

**Legislative Council Panel on Home Affairs
Information Paper**

Proposed Amendments to the Gambling Ordinance (Chapter 148)

Purpose

This paper informs Members of Government's proposals to amend the Gambling Ordinance in order to combat unauthorized gambling activities with an extraterritorial element.

Background

2. The Government's policy is to restrict gambling activities to authorized gambling outlets only. Horse racing organized by the Hong Kong Jockey Club (HKJC) and the Mark Six Lottery organized by the Hong Kong Lotteries Board are the main examples of such legal outlets. Under the Gambling Ordinance (Cap. 148), all gambling activities are illegal except those of a private nature.

3. In recent years, a number of offshore bookmakers have been providing betting-related services and promoting their business in Hong Kong. Their activities include advertising their business, establishing service centres or setting up telephone hotlines. Through these services, Hong Kong people can open betting accounts, make betting deposits and obtain general betting information in Hong Kong, and place bets with these bookmakers via toll-free IDD service or the Internet. After detailed study, the Department of Justice advises that the current Gambling Ordinance may not be adequate to deal with offshore bookmaking companies receiving bets from Hong Kong people as well as their gambling-related activities within the territory of Hong Kong.

4. These unauthorized gambling activities with an extraterritorial element will undermine the integrity of our gambling policy and have already aroused community concern. In addition, these activities induce Hong Kong residents to place bets with offshore bookmakers: if the total amount of available betting money is more or less the same for a given period, an increase in bets with unauthorized offshore bookmakers would mean a reduction of bets on authorized gambling activities, thus draining our betting revenue and the

resources available for charity work and donation. We therefore propose to amend the Gambling Ordinance to combat such unauthorized activities.

Proposed Amendments

5. The Home Affairs Bureau presented an information paper (see **Annex A**) to the LegCo Panel on Home Affairs on 13 December 1999 outlining the major proposed amendments to the Gambling Ordinance as follows –

- (a) to criminalize the bookmaking activities of offshore bookmakers with the bets placed from Hong Kong and the betting with such bookmakers in Hong Kong;
- (b) to criminalize the promotion or facilitation of the bookmaking activities mentioned above;
- (c) to criminalize the conduct of anyone who knowingly permits or suffers the use of premises for the purpose of promoting or facilitating the receipt of bets; and
- (d) to enable forfeiture of money or property used in connection with unlawful gambling taking place outside Hong Kong with the bets concerned placed from Hong Kong.

The Panel had indicated its support for the above proposals.

Restriction on broadcast of betting information relating to unauthorized horse or dog races

6. At present, some local broadcasting institutions have been providing live coverage of horse and dog races held in Macau on a weekly basis, with the concurrent provision of betting information (such as odds and tips). These activities have greatly increased the appeal of such unauthorized races to the Hong Kong residents. Together with the services provided by the relevant bookmaking companies in Hong Kong (see paragraph 3 above), it has become even more convenient for Hong Kong residents to place bets on these races. Hence, in drafting the amendment bill, we have considered ways to effectively restrict the above broadcasting activities.

7. Apart from the proposed amendments mentioned in paragraph 5 above, we propose to create a new provision to prohibit the broadcast of any odds or tip in relation to any unauthorized horse or dog racing event via TV or radio

within the 12-hour period preceding the conduct of that event. We believe that this provision will significantly reduce the attractiveness of and ease with betting with such bookmakers. The provision will however not apply to races authorized under the Betting Duty Ordinance (i.e. the HKJC horse racing) or betting information that may be covered in TV/radio news. Besides, the Secretary for Home Affairs may exempt some internationally prestigious horse races, to be specified by notice in the Gazette, from the application of this provision. A defence can be invoked by the accused if he can show that he has used all due diligence and taken all reasonable precautions to avoid the commission of the offence.

8. We have completed the drafting of the Gambling (Amendment) Bill 2000 incorporating the proposed amendments mentioned in paragraphs 5 and 7 above. The Bill has been approved by the Executive Council. Details of the proposed amendments are set out in the Legislative Council Brief issued by the Home Affairs Bureau on 8 November 2000 (see **Annex B**). We believe the proposed amendments taken together will significantly reduce, if not eliminate, the activities and services of offshore bookmakers in Hong Kong, as well as the attractiveness of and ease with betting with such bookmakers.

