

本局檔號 OUR REF : HAB/CR/1/17/93 Pt. 39
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URGENT BY FAX

7 May 2002

Mr. Stephen Lam
Assistant Legal Adviser
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Mr. Lam,

Gambling (Amendment) Bill 2000

Thank you for your letter dated 6 May 2002. Our response is as follows.

- (a) we have added “曾” before “參加該項競賽” in the Chinese text of clause 10 (on section 20) as suggested;
- (b) the heading of clause 3 (on section 5) should read “非法賭場”. Thank you for pointing it out;
- (c) we do not consider it necessary to add “用途” to the Chinese text of section 16C(1)(b)(iii). The meaning of “為投注而支付的按金” is clear;
- (d) we have considered your suggestion of amending section

16C(2) but concluded that the original version is clear in its meaning and could be adopted;

- (e) we have deleted the words “in or for or” appearing after “used” in section 23A(2)(d) to streamline the provision without affecting its scope. The Chinese text has been revised and streamlined accordingly;
- (f) we agree with you that clause 14(1)(a) should be deleted, now that we have decided not to delete section 5(c) to remove the “assisting” offence;
- (g) you enquired whether the amendments to sections 7, 9 and 13 necessitates a saving provision stating that proceedings being brought or to be brought in respect of offences committed before the commencement of the Bill, are not to be affected by the amendments. The general principle is that an offence should be tried according to the law at the time of the commission of the offence. Section 23 of the Interpretation and General Clauses Ordinance is relevant. We therefore do not consider that a saving provision is necessary.

We have also taken the opportunity to review the drafting of the proposed section 23A(1). In the latest set of CSAs presented to the Bills Committee, the subsection contains a reference to “bookmaking or betting with a bookmaker ... is promoted or facilitated in any premises”. However, it is unclear as to what “promoted or facilitated” refers to. The proposed section 16C sets out the activities which will be regarded as “promoting or facilitating of bookmaking or betting with a bookmaker” under sections 16A and 16B. It does not apply to section 23A. We therefore propose to further amend section 23A(1) to read “A police officer of or above the rank of superintendent may, if he reasonably suspects that *an offence under section 16B is being or has been committed in any premises or place*, authorize in writing any police officer to enter and search the premises or place” (changes in italics). “An offence under section 16B” refers to the offence of promoting or facilitating bookmaking or betting with a bookmaker. The scope of the proposed section 23A(1) as expressed by the new wording is essentially the same with that of the previous versions.

A revised set of CSAs, which reflects the changes mentioned above, is enclosed.

Yours sincerely,

(Ms Esther Leung)
for Secretary for Home Affairs

cc D of J (Attn.: Mr. Gilbert Mo
Mr. Stephen Wong
Mr. John Reading
Mr. Gavin Shiu
Mr. Llewellyn Mui
Ms. Mabel Cheung)
C of P (Attn.: Mr. Lo Mung-hung)
Clerk to Bills Committee (Attn.: Ms. Flora Tai)

GAMBLING (AMENDMENT) BILL 2000

COMMITTEE STAGE

Amendments to be moved by the Secretary for Home Affairs

- | <u>Clause</u> | <u>Amendment Proposed</u> |
|---------------|---|
| 1 | <p>By deleting the clause and substituting -</p> <p>"1. Short Title</p> <p>This Ordinance may be cited as the Gambling (Amendment) Ordinance 2002."</p> |
| 2 | <p>By deleting everything after "(Cap. 148) is" and substituting "amended, in the definition of "bookmaking", by adding "or on-line medium (including the service commonly known as the Internet)" after "telegram"."</p> |
| 3 | <p>By deleting the clause and substituting -</p> <p>"3. Unlawful gambling establishments</p> <p>Section 5(b) is amended by adding "以其他方式" before "控"." where it twice appears."</p> |
| 4 | <p>In paragraph (b), by deleting the proposed new subsection (1A) and substituting -</p> <p>"(1A) Any person who engages in bookmaking, whether on one occasion or more than one occasion by receiving,</p> |

negotiating or settling outside Hong Kong bet -

- (a) which is placed from Hong Kong; or
- (b) placed by a person who is in Hong Kong when the bet is place,

commits an offence and is liable -

- (i) on summary conviction to a fine of \$5,000,000 and to imprisonment for 2 years; or on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 7 years." .

