

A BILL

To

Amend the Gambling Ordinance so as to further discourage and prevent unlawful gambling.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Gambling (Amendment) Ordinance 2000.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Home Affairs by notice published in the Gazette.

2. Interpretation

Section 2 of the Gambling Ordinance (Cap. 148) is amended---

(a) by repealing the definition "bookmaking" and substituting---

""bookmaking" (收受賭注) includes---

(a) 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;

(b) the organization, management or control of any act of the description mentioned in paragraph (a);"

(b) by repealing the definition "gambling" and substituting---

""gambling" (賭博) includes---

(a) betting;

(b) bookmaking;

(c) gaming;

(d) any activity of the description mentioned in section 16A(1)(a), (b), (c), (d) or (e);

(e) any activity of the description mentioned in section 16B(1)(a), (b) or (c);"

(c) by repealing the definition "gambling establishment" and substituting---

""gambling establishment" (賭場) includes---

(a) any premises or place, whether or not the public or a section of the public is entitled or permitted to have access thereto, opened, kept or used, whether on one occasion or more than one occasion, for the purposes of or in connexion with unlawful gambling or an unlawful lottery;

(b) any premises or place of the description mentioned in section 16A(1)(a), (b), (c), (d) or (e);

(c) any premises or place of the description mentioned in section 16B(1)(a), (b) or (c);".

3. Unlawful gambling establishments

Section 5 is amended---

- (a) in paragraph (a), by adding "or" at the end;
- (b) in paragraph (b), by repealing "; or" and substituting a comma;
- (c) by repealing paragraph (c).

4. Bookmaking

Section 7 is amended---

- (a) in subsection (1)---
 - (i) in paragraph (a), by adding "or" at the end;
 - (ii) in paragraph (b), by repealing "; or" and substituting a comma;
 - (iii) by repealing paragraph (c);

(b) by adding---

"(1A) Subsection (1)---

(a) shall apply whether or not---

(i) any bet that was made was solicited, received, negotiated or settled wholly or partly outside Hong Kong; or

(ii) any horse, pony or dog race or other event in respect of which the bet was or is to be made, was organized or took place or is to be organized or to take place, as the case may be, within or outside Hong Kong;

(b) shall not apply where there is evidence that---

(i) the transaction, namely, the bookmaking took place or is to take place, as the case may be, wholly outside Hong Kong; and

(ii) all of the parties to the transaction were or will be outside Hong Kong at the time that it took place or is to take place, as the case may be.";

(c) by repealing subsection (2).

5. Betting with a bookmaker

Section 8 is amended---

(a) by renumbering it as section 8(1);

(b) by adding---

"(2) Subsection (1)---

(a) shall apply whether or not---

(i) any bet that was made was solicited, received, negotiated or settled wholly or partly outside Hong Kong; or

(ii) any horse, pony or dog race or other event in respect of which the bet was or is to be made, was organized or took place or is to be organized or to take place, as the case may be, within or outside Hong Kong;

(b) shall not apply where there is evidence that---

(i) the bet was made or is to be made, as the case may be, wholly outside Hong Kong; and

(ii) both the person who made the bet and the bookmaker, were at the time that the bet was made, or will be at the time that it is to be made, as the case may be, outside Hong Kong."

6. Section substituted

Section 9 is repealed and the following substituted---

"9. Promoters of lotteries

Any person who promotes, organizes, conducts or manages, or otherwise has control of, an unlawful lottery 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."

7. Gambling in any place not being a gambling establishment or in a street

Section 13(1) is repealed and the following substituted---

"(1) Any person who operates or manages or otherwise controls unlawful gambling in any place whatsoever (not being a gambling establishment) whether or not the public have or are permitted to have access thereto, or in any street, commits an offence and is liable on conviction to a fine of \$50,000 and to imprisonment for 2 years."

8. Part added

The following is added---

"PART IIIA

Keeping Premises for Betting, etc., Restriction on Broadcasting, and Promoting or Facilitating Bookmaking

16A. Keeping premises for betting on horse, pony or dog races, etc.