Advice sought

9. Members are asked to take note of and comment on the contents of this paper.

**Home Affairs Bureau
November 2000**

**Legislative Council Panel on Home Affairs
Information Paper**

**Proposed Amendments to the Gambling Ordinance (Cap. 148)
to outlaw unauthorized gambling with extraterritorial elements**

Purpose

This paper informs Members of Government's proposals to amend the Gambling Ordinance (Cap. 148) (the Ordinance) (*Annex*) to outlaw unauthorized gambling activities with extraterritorial elements.

Background

2. Government's policy is not to encourage gambling but to allow controlled legal gambling outlets to exist. Horse racing organised by the Hong Kong Jockey Club and the Mark Six Lottery organised by the Hong Kong Lotteries Board are examples of such legal outlets.

Problem

3. The existing Ordinance is inadequate to deal with unauthorized gambling activities with extraterritorial elements. We are aware of cases where overseas bookmakers publicly invite Hong Kong residents to gamble with them. The Macau Jockey Club (MJC) is a case in point. The MJC has, so far, set up six service centres in Hong Kong. The public can conveniently open betting accounts, make betting deposits, obtain general information at these service centres, and place bets through dialing a toll free IDD number. However, there is no over-the-counter betting in these MJC service centres.

4. On 9.3.99, the Police raided the six service centres of the MJC. After thorough study of the evidence collected, D of J advised that there was insufficient evidence to prosecute the arrested staff of the MJC under the Ordinance. The case has revealed the inadequacies of the Ordinance which was not originally designed to deal with overseas bookmaking operations providing betting-related services (such as provision of betting accounts and receiving betting deposits) and

promoting their business in Hong Kong.

5. In addition to the MJC, there are other overseas bookmakers which have established or plan to establish offices in Hong Kong with mode of operation similar to that of the MJC.

6. These unauthorized gambling activities are eroding our long established and accepted policy of restricting gambling opportunities to a few authorized outlets. There is also growing community concern. From the revenue angle, such gambling activities are draining our betting duty. We therefore propose that they be explicitly outlawed.

The proposals

7. Section 7 of the Ordinance deals with bookmaking. However, the MJC case has demonstrated that this provision is inadequate to cover overseas bookmakers offering betting related services and promoting their business in Hong Kong. We therefore propose to insert an extraterritorial element into the offence of “bookmaking” to make it explicit that bookmaking will be illegal even though part of the process is conducted outside Hong Kong.

8. Section 7(1)(c) provides that assisting, either directly or indirectly, another person in bookmaking is an offence. However, the court ruled in 1985 that the enactment of the specific offence under this section (assisting in bookmaking) had displaced the common law doctrines of accessory liability (aiding, abetting, counselling or procuring an offence). Indeed, the court equated “assisting” with “aiding” only. To overcome this narrow interpretation, we propose to make it explicit that aiding, abetting, counselling or procuring bookmaking (including bookmaking where part or all of the process is conducted outside Hong Kong) is an offence. To ensure that betting related services (such as provision of betting accounts and receiving betting deposits) offered and promotional activities (such as provision of information to prospective punters on how to place a bet from Hong Kong) conducted by overseas bookmakers will be covered, we further propose to create a new offence of promoting or facilitating bookmaking (including bookmaking where part or all of the process is conducted outside Hong Kong).

9. Section 8 deals with betting with a bookmaker. We propose that amendments be made so that betting with a bookmaker will be an offence whether the bookmaking is conducted in Hong Kong, partly in Hong Kong or wholly outside Hong Kong. However, the policy intention is that betting directly with an overseas bookmaker is not illegal if the bookmaker does not in any way conduct the bookmaking, offer betting-related services and promote its business in Hong Kong.

10. Section 15 provides that no person shall knowingly permit or suffer the use of premises under his charge as gambling establishment. We propose to extend its coverage to knowingly permitting and suffering the use of premises for promoting or facilitating gambling (including gambling with extraterritorial elements) to deal with the problem of overseas bookmakers setting up service centres in Hong Kong to provide betting-related services to Hong Kong people. We also propose consequential amendments to Section 23 in relation to search of such premises and to Section 24 in relation to seizure of equipment used in promoting or facilitating such activities.