5 By deleting the clause and substituting -

"5. Betting with a bookmaker

Section 8 is amended -

- (a) in paragraph (c), by repealing the full stop and substituting a comma;
- (b) by adding "whether the bet is received within or outside Hong Kong." after paragraph (c)."

New By adding -

"6A. Selling lottery tickets

Section 10(a) and (b) is amended by adding "以其他方式" after "或" where it twice appears."

8 By deleting the proposed Part IIIA and substituting -

"PART IIIA

OPERATING PREMISES OR PLACES FOR PROMOTING OR
FACILITATING BOOKMAKING, ETC., PROMOTING
OR FACILITATING BOOKMAKING, ETC. AND
RESTRICTION ON BROADCASTING OF
TIPS, ETC.

**16A. Operating premises or
place for promoting
or facilitating
bookmaking, etc.**

(1) No person shall knowingly operate, manage or otherwise have control of or assist in the operation, management or other control of any premises or place where, whether on one or more than one occasion, bookmaking or betting with a bookmaker (except bookmaking or betting which is lawful by virtue of section 3(8)) is promoted or facilitated.

(2) Subsection (1) shall not apply if the bet in question -

(a) can only be placed; or

(b) is placed,

by a person outside Hong Kong.

(3) Any person who contravenes subsection (1) commits an offence and is liable -

(a) on summary conviction to a fine of
\$5,000,000 and to imprisonment for 2
years; or

- (b) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 7 years.

16B. Promoting or facilitating bookmaking, etc.

(1) No person shall knowingly promote or facilitate bookmaking or betting with a bookmaker (except bookmaking or betting which is lawful by virtue of section 3(8)).

(2) Subsection (1) shall not apply if the bet in question -

- (a) can only be placed; or
- (b) is placed,

by a person outside Hong Kong.

(3) Any person who contravenes subsection (1) commits an offence and is liable -

- (a) on summary conviction to a fine of \$5,000,000 and to imprisonment for 2 years; or
- (b) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 7 years.

16C. General provisions relating to sections 16A and 16B

(1) For the purposes of section 16A(1),

bookmaking or betting with a bookmaker is promoted or facilitated if -

(a) advertisements to promote bookmaking or betting with a bookmaker are exhibited, disseminated or distributed; or

(b) service in any of the following forms is made available -

(i) receipt of a bet as an agent whether the bet is ultimately received by the bookmaker within or outside Hong Kong;

(ii) transmission of a bet;

(iii) receipt of a deposit paid wholly or partly for the purpose of betting;

(iv) transmission of a deposit referred to in subparagraph (iii);

(v) transmission of winnings on a bet; or

(vi) arrangement for opening or maintaining of an account wholly or partly for the purpose of betting,

and in section 16B(1), "promote or facilitate bookmaking or betting with a bookmaker" shall be construed accordingly.

(2) A person may be convicted of an offence under section 16A or 16B in relation to a set of facts notwithstanding that no person is convicted of an offence under section 7 or 8 in relation to the same set of facts.

16D. Responsibilities of owners, tenants, etc. for act prohibited under section 16A

(1) No person shall -

- (a) being the owner, tenant, occupier or person in charge of any premises or place, knowingly permit or suffer such premises or place or any part thereof to be used as premises or place mentioned in section 16A(1); or
- (b) let or agree to let, whether as principal or agent, any premises or place with the knowledge that such premises or place or any part thereof is to be used as premises or place mentioned in section 16A(1).

(2) Any person who contravenes subsection (1) commits an offence and is liable -

- (a) on summary conviction to a fine of \$500,000 and to imprisonment for 2 years; or
- (b) on conviction on indictment to a fine of

\$500,000 and to imprisonment for 7 years.