(1) Save under and in accordance with the written permission of the Chief Secretary for Administration given under the Betting Duty Ordinance (Cap. 108), no person shall open, keep or manage or assist in the management of any premises or place opened, kept or managed, where, whether on one occasion or more than one occasion---

(a) cash-sweeps are conducted on horse, pony or dog races;

(b) chances are allocated in cash-sweeps that are conducted on horse, pony or dog races;

(c) totalizator or pari-mutuel betting is conducted on horse, pony or dog races;

(d) bets on horse, pony or dog races, whether for or in connexion with a cash-sweep or totalizator or pari-mutuel betting or otherwise, are solicited, received, negotiated or settled; or

(e) any activity which promotes or facilitates any activity of the description mentioned in paragraph (a), (b), (c) or (d) is carried on.

(2) Subsection (1) shall apply whether or not the horse, pony or dog races of the description mentioned in that subsection or, any transactions relating to them, are organized or take place or are to be organized or are to take place, as the case may be, within or 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. Keeping premises for competitions
on results of future events, etc.

(1) Save under and in accordance with the written permission of the Chief Secretary for Administration given under the Betting Duty Ordinance (Cap. 108) or under and in accordance with a licence granted by the Commissioner for Television and Entertainment Licensing under section 22 of this Ordinance, no person shall open, keep or manage or assist in the management of any premises or place opened, kept or managed, where, whether on one occasion or more than one occasion---

(a) competitions, for money or other property, involving the guessing or the estimating of the results of future events or of past events, the results of which are not generally known, are promoted, conducted or managed by way of trade or business;

(b) bets for or in connexion with competitions of the description mentioned in paragraph (a) are solicited, received, negotiated or settled; or

(c) any activity which promotes or facilitates any activity of the description mentioned in paragraph (a) or (b) is carried on.

(2) Subsection (1) shall apply whether or not the future events or the past events of the description mentioned in that subsection or, any transactions relating to them, are to take place or took place, as the case may be, within or 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. Responsibility of owners, tenants, etc.
under this Part

(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 opened, kept or used for the promotion, conduct or management of any activity of the description mentioned in section 16A(1)(a), (b), (c), (d) or (e) or 16B(1)(a), (b) or (c);

(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 opened, kept or used for the promotion, conduct or management of any activity of the description mentioned in section 16A(1)(a), (b), (c), (d) or (e) or 16B(1)(a), (b) or (c).

(2) 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.

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

(1) A person who for the purposes of dissemination or distribution in Hong Kong to the public or, to a section of the public broadcasts 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 a period of 12 hours before the conduct of that horse, pony or dog race and, in respect of which the condition referred to in subsection (2) has not been satisfied, 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.

(2) The condition referred to in subsection (1) is that the horse, pony or dog race is a horse, pony or dog race on which totalizator or pari-mutuel betting is conducted under and in accordance with the written permission of the Chief Secretary for Administration given under section 3 of the Betting Duty Ordinance (Cap. 108) (authorization of totalizator or pari-mutuel betting on horse or pony races).

(3) Subsection (1)---

(a) shall apply whether or not the horse, pony or dog race is organized or takes place or is to be organized or is to take place, as the case may be, within or outside Hong Kong;

(b) shall not apply to any horse, pony or dog race that is organized or takes place or is to be organized or is to take place, as the case may be, within or outside Hong

Kong as part of any event that is specified by name, by notice published in the Gazette, by the Secretary for Home Affairs for the purposes of this paragraph.

(4) A notice published in the Gazette under subsection (3)(b) shall not be subsidiary legislation within the meaning of those words in section 34 of the Interpretation and General Clauses Ordinance (Cap. 1).

(5) In this section, "broadcasts" (廣播)---

(a) means broadcasts by means of a broadcasting service as defined in section 2(1) of the Broadcasting Ordinance (48 of 2000);

(b) and means 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);

(c) but does not mean broadcasts, by any means, of news or any remarks, observations or comments in relation to such news.

(6) 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.

16E. Promoting or facilitating bookmaking

(1) Any person who promotes or facilitates bookmaking 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.