11. Section 26 deals with forfeiture of property used in connection with unlawful gambling. We propose that this section be amended to make it explicit that it covers gambling with extraterritorial elements.

12. Section 16 makes it an offence for anyone who cheats in gambling or in a lottery. We propose that this section should also cover gambling with extraterritorial elements.

13. Section 25(1) empowers a racing club to use all reasonable and lawful means to prevent commission of offences under Section 7 in the club's premises. The opportunity will be taken to amend Section 25 to cover offences under Section 8 as well.

14. Section 21 appears to be obsolete in that it states that the court can require only the Hong Kong Telephone Company Limited to disconnect telephone services to those convicted of offences under Sections 5, 7 and 8. The opportunity will be taken to amend the Section to cover all telephone service providers.

Current position

15. The Law Draftsman is drafting a Gambling (Amendment) Bill 2000 in respect of the above proposed legislative amendments. We aim to introduce the Bill into the Legislative Council as soon as possible.

Views sought

16. Members are requested to note the content of this paper and give their views.

Home Affairs Bureau
December 1999

LEGISLATIVE COUNCIL BRIEF

Gambling Ordinance (Chapter 148)

GAMBLING (AMENDMENT) BILL 2000

INTRODUCTION

At the meeting of the Executive Council on 7 November 2000, the Council ADVISED and the Chief Executive ORDERED that the Gambling (Amendment) Bill 2000 at **Annex A** should be introduced into the Legislative Council.

BACKGROUND AND ARGUMENT

General Background

2. Government's policy is not to encourage gambling but to allow controlled legal gambling outlets to exist. Horse racing organized by the Hong Kong Jockey Club (HKJC) and the Mark Six Lottery organized by the Hong Kong Lotteries Board are the main examples of such legal outlets. Under the Gambling Ordinance (Cap. 148), all gambling activities are illegal except those expressly authorized by the Government under the Betting Duty Ordinance (the HKJC horse racing and Mark Six), those exempted under Section 3 of the Ordinance (mainly social gambling) and those licensed by the Commissioner for Television and Entertainment Licensing (e.g. mahjong parlours).

Present Position

3. In recent years, a number of offshore bookmakers have been

providing betting-related services and promoting their business in Hong Kong in order to induce Hong Kong people to bet with them on a wide range of racing and sporting events. These include some Macau-based bookmaking companies, some prominent bookmakers licensed in Europe and some offshore Internet gambling operators. Their activities include establishing service centres, setting up local or offshore telephone hotlines and advertising their business in the local media. Through these services, Hong Kong people can open betting accounts, make betting deposits and place bets with the offshore bookmakers fairly conveniently via telephone or the Internet. It should however be noted that in those cases, no bet has actually been “received” by offshore bookmakers within the territory of Hong Kong (i.e. bookmaking with an extraterritorial element).

4. In addition, some local broadcasting institutions have been providing live coverage of offshore unauthorized horse and dog races on a regular basis. With the concurrent provision of betting information, such live TV and radio coverage has greatly increased the appeal of the offshore races to Hong Kong residents who can place their bets by dialing the toll-free IDD numbers provided by the offshore bookmakers.

5. The Gambling Ordinance, which was first drafted in the 1970s, may not be adequate to deal with the activities of the offshore bookmaking activities in Hong Kong which contain an extraterritorial element. We are concerned that more offshore bookmakers will follow suit and adopt similar modes of operation in Hong Kong. These unauthorized activities have given rise to growing community concern and will gradually undermine the integrity of our gambling policy. If the total amount of available betting money is more or less the same for a given period, an increase in bets with the unauthorized bookmakers would mean a reduction of bets on authorized gambling activities, thus draining our betting revenue and the resources available for charity work and donation. We therefore propose to amend the Gambling Ordinance to combat the unauthorized activities of offshore bookmakers.

6. Section 7(1)(c) of the Gambling Ordinance provides that “assisting”, either directly or indirectly, another person in bookmaking is an offence. However, the court ruled in 1985 that the enactment of the

specific offence of “assisting in bookmaking” under this section has displaced the common law doctrines of accessory liability (aiding, abetting, counselling or procuring an offence as set out under section 89 of the Criminal Procedure Ordinance (Cap. 221)). It is thus necessary to reinstate the concept of “aiding, abetting, procuring or counselling” in the offence of “bookmaking”, as well as other offences containing a reference to “assisting”.