16E. Restriction on broadcasts of forecasts, hints, odds or tips as to results of horse, pony or dog races

(1) No person shall, for the purposes of dissemination or distribution in Hong Kong to the public or a section of the public, broadcast any forecast, hint, odds or tip relating to guessing or foretelling the result of, or contingency regarding any horse, pony or dog race at any time within 12 hours before the conduct of that race.

(2) Subsection (1) -

(a) shall apply whether the race in question is or is to be conducted within or outside Hong Kong;

(b) shall not apply in relation to any race on which totalizator or pari-mutuel betting is conducted with a permission given under section 3 of the Betting Duty Ordinance (Cap. 108);

(c) shall not apply in relation to any race which is or is to be conducted as part of any event which is specified by notice published in the Gazette by the Secretary for Home Affairs for the purposes of this

paragraph.

(3) Any person who contravenes subsection (1) commits an offence and is liable -

(a) on summary conviction to a fine of \$1,000,000 and to imprisonment for 2 years; or

(b) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years.

(4) A notice published under subsection (2)(c) is not subsidiary legislation.

(5) In proceedings for an offence under this section, it shall be a defence for the accused to show that he used all due diligence and took all reasonable precautions to avoid the commission of the offence.

(6) In this section, "broadcast" (廣播) means -

(a) broadcasts by means of a broadcasting service as defined in section 2(1) of the Broadcasting Ordinance (Cap. 562); or

(b) broadcasts by transmitting sound for general reception by means of radio waves under and in accordance with a licence granted under section 13C of the Telecommunications Ordinance (Cap. 106),

but does not include broadcasts, by any means, of news or any remarks, observations or comments in relation to

such news.

**16F. Consent to prosecution under
this Part**

(1) No prosecution for an offence under this Part shall be instituted without the consent in writing of the Secretary for Justice.

(2) Subsection (1) shall not prevent -

(a) the arrest of a person for;

(b) the issue of a warrant for the arrest of a person for; or

(c) remand in custody of a person charged with,

any offence under this Part."

10(b) In the proposed section 20(2), by adding "曾" before "參加該" in the proposed section 20(2).

11 By deleting the clause and substituting -

"11. Disconnexion of telephone service

Section 21 is amended -

(a) by repealing subsection (1)(c);

(b) in subsections (1) and (2), by repealing "Hong Kong Telephone Company Limited" wherever it appears and substituting "telecommunications service provider";

(c) in subsection (2), by repealing "the

Company" and substituting "the telecommunications service provider";

- (d) in subsection (3), by repealing "Company" and substituting "telecommunications service provider";

- (e) by adding -

"(4) In this section, "telecommunications service provider" (電訊服務提供者) means a licensee as defined in section 2(1) of the Telecommunications Ordinance (Cap. 106).".".

New The following is added -

"11A. Search of suspected gambling establishments

Section 23(2)(e)(ii) is amended by adding "以其他方式" before "控" where it twice appears.

11B. Section added

The following is added -

"23A. Search of premises or place for promoting or facilitating bookmaking, etc.

(1) A police officer of or above the rank of superintendent may, if he reasonably suspects that

an offence under section 16B is being or has been committed in any premises or place, authorize in writing any police officer to enter and search the premises or place.

(2) A police officer to whom an authorization is issued under subsection (1), and any other police officer acting under his direction, may -

- (a) enter, by force if necessary, the premises or place specified in the authorization and search the same;
- (b) arrest any person who is found in such premises or place or who escapes from such premises or place;
- (c) search any person who is found in such premises or place or who escapes from such premises or place;
- (d) seize and detain any thing found in such premises or place or found on any person in such premises or place or found on any person who escapes from such premises or place, which is being or has been used in connexion with an act prohibited by section 16A or 16B; and
- (e) seize and detain any money -

- (i) being -
 - (A) money paid pursuant to a bet with a bookmaker;
 - (B) winnings on such a bet; or
 - (C) a deposit paid wholly or partly for the purpose of such a bet;
- (ii) found on any person operating, managing or otherwise controlling such premises or place or on any person assisting in the operation, management or other control of such premises or place; or
- (iii) found on any person found in such premises or place where entry under paragraph (a) is prevented, obstructed or delayed.