(2) Subsection (1)---

(a) shall apply whether or not---

(i) any bet that was made or is to be made was or will be solicited, received, negotiated or settled wholly or partly outside Hong Kong; or

(ii) any horse, pony or dog race or other event in respect of which the bet was or is to be made, was organized or took place or is to be organized or to take place, as the case may be, within or outside Hong Kong;

(b) shall not apply where there is evidence that---

(i) the transaction, namely, the bookmaking took place or is to take place, as the case may be, wholly outside Hong Kong; and

(ii) all of the parties to the transaction were or will be outside Hong Kong at the time that it took place or is to take place, as the case may be.

(3) In the prosecution of any person for an offence under subsection (1), it shall not be necessary to show, in relation to the circumstances or set of facts in respect of which that offence is prosecuted, that any other person has committed or been found

guilty of an offence under section 7 in relation to the same circumstances or the same set of facts.

16F. Consent to prosecutions under this Part

No prosecution for an offence under this Part shall be instituted without the consent in writing of the Secretary for Justice, but this section shall not prevent the arrest, or the issue of a warrant for the arrest, of a person for any such offence, or the remand in custody or on bail of a person charged with any such offence."

9. Section substituted

Section 19 is repealed and the following substituted---

"19. Presumptions

(1) Where in any proceedings under this Ordinance there is evidence that---

(a) the entry of a police officer to any premises or place under section 23(2)(a) was prevented, obstructed or delayed;

(b) any premises or place entered under section 23(2)(a) were or was provided with any means for concealing, removing or destroying gambling equipment;

(c) gambling equipment was found in any premises or place entered under section 23(2)(a) or on any person found in any such premises or place,

it shall, unless there is evidence to the contrary, be presumed that the premises or place are or is a gambling establishment.

(2) Where in any proceedings under section 6 there is evidence that a person was found in a gambling establishment or that a person escaped from a gambling establishment on the occasion of its being entered under section 23(2)(a), such person shall, unless there is evidence to the contrary, be presumed to have been gambling therein.

(3) If in any proceedings under this Ordinance there is evidence that any money was found in any premises or place or was found on any person in such premises or place on the occasion of its being entered under section 23(2)(a) where entry was prevented, obstructed or delayed, it shall, unless there is evidence to the contrary, be presumed that such money has been used in or for or in connexion with unlawful gambling."

10. Admissibility of evidence

Section 20 is amended---

(a) in subsection (1), by adding "or 8" after "7";

(b) by repealing subsection (2) and substituting---

"(2) In any proceedings under this Ordinance a report in a newspaper circulating in Hong Kong that a particular person, horse, pony, dog, team, contestant, entrant or participant was entered as a participant in or participated in a particular competition, race, event or contest, whether or not the competition, race, event or

contest is to be or was held in Hong Kong, shall be admissible in evidence and shall be prima facie evidence that the person, horse, pony, dog, team, contestant, entrant or participant was so entered or did so participate."

11. Disconnexion of telephone service

Section 21 is amended---

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

(b) in subsection (2), by repealing "the Company" and substituting "the telecommunications service provider";

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

(d) 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)."

12. Bookmaking on racing club premises

Section 25(1) and (2) is amended by adding "or 8" after "7".

13. Forfeiture

Section 26 is amended by repealing everything after "with" and substituting--

"or is or represents the proceeds of or is derived from---

(a) unlawful gambling or an unlawful lottery;

(b) any activity of the description mentioned in section 16A(1)(a), (b), (c), (d) or (e); or

(c) any activity of the description mentioned in section 16B(1)(a), (b) or (c), the court shall order that it be forfeited to the Government, whether or not any person has been convicted of an offence under this Ordinance."

14. Saving as to aiding and abetting

(1) The amendments made by---

(a) section 3 of this Ordinance to section 5 of the principal Ordinance;

(b) section 4(a) of this Ordinance to section 7 of the principal Ordinance;

(c) section 6 of this Ordinance to section 9 of the principal Ordinance;

(d) section 7 of this Ordinance to section 13 of the principal Ordinance,

shall not be construed so as to prevent any person who aids, abets, counsels or procures the commission by another person of an offence under section 5, 7, 9 or 13 of the principal Ordinance, as the case may be, being found guilty of any such like offence.