The Proposals

7. The following legislative amendments are proposed -
 - (a) to insert an **extraterritorial element** into the offence of **“bookmaking”** to make it explicit that unauthorized bookmaking will be illegal even when the bet is solicited or received outside Hong Kong. The amended provision will however not cover situations where both the conduct of the gambling transaction **and** the parties thereto are wholly outside Hong Kong (e.g. casino gambling in Las Vegas and Macau);
 - (b) to insert an **extraterritorial element** into the offence of **“betting with a bookmaker”** to make it an offence for Hong Kong people to bet with an offshore bookmaker. As with (a) above, this will not cover betting activities where the bet is made **and** the parties to the transaction are wholly outside Hong Kong (e.g. Hong Kong people gambling in casinos abroad);
 - (c) to create a new offence to criminalize **“promoting or facilitating bookmaking”** in Hong Kong even when the bookmaking takes place wholly outside the territory;
 - (d) to criminalize **keeping of premises** for the purpose of promoting or facilitating the receipt of bets on horse racing or other contingencies even when the transaction takes place outside Hong Kong. Owners or tenants who knowingly permit or suffer the use of their premises for such purposes will

also be liable;

- (e) to enable **forfeiture of money or property** used in connection with unlawful gambling taking place outside Hong Kong with the bets concerned placed from Hong Kong (i.e. to insert an extra-territorial element into the provision);
- (f) to create a strict liability offence to prohibit the **broadcast of any forecast, hint, odds or tip** in relation to any unauthorized horse or dog racing event via TV or radio within the 12-hour period preceding the conduct of that event. The new provision will not apply to races on which betting is authorized by the Chief Secretary for Administration under the Betting Duty Ordinance (i.e. the HKJC races) or to coverage of betting information in TV/radio news. A defence has been included and can be invoked by the accused if he can show that he has used all due diligence and took all reasonable precautions to avoid the commission of the offence; and
- (g) to reinstate the concept of **“aiding, abetting, procuring or counselling”** in the Ordinance by deleting references to “assisting” from the relevant offences including bookmaking.

8. In devising the proposal in para.7(f) above, we are mindful of the need to strike a balance among the different policy objectives of combating unauthorized gambling activities, preserving freedom of expression and maintaining a liberal broadcasting policy. Accordingly, we have adopted a narrow and focussed approach in constructing the offence. Firstly, we propose to prohibit the broadcast of betting information relating to horse and dog races, rather than the races themselves, as it is difficult to prove that the broadcast of events is solely for the purpose of promoting or facilitating unlawful gambling or has resulted in an increase in such activities. Secondly, by confining the application of the offence to TV and radio broadcast, we have exempted the printed media which are less capable of disseminating up-to-date and instant betting information to facilitate the placing of bets. Thirdly, the provision will not apply to the Internet and other telecommunications

means (e.g. pagers and mobile phones) partly because they are at present not popular ways for disseminating betting information and partly because offshore bookmakers can still evade the law by setting up websites outside Hong Kong over which we have no jurisdiction. Fourthly, services of non-domestic television licensees not receivable in Hong Kong will not be caught by the provision. Fifthly, free-to-air television programmes uplinked and radio broadcast transmitted from places outside Hong Kong and freely receivable in Hong Kong will also not be covered because such broadcasters are not required to be licensed or regulated by any Hong Kong authority. Lastly, we propose to exempt some internationally prestigious horse races, to be specified by notice in the Gazette, from the application of the provision as they are not regularly or frequently featured and in order not to reduce the attractiveness of Hong Kong as the regional broadcasting hub.

9. We believe that the proposed legislative amendments set out in paragraph 7 above taken together will significantly reduce the activities and services of offshore bookmakers in Hong Kong, as well as the attractiveness of and ease with betting with such bookmakers.

