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Ms. Kitty Cheng
Assistant Legal Adviser
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Ms. Cheng,

**Bills Committee on
Gambling (Amendment) Bill 2000**

Meeting on 10 April 2002

I refer to our teleconversation on 12 April 2002 in which you asked us for a response to a Member's comment expressed at the above Bills Committee meeting that the offence of "betting with a bookmaker" (section 8) should be deleted from the *existing* Gambling Ordinance and the Bill.

Our existing gambling policy

The Government's long-standing gambling policy is to *restrict gambling opportunities to a limited number of authorized and regulated outlets only*. The rationale behind this policy is two-fold:

- a) Whilst it would not be practicable to prohibit gambling altogether, allowing gambling to be conducted in an

uncontrolled and unregulated manner would give rise to a host of social problems and provide a lucrative source of income for triad and criminal activities. It is thus a balanced approach to allow only authorized and regulated gambling to take place.

- b) Since it is impossible to reconcile the differences in the community regarding the extent to which authorized and regulated gambling outlets should be allowed to exist, it is a compromise approach to allow only a limited number of authorized outlets in Hong Kong. The main purpose of these outlets is to satisfy substantial and persistent public demand for gambling which would otherwise turn to unauthorized or illegal operators, hence giving rise to serious social and law and order problems.

In a nutshell, our established gambling policy strikes a balance between the need to meet the demand for gambling and the need to minimize the negative impact of gambling. This policy is underpinned by the existing Gambling Ordinance which stipulates that all gambling activities are illegal unless expressly exempted under the Ordinance (mainly gambling on social occasions not conducted by way of trade or business), licensed by the Commissioner of Television and Entertainment Licensing, or authorized by the Betting Duty Ordinance. “Gambling” is defined under the Gambling Ordinance to include gaming, betting and bookmaking.

The results of the public consultation exercise on the Gambling Review conducted in mid-2001 indicate that there is general public support (around 92% of those who commented on this issue expressed support) for maintaining the existing gambling policy.

Effects of deleting section 8 from the Gambling Ordinance

To delete section 8 from the Ordinance would effectively allow anyone to bet in Hong Kong with any unauthorized bookmakers lawfully. In other words, this would decriminalize all forms of betting activities. As “betting” is part and parcel of any gambling transaction, this represents a major and fundamental departure from our existing gambling policy, as there would no longer be any restriction on gambling opportunities in Hong Kong as far as betting by the punters are concerned. This would

also amount to a substantial relaxation of our long established statutory restrictions on gambling activities in Hong Kong under the Ordinance.

The deletion of the offence of betting with a bookmaker in section 8 of the Gambling Ordinance would substantially reduce the scope of, and the overall effectiveness of the Ordinance in tackling and combatting unlawful bookmaking activities, for the following reasons:

- a) The existing sections 7 and 8 of the Ordinance, which criminalize “unauthorized bookmaking” (the “bookmaking offence”) and “betting with an unauthorized bookmaker”(the “betting offence”) respectively, function as a whole. The “betting offence” is a necessary and indispensable part because both the bookmaker and the bettor are immediate parties to any single illegal gambling transaction. Indeed, in most cases, it is the betting part which makes the illegal bookmaking transaction possible or completes the bookmaking transaction.

Without the “betting offence”, prosecutions against the unauthorized bookmaking activities on the basis of the “bookmaking offence” alone will become considerably more difficult. This is especially so in cases where bettors caught under the “betting offence” could become prosecution witnesses against the bookmaker, and where bookmakers lay off some of the bets received to other bookmaking syndicates (i.e. bet with other bookmakers) in order to reduce their risks.

- b) The removal of the “betting offence” in section 8 would have major implications on the operation of the Gambling Ordinance. For example, the existing section 3 provides that all gambling (defined as including gaming, *betting* and bookmaking) are unlawful except for those authorized or exempted under the circumstances prescribed under the section. If section 8 is deleted and betting is made lawful, the “betting” element would have to be taken out from the definition of “gambling” in order to be consistent. This would substantially narrow the scope of other terms in the Ordinance which are defined with reference to “gambling” or “unlawful gambling”, such as “gambling establishment”

(premises kept or used for the purpose of unlawful gambling). Accordingly, the effectiveness of the relevant offence provisions would also be reduced. For example, proving an offence under section 5, which prohibits operation of gambling establishments, would become more difficult. It would also be more difficult to prove and tackle unlawful gambling in public places (prohibited under section 13), as the gamblers would commit no offence.

Both bookmaking and betting activities would become more widespread in Hong Kong as a result of deleting the “betting offence” in section 8 of the Ordinance. This is because since all betting activities in Hong Kong would effectively be decriminalized, anyone in Hong Kong would be able to bet lawfully with any unauthorized bookmaker. This would fuel the growth of illegal bookmaking activities, criminal activities associated with bookmaking, including loan sharking, intimidation and money laundering, as well as triad and criminal operations. As unauthorized gambling opportunities are invariably accessible to underage persons, and with credit betting and unlimited round-the-clock betting facilities, the “decriminalizing” of betting activities would aggravate the social and behavioural problems arising from gambling, including pathological gambling.

This would also send a very negative message to the community that we are changing our gambling policy by encouraging gambling (including unregulated bookmaking and betting) through decriminalizing betting. Repeal of section 8 would mean liberalising our existing gambling control regime. Without the “betting offence”, it is very likely that the number of people participating in illegal gambling will surge.

To sum up, section 8 is an offence provision essential in upholding the integrity of the gambling policy which is generally accepted by the public. Betting with an unauthorized bookmaker has been considered as participating in and sponsoring an illegal transaction which has a negative impact on our society, and has been an offence since the Gambling Ordinance was enacted in the 1970s. The offence helps to tackle and deter not only betting but also indirectly illegal bookmaking. To decriminalize betting with unauthorized bookmakers would fundamentally undermine the existing policy and would result in a surge in illegal