(2) In this section, a reference to "the principal Ordinance" means the Gambling

Ordinance (Cap. 148) prior to its amendment by this Ordinance.

Explanatory Memorandum

The objects of this Bill are---

(a) to add an extraterritorial element to the offence "bookmaking" under section 7 (clause 4, new section 7(1A)(a));

(b) to not make it an offence under section 7 if the transaction which constitutes the bookmaking and the parties to the transaction are outside Hong Kong (clause 4, new section 7(1A)(b));

(c) to add an extraterritorial element to the offence "betting with a bookmaker" under section 8 (clause 5, new section 8(2)(a));

(d) to not make it an offence under section 8 if the person who makes the bet and the bookmaker with whom the bet is made are outside Hong Kong (clause 5, new section 8(2)(b));

(e) to make it an offence to keep any premises or place---

(i) for the conduct of cash-sweeps, totalizator or pari-mutuel betting or the soliciting, receiving, negotiating or settling of bets on horse, pony or dog races or, for any activity which promotes or facilitates such conduct, save under and in accordance with the written permission of the Chief Secretary for Administration given under the Betting Duty Ordinance (Cap. 108);

(ii) for the conduct of competitions for money or the soliciting, receiving, negotiating or settling of bets for competitions for money involving the guessing or the estimating of the results of future events or of past events, the results of which are not generally known or, for any activity which promotes or facilitates such conduct, save under and in accordance with permission similarly given under the Betting Duty Ordinance (Cap. 108) or under section 22 of the principal Ordinance, (clause 8, new sections 16A and 16B).

2. It will also be an offence for any person---

(a) being the owner, tenant, occupier or person in charge of any premises or place to knowingly permit or suffer such premises or place or any part thereof to be opened, kept or used for the promotion, conduct or management of any activity which constitutes an offence under new section 16A or 16B;

(b) to let or agree to let any premises or place with the knowledge that such premises or place or any part thereof is to be opened, kept or used for such purposes, (clause 8, new section 16C).

3. A restriction is placed on broadcasts of forecasts, hints, odds or tips as to the results of horse, pony or dog races, unless the horse, pony or dog races are those in respect of which totalizator or pari-mutuel betting is conducted under and in accordance with the written permission of the Chief Secretary for Administration

given under the Betting Duty Ordinance (Cap. 108). Provision is made for the restriction not to apply in the case of named events specified by the Secretary for Home Affairs by notice published in the Gazette (clause 8, new section 16D).

4. A new offence, namely, promoting and facilitating bookmaking is created (clause 8, new section 16E).

5. Persons who commit offences under new section 16A, 16B, 16C or 16E are liable on summary conviction to a fine of \$5,000,000 and to imprisonment for 2 years and on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 7 years. An offence under new section 16D is punishable on summary conviction with a fine of \$1,000,000 and imprisonment to 2 years. On conviction on indictment, a fine of \$1,000,000 and 7 years imprisonment may be imposed.

6. A prosecution for an offence may not be instituted under new section 16A, 16B, 16C, 16D or 16E without the written consent of the Secretary for Justice (clause 8, new section 16F).

7. Amendments are also made to the definitions "bookmaking", "gambling" and "gambling establishment" in section 2 and to section 26 ("forfeiture") so as to bring any activity which constitutes an offence under new section 16A or 16B within the scope of those definitions and that section.

8. The concept of "assisting" is removed from the principal Ordinance having regard to recent court decisions which suggest that the concept may exclude the application of section 89 of the Criminal Procedure Ordinance (Cap. 221) insofar as it enables persons who assist to be charged with aiding and abetting the commission of the principal offence (clauses 3, 4(a), 6 and 7). A saving provision appears in clause 14.

9. The opportunity is taken to amend section 19 relating to presumptions to enhance the provisions' consistency with the Human Rights provisions of the Basic Law (clause 9).