THE BILL

10. The main provisions of the Bill are as follows:

- (a) Clause 4 amends Section 7 to insert an extraterritorial element into the offence of “bookmaking”, but exempting bookmaking where the transaction and the parties to the transaction are outside Hong Kong;
- (b) Clause 5 amends Section 8 to insert an extraterritorial element into the offence of “betting with a bookmaker”. As with (a) above, it is not an offence if the bet is made outside Hong Kong and the parties to the transaction are outside Hong Kong;
- (c) Clause 8 creates the following offences:

- (i) keeping any premises for the conduct of bookmaking on horse racing or other contingencies, and for the promotion or facilitation of such conduct, even when the transaction takes place outside Hong Kong (Sections 16A and 16B);
 - (ii) as owners or tenants, knowingly permitting or suffering the use of their premises for the purposes mentioned in (i) above (Section 16C);
 - (iii) broadcasting of forecast, hint, odd or tip in relation to any unauthorized horse or dog racing event via TV or radio within the 12-hour period before the event (Section 16D); and
 - (iv) promoting or facilitating bookmaking (Section 16E);
- (d) Clause 13 amends Section 26 to enable forfeiture of money or property used in connection with unlawful gambling with an extraterritorial element; and
- (e) Clause 14 reinstates the concept of “aiding, abetting, procuring or counselling” in Sections 5, 7, 9 and 13 of the Ordinance.

The relevant sections in the existing Ordinance to be amended are at **Annex B**.

PUBLIC CONSULTATION

11. Except for paragraph 7(f) above which is a new proposal from the Administration, the LegCo Panel on Home Affairs was consulted in December 1999 on the parameters of the legislative proposals and had indicated its support. We will consult the Panel further on the latest proposals at its next meeting on 14 November 2000.

12. We have written to the Hong Kong Association of Banks

(HKAB) and the DTC Association (the Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies) to consult them particularly on the provisions to outlaw the promotion and facilitation of unauthorized bookmaking activities. The Associations have generally indicated no objection. The HKAB has nonetheless considered that the proposed amendment in paragraph 7(d) above may impose too much of a burden on the owners of the premises concerned. We have explained to the HKAB that it is reasonable to hold the owners liable if he knowingly permits or suffers the premises to be used for the purpose of unlawful gambling or promoting or facilitating it. Similar liability is imposed on owners insofar as keeping of gambling establishments is concerned. The HKJC welcomes the legislative proposals.

BASIC LAW IMPLICATIONS

13. The Department of Justice advises that the Bill does not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

14. The Department of Justice advises that the restriction of TV/radio broadcasts of forecast, hint, odds or tip at any time within a period of 12 hours before any unauthorized horse or dog races is consistent with the right to freedom of expression including the freedom to receive and impart information of all kinds as the restriction is necessary and proportionate to combating unauthorized gambling activities. The other provisions in the Bill are consistent with the human rights provision of the Basic Law.

BINDING EFFECT OF THE LEGISLATION

15. The amendments will not affect the current binding effect of the Ordinance.

FINANCIAL AND STAFFING IMPLICATIONS

16. The activities of offshore bookmakers in Hong Kong have siphoned off betting money from authorized betting channels. This has led to a considerable loss of betting duty receipts and reduced surplus available for charity work and donation. The proposed amendments will reduce the ease with which Hong Kong people bet with offshore bookmakers which will in turn help channel part of the betting dollar on unauthorized activities back to the authorized avenues. As a result, our betting duty receipt will increase, so will surplus available for charity work and donation. The magnitude of the increase is however difficult to predict.

17. The Police will be able to implement the proposals within existing resources.

ECONOMIC IMPLICATIONS

18. The legislative proposals should help divert part of the betting money on unauthorized activities back to the authorized channels, thereby increasing betting revenue and benefiting the Hong Kong community at large. On the other hand, the local broadcasting institutions carrying unauthorized horse and dog races may have to terminate their contracts with the race organizers and programme providers and thus lose an important source of income. Business of Hong Kong-based companies acting as agents for offshore bookmakers and promoting their business in Hong Kong may contract but the overall economic impact on Hong Kong cannot be ascertained as there is little transparency on the business operations of these companies.

LEGISLATIVE TIMETABLE

19. The legislative timetable will be as follows -

Publication in the Gazette	10 November 2000
First Reading and commencement of the Second Reading Debate	22 November 2000
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

PUBLICITY

20. A press release will be issued on 8 November 2000. A spokesman will be available to handle media and public enquiries.

ENQUIRY

21. Enquiries on this Legislative Council brief may be directed to Mr. Francis Lo, Principal Assistant Secretary for Home Affairs at tel. no. 2835 1484.

Home Affairs Bureau
8 November 2000
HAB CR 1/17/93 Pt. 29