(3) No person shall be searched under this section except by a person of the same sex.

(4) Any person who obstructs any police officer authorized under subsection (1) or any other police officer acting under his direction from entering the premises or place specified in the authorization commits an offence and is liable on conviction to a fine of \$50,000 and to imprisonment for 2 years.

(5) Where a person delays the entry of any police officer referred to in subsection (4) into any premises or place so referred to, he shall be presumed, until the contrary is proved, to have delayed entry for the purpose of obstructing such police officer from entering such premises or place."."

13 By deleting the clause and substituting -

"13. Forfeiture

Section 26 is amended by adding "or is or represents the proceeds of or is derived from" after "with"."

New By adding -

"13A. Obstruction of police officers

Section 27 is amended by repealing "Any" and substituting "Subject to section 23(4) or 23A(4), any"."

14(1) (a) By deleting paragraph (a).

(b) By deleting "5,".

《2000年賭博(修訂)條例草案》

委員會審議階段

由民政事務局局長動議的修正案

條次

建議修正案

1 刪去該條而代以 —

“1. 簡稱

本條例可引稱為《2002年賭博(修訂)條例》。”。

2 刪去在“現予”之後的所有字句而代以“修訂，在“收受賭注”的定義中，廢除“或其”而代以“或聯機媒介(包括一般稱為電腦互聯網的服務)或以其”。”。

3 刪去該條而代以 —

“3. 非法賭場

第5條現予修訂，在兩度出現的“控”之前加入“以其他方式”。”。

4 在(b)段中，刪去建議的新訂的第(1A)條款而代以 —

“(1A) 任何人如藉在香港境外收取、商議或結清符合以下說明的賭注 —

(a) 賭注是從香港境內作出的；或

- (b) 由在作出該賭注的時間是在香港境內的人所作出的，

而一次或多次從事收受賭注，即屬犯罪 —

- (c) 一經循簡易程序定罪，可處罰款\$5,000,000及監禁2年；或

- (d) 一經循公訴程序定罪，可處罰款\$5,000,000及監禁7年。”。

5 刪去該條而代以 —

“5. 向收受賭注者投注

第8條現予修訂，在“投注”之後加入“(不論有關賭注是在香港境內或境外收取)”。

新條文 加入 —

“6A. 獎券活動彩票的出售

第10條現予修訂，在兩度出現的“或”之後加入“以其他方式”。

8 刪去建議的第IIIA部而代以 —

“第IIIA部

營辦處所或場所作推廣或便利收受賭注等
用途、推廣或便利收受賭注等
及限制廣播提示等

16A. 營辦處所或場所作推廣或便利 收受賭注等用途

(1) 任何人均不得明知而營辦、管理或以其他方式控制，或協助營辦、管理或以其他方式控制曾一次或多於一次用於推廣或便利收受賭注或向收受賭注者投注(但憑藉第3(8)條屬合法的收受賭注或投注則除外)的處所或場所。

