no knowledge of the purchaser's identity when, say, a pre-paid SIM-card is sold to a person. Without this knowledge, a telephone service provider would not be considered as disobeying the court order (or be charged of criminal contempt of court) even if it failed to terminate the pre-paid telephone services provided to the convict; and

- (v) we have no fundamental problem with CSL's request for a "grace period" following the enactment of the Bill for telephone service providers to conduct the necessary system upgrading (which may or may not be necessary if section 21(1)(c) is deleted). We will consult them further on the matter.

As requested by Members, we have approached the Judiciary Administrator for statistics on the number of court orders issued under section 21. He has advised that such information has not been kept.

Other proposed CSAs

In addition to the amendments proposed to sections 16A(2)(b)(vi) and 16E(1A)(b)(vi) mentioned above, we have, as foreshadowed in previous discussions, proposed to add a new section alongside the existing section 23 (search of suspected gambling establishment). The new section 23A serves to provide the Police with the necessary powers to enter and search premises suspected to have been or being used for promoting and facilitating bookmaking (i.e. section 16A premises). The rationale was set out in our letter to the Bills Committee dated 30 October 2001.¹ The powers conferred on the Police and the conditions under which such powers can be invoked are essentially the same as those under the existing section 23.

I should be grateful if you would kindly convey the above information to Members. The officers attending the meeting of the Bills Committee on 26 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

¹ Section 23 of the existing Ordinance empowers the Police to enter and search any premises suspected to be a gambling establishment. The Gambling (Amendment) Bill 2000, by incorporating premises for promotion or facilitation of betting (i.e. premises described under the original sections 16A and 16B) into the definition of "gambling establishment", makes section 23 applicable to sections 16A and 16B premises. As sections 16A and 16B have been merged and taken out from the definition of "gambling establishment", we need to create specific provisions to confer the same powers under section 23 on the Police to facilitate their enforcement actions against premises for promoting or facilitating betting and the activities therein.

Mr. Tsang Wai-hung Home Affairs(5),
Mr. Gavin Shiu Chief Superintendent of Police (OCTB),
 Senior Government Counsel,
 Prosecutions Division,
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)
 ALA/LegCo (Attn.: Mr. Stephen Lam)