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URGENT BY FAX

21 June 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 Meeting on 20 June 2001

Thank you for your letter dated 20 June 2001. Our response to the points raised therein is set out below.

Item (a): Blocking access to/taking down gambling websites

As pointed out in our letter to the Bills Committee dated 19 June 2001, we have no intention to impose on Internet service providers (ISPs) a legal obligation to block access to gambling websites because of the freedom of information concerns and the limited effectiveness. Indeed, due to the sheer volume of the Internet traffic, ISPs normally do not monitor and thus have **no knowledge** of the Internet activities (including those related to gambling) going through its network. As conveyors of information, they would therefore not commit any offence under section 16E in normal circumstances.

Regarding the “take-down” approach (removal of gambling website by ISPs), it would be useful only when the website is hosted by a local ISP. At present, however, all the known gambling websites are based outside Hong Kong, which local ISPs are not in a position to remove. In the case of a local gambling website, it should be possible for the Police to track down the operator and take enforcement actions without the need to ask the concerned local ISP to remove the website. We share the views expressed by a Member that the Government might collaborate with the ISPs in the promotion of the use of filtering tools.

Items (b): The need to use the words “promoting” and “facilitating” in the revised section 16E

The words are necessary because they are used to **specify the purposes** for which an act (e.g. advertising, providing services) can be construed as illegal. For example, in relation to section 16E(3) under clause 8 of the Committee Stage Amendments (CSAs), provision of service will be illegal only if it is for the purpose of bookmaking, facilitating bookmaking or facilitating betting by any person with a bookmaker. Deleting the word “facilitating” would substantially narrow the scope of the offence by excluding the intermediaries in bookmaking transactions who provide services for the purposes of “facilitating bookmaking” but not for the purposes of “bookmaking”. For example, a company opening and maintaining an account knowing that it is used to take betting deposit for cross-border gambling is providing services “for the purposes of facilitating bookmaking” rather than “for the purposes of bookmaking”. The application of sections 16E(1) and (2) would likewise be severely restricted if the notion “for the purposes of promoting bookmaking” is removed therefrom. We believe that the revised formulation of section 16E would give a better idea of the acts, and the purposes they serve, to be covered by the section.

Item (c): Definition of “bookmaking”

The words “by letter, telephone, telegram” appear in the **existing** definition of “bookmaking”. Although letter and telegram are not used as widely nowadays as in the 1970s in the conduct of gambling, the provision is adequate to serve the present day’s needs as it covers “*any other means*” apart from the mentioned ones. Legal advice is that it can sufficiently cover even gambling via the Internet. Retention of these

words would not limit the effectiveness of the provision. On the other hand, deletion of the words may be interpreted as a deliberate exemption for bookmaking by these means and illegal/unauthorized bookmakers may resort to the use of such exempted means for soliciting and accepting bets after the enactment of the Bill, even though they are less efficient means of transmission. We would therefore wish to give further thoughts to the matter and do not intend to propose changes to that part of the definition in the current exercise.

Item (d): Gambling on a social occasion on commercial premises

The spirit of the Gambling Ordinance is to criminalize all unauthorized commercial bookmaking activities but social gambling not conducted by way of trade or business is allowed. The exemption is provided for by the various provisions under section 3 of the Ordinance. In particular, section 3(2) exempts gaming if the game is played on a social occasion in private premises and is not promoted or conducted by way of trade or business or for the private gain of any person. Section 3(7) also stipulates that betting is lawful if the bet is made between persons none of whom is thereby committing an offence under section 7 (i.e. bookmaking, which means the soliciting, receiving, negotiating and settling of a bet *by way of trade or business*). These provisions should provide sufficient safeguard for private and social gambling among friends, in private premises or otherwise.

Item (e): The appropriateness of the use of the wording “by way of trade or business”

The wording “by way of trade or business” is used to specify the nature of the bet solicited, negotiated, received or settled. They are used to distinguish between **commercially operated bookmaking**, which is regulated under the Ordinance, from **social gambling** (i.e. those not conducted by way of trade or business), which is exempted. The words are used in many places in the existing Ordinance.

Items (f) and (g): section 16B

We are considering whether some changes could be made to the section to address Members’ concerns. We will revert to the Bills

Committee as soon as possible.

Item (h): The use of the phrases “for the purposes of” and “in connexion with” in the definition of “gambling establishment”

“For the purposes of” and “in connexion with” in the definition of “gambling establishments” cover *different* types of establishments. For example, an illegal casino can be described as premises opened or kept *for the purposes* of unlawful gambling. On the other hand, if a person operates a factory for printing unlawful lottery tickets, the factory can be said to be kept *in connexion* with an unlawful lottery, but not *for the purposes of* an unlawful lottery.

Item (i): Section 8

We are considering Members’ comments on the proposed section 8 and the need to consult the relevant parties (e.g. the Hong Kong Tourism Board). We shall revert to the Bills Committee with our considered view as soon as possible.

I should be grateful if you would kindly convey the above information to Members. The officers attending the meeting of the Bills Committee on 21 June 2001 will be as follows:

Mrs. Betty Fung	Deputy Secretary for Home Affairs (2),
Mr. J. D. Scott	Senior Assistant Law Draftsman,
Mr. Francis Lo	Principal Assistant Secretary for Home Affairs (5),
Ms. Anthea Pang	Senior Government Counsel,
Ms. Mabel Cheung	Prosecutions Division,
	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
 Ms. Anthea Pang
 Mr. Llewellyn Mui
 Ms. Mabel Cheung)