(2) 第(1)款在以下情況下不適用 —

- (a) 有關賭注是只能由在香港境外的人作出的；或
- (b) 有關賭注是由在香港境外的人作出的。

(3) 任何人違反第(1)款，即屬犯罪 —

- (a) 一經循簡易程序定罪，可處罰款\$5,000,000及監禁2年；或
- (b) 一經循公訴程序定罪，可處罰款\$5,000,000及監禁7年。

16B. 推廣或便利收受賭注等

(1) 任何人不得明知而推廣或便利收受賭注或向收受賭注者投注(但憑藉第3(8)條屬合法的收受賭注或投注則除外)。

(2) 第(1)款在以下情況下不適用 —

- (a) 有關賭注是只能由在香港境外的人作出的；或
- (b) 有關賭注是由在香港境外的人作出的。

(3) 任何人違反第(1)款，即屬犯罪 —

- (a) 一經循簡易程序定罪，可處罰款\$5,000,000及監禁2年；或
- (b) 一經循公訴程序定罪，可處罰款\$5,000,000及監禁7年。

16C. 關於第16A及16B條的一般條文

(1) 就第16A(1)條而言，如有以下情況，即屬推廣或便利收受賭注或向收受賭注者投注 —

- (a) 有推廣收受賭注或向收受投注者投注的廣告被展示、分發或散布；或
- (b) 有以下形式的服務提供 —
 - (i) 以代理人身分收取賭注(不論該賭注最終是由收受賭注者在香港境內或境外收取亦然)；
 - (ii) 傳轉賭注；

- (iii) 收取全部或部分為投注而支付的按金；
- (iv) 傳轉第(iii)節提述的按金；
- (v) 傳轉就賭注而贏取的收益；或
- (vi) 安排開設或維持全部或部分作投注用途的帳戶，

而在第16B(1)條中，“推廣或便利收受賭注或向收受賭注者投注”須據此解釋。

(2) 即使沒有人被裁定就某一組事實犯第7或8條所訂的罪行，仍可裁定某人就同一組事實犯第16A或16B條所訂的罪行。

16D. 擁有人、租客等就第16A條所禁止的作為須負的責任

(1) 任何人 —

- (a) 如身為任何處所或場所的擁有人、租客、佔用人或管理人，則不得明知而准許或容受該處所或場所或其任何部分被用作第16A(1)條所述的處所或場所；或

- (b) 不得在知悉有關處所或場所或其任何部分將會被用作第16A(1)條所述的處所或場所的情況下，以主事人或代理人身分出租或同意以該等身分出租該處所或場所。

(2) 任何人違反第(1)款，即屬犯罪 —

- (a) 一經循簡易程序定罪，可處罰款\$500,000及監禁2年；或
- (b) 一經循公訴程序定罪，可處罰款\$500,000及監禁7年。

16E. 限制廣播馬匹、小馬或狗隻 競賽結果的預測、示意、 賠率或提示

(1) 任何人不得為在香港向公眾人士或某部分公眾人士散布或分發的目的，在任何馬匹、小馬或狗隻競賽舉行前12小時內，廣播任何關於猜測或預計該競賽的結果或可能就該競賽發生的事宜的預測、示意、賠率或提示。

- (2) (a) 不論有關的競賽在或將會在香港境內或境外舉行，第(1)款均適用。
- (b) 如有電算機投注或彩池投注在根據《博彩稅條例》(第108章)第3條給予的准許下就有關的競賽舉行，則第(1)款並不就該競賽而適用。

- (c) 凡民政事務局局長為本段的目的藉刊登於憲報的公告指明某項活動，則第(1)款並不就作為或將會作為該項活動一部分而舉行的競賽而適用。

(3) 任何人違反第(1)款，即屬犯罪 —

- (a) 一經循簡易程序定罪，可處罰款\$1,000,000及監禁2年；或
- (b) 一經循公訴程序定罪，可處罰款\$1,000,000及監禁7年。

(4) 根據第(2)(c)款刊登的公告不是附屬法例。

(5) 在就本條所訂罪行而進行的法律程序中，被控人如證明他已盡一切應盡努力及已採取一切合理措施以避免犯該罪行，即可以此作為免責辯護。

(6) 在本條中，“廣播”(broadcast)指 —

- (a) 透過《廣播條例》(第562章)第2(1)條所界定的廣播服務進行的廣播；或
- (b) 根據並按照《電訊條例》(第106章)第13C條批給的牌照，透過無線電波將聲音發送以供公眾接收的廣播，

但不包括透過任何途徑所作的新聞廣播，或透過任何途徑所作的新聞評註、新聞論述或新聞評論廣播。

16F. 同意在本部下檢控

(1) 未得律政司司長書面同意，不得就本部所訂罪行提出檢控。

(2) 第(1)款並不阻止 —

- (a) 就本部所訂罪行逮捕任何人；
- (b) 發出逮捕令以就本部所訂罪行逮捕任何人；或
- (c) 將被控以本部所訂罪行的人還押羈留。”。

10 在(b)段中，在建議的第20(2)條中，在“參加該”之前加入“曾”。

11 刪去該條而代以 —

“11. 電話服務的截斷

第21條現予修訂 —

- (a) 在第(1)款中，廢除(c)段；
- (b) 在第(1)及(2)款中，廢除所有“香港電話有限公司”而代以“電訊服務提供者”；
- (c) 在第(2)款中，廢除“該公司”而代以“該電訊服務提供者”；
- (d) 在第(3)款中，廢除“電話公司”而代以“電訊服務提供者”；

(e) 加入 —

“ (4) 在本條中， “電訊服務提供者” (telecommunications service provider)指《電訊條例》(第106章)第2(1)條所界定的持牌人。” 。

新條文 加入 —

“11A. 搜查懷疑為賭場的地方

第23(2)(e)(ii)條現予修訂，在兩度出現的“控”之前加入“以其他方式”。

11B. 加入條文

現加入 —

“23A. 搜查用於推廣或便利 收受賭注等用途 的處所或場所

(1) 警司或以上職級的警務人員，如合理地懷疑有人工在或已在任何處所或場所第 16B 條所訂罪行，可書面授權任何警務人員進入及搜查該處所或場所。

(2) 任何取得根據第(1)款發出的授權書的警務人員，以及任何受其指揮的其他警務人員，可 —

- (a) 進入或必要時強行進入授權書內指明的處所或場所，並加以搜查；
- (b) 逮捕任何被發現在該處所或場所內的人或逃離該處所或場所的人；
- (c) 搜查任何被發現在該處所或場所內的人或逃離該處所或場所的人；
- (d) 檢取及扣留在該處所或場所內被發現的正在或曾經用於與第 16B 條所禁制的作為有關的用途的物件，或在該處所或場所內的人身上發現或在逃離該處所或場所的人身上發現的該等物件；
- (e) 檢取及扣留 —
 - (i) 屬以下性質的金錢 —
 - (A) 依據向收受賭注者作出的賭注而支付者；

(B) 就賭
注而
贏取
的收
益；或

(C) 全部
或部
分爲
賭注
而支
付的
按
金；

(ii) 在營辦、管理
或以其他方式
控制該處
所或場所的
人身上發現
的金錢，或在
協助營辦、管
理或以其他方式
控制該
處所或場所
的人身上發
現的金錢；或

(iii) 在該處所或場所內被發現的人身上的金錢，而警務人員根據(a)段進入該處所或場所時曾遭阻止、阻撓或拖延。

(3) 根據本條對任何人作搜查，只可由與該人性別相同的人進行。

(4) 任何人如阻撓根據第(1)款獲授權的任何警務人員或阻撓任何受其指揮的其他警務人員進入授權書內指明的處所或場所，即屬犯罪，經定罪後，可處罰款\$50,000及監禁2年。

(5) 凡任何人拖延第(4)款所提述的任何警務人員進入該款所提述的任何處所或場所，則直至相反證明成立，須推定該人乃為阻撓該等警務人員進入該處所或場所而將他們拖延。”。

13 刪去該條而代以 —

“13. 沒收

第26條現予修訂，在“途，”之後加入“或為非法賭博或非法獎券活動或代表非法賭博或非法獎券活動的收益，或是得自非法賭博或非法獎券活動，”。

新條文 加入 —

“13A. 阻撓警務人員

第 27 條現予修訂，在“任”之前加入“除第 23(4)或 23A(4)條另有規定外，”。

14

在第(1)款中 —

(a) 刪去(a)段。

(b) 刪去“5、”。