

THE
GAMBLING LAW
REVIEW

SIXTH EDITION

Editor
Carl Rohsler

THE LAWREVIEWS

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REVIEW

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PREFACE

Again, the public showed that they would bear their share in these things; the very Court, which was then gay and luxurious, put on a face of just concern for the public danger. All the plays and interludes which, after the manner of the French Court, had been set up, and began to increase among us, were forbid to act; the gaming-tables, public dancing-rooms, and music-houses, which multiplied and began to debauch the manners of the people, were shut up and suppressed; and the jack-puddings, merry-andrews, puppet-shows, rope-dancers, and such-like doings, which had bewitched the poor common people, shut up their shops, finding indeed no trade; for the minds of the people were agitated with other things, and a kind of sadness and horror at these things sat upon the countenances even of the common people. Death was before their eyes, and everybody began to think of their graves, not of mirth and diversions.

Daniel Defoe. *A Journal of the Plague Year*

A year ago, I began the preface to the fifth edition by reminding readers of the most famous epidemic that ever troubled Britain: the Great Plague of 1665, which closed the theatres and silenced the ‘jack puddings and merry Andrews’ in London for a whole year. Writing of that same event years later, Daniel Defoe reminds us that despite the passing centuries, the human impact of plague has actually not changed that much. In another passage from his journal, he remarks how he could only pass along the king’s highway if he obtained a paper from a magistrate to say that he was in full health. The judiciary may have been replaced by the PCR swab or the vaccine passport, but the feeling that the public does not enjoy its normal liberties is scarcely different then than now. Another point that Defoe notes, and which we should not ignore, is that the effect of plagues is marked not in inconvenient days or months, but in decades. ‘Plague Bills’ showing the number of deaths in each parish were first published 1665, and the practice was not formally discontinued until 1679. And so, I begin the preface to the sixth edition of *The Gambling Law Review* in similar terms and circumstances as those of last year.

There have been many changes in gambling law and practice over the last 12 months, but, with perhaps a few exceptions (such as Ukraine), they have been of a minor nature, reflecting perhaps that governments have been so overwhelmed by the social and economic impact of the covid-19 pandemic, that they have simply not had the time to revise the intricacies of betting and gaming regulation. So, in many cases, the legal frameworks that applied in 2020 will still apply in 2021. But the chapters that we each write are designed not only to focus on the details of regulatory change but also to canvas broader themes and directions for the future, and so our authors have all had to try to describe what the future will hold, as well as the past 12 months.

Following that theme, I want in this Preface to talk not so much about gambling, but about the state of the world in which gambling exists and the macro-changes that we now face. In that regard, it seems to me that the question so often asked: ‘when things will get back to normal?’ is not really appropriate anymore. The pandemic has had such a sweeping change on the lives of those in the developed world, that not only have we been forced to break our old habits, but have had enough time to discover and develop new ones. So, no doubt we will go back to restaurants and bars again, and sometimes enjoy high street shopping or a trip to the gym. But there will also, undoubtedly, be permanent changes.

In short, the pandemic, like a world war or a crisis of resources, has created a paradigm shift, a step change. We could go back to our old habits and ways of working. But would that really be such a good idea? Should we want to? The First World War, for all its tragic loss of life, brought us into the modern world and forced societal change at the deepest level. The peace in 1918 brought with it a number of social and legislative changes in the UK of key importance in the century that followed. The Education Act of 1918 enforced a compulsory school-leaving age of 14, recognised special educational needs for the first time and introduced school meals. The Representation of the People Act 1918 allowed (certain) women the right to vote for the first time, and the Sex Disqualification (Removal) Act of 1919 prohibited an employer from excluding someone from a job on the basis of gender. The Ministry of Health Act 1919 created for the first time a minister of Health and made the health of citizens a government responsibility. These pieces of legislation were not the immediate effect of war, but the indicators of underlying changes in the way that society had come to view health, education and the role of women in light of the changes that war had wrought on the collective mind. There was no way back to the innocence of 1914, but there was also much to be gained from recognising that the pre-war period contained injustices and social unfairness that could no longer be tolerated in the post-war world.

If we assume that the current pandemic will resonate in socio-economic terms as loud and long as a major war then, as we emerge from its grip, it is useful to identify and predict the things that may change, and the opportunities that exist to establish new habits that will make our lives better and fairer. Identifying such changes and opportunities is very difficult. My own views are shaped by my perspective – which is a middle-aged professional asked to shoulder the minor inconvenience of homeworking, not a young bar-worker furloughed for almost a year, or a nurse on the front line of treatment and still less a Chinese worker from Wuhan – but let’s nonetheless try to uncover some of the themes.

i Geography – tectonic shifts in our domestic plan

Home/work

The most important collective discovery of the pandemic was our own homes. For millions, it ceased to be the place just to spend evenings and weekends and became the only focus of our lives. Many of us have toyed with the idea of working from home, (or rehearsed the uncomfortable conversation with our bosses about why we do not always need to be in the office). We always thought that we might be more efficient place to work, without a long commute, but there was never the empirical data to justify those theories. Now we have discovered what a year of work without a place of work feels like. The ‘To Let’ boards are springing up in urban centres, and thousands of professionals have experienced the freedoms and inconveniences of a different workplace: our bedrooms, studies, and kitchens. In 2019,

30 per cent of the UK's workforce had experienced working from home. By March 2021, the proportion had grown to 60 per cent.

The implications of this change are in my view very profound. While some are now advocating a return to office life in the summer of 2021, there is increasing evidence that the pandemic will lead to a permanent shift in the workforce away from urban centres and to more suburban and rural settings. Houses with space are more popular and generally cheaper than equivalent houses in towns. The need for large numbers of commuters to move each day to urban centres has been significantly reduced. In short, people will want to work from home more, and homes will feature as more important and valuable resources in our lives. Provided that the communications infrastructure can allow it, more of us will reduce our time in traditional places of work, and very substantially reduce the time travelling to our workplaces. This will have implications ranging from reduction in transport and carbon usage, to the development of smaller towns at the expense of larger cities. We will become a more disaggregated workforce. Over time, that disaggregation may not just challenge existing notions of work–life balance but also blur national boundaries. Once reliance on a physical workplace is diminished, and contributions to working life routinely come via remote communication, then one's workforce can not only be scattered across a country, but just as easily across a continent. We will need to see how employment and tax law deal with these challenges. But in some professional sectors at least, working from home is going to become part of the new normality. That poses challenges for government and infrastructure providers to ensure that our communications networks provide adequate bandwidth outside urban centres as well as within.

Home/school

The transition away from concentrated work spaces, to disaggregated working and living has some interesting impacts from a technological point of view. We have all become more adept at managing our own domestic IT systems, and fortunately by 2020 most companies' IT systems had developed the resilience to operate on a remote basis. So the transition to home working did not actually require very much in the way of new technology, just a greater acceptance of technology that was already there. To give one indicia, the number of daily active users of Microsoft Teams rose from 13 million in July 2019 to 115 million by October 2020.

Home also became school for many. Where once we worried about the number of hours our children were spending online, we were suddenly grateful that they were at least ready-trained digital natives. A whole young generation whose internet experience was limited to fun and games, began to use their PCs for lessons, exams, projects, Powerpoint presentations and multiparty video conferences with an ease that many of their parents could only envy. Perhaps we need to re-examine whether 'limiting screen time' is really an achievable or even desirable aim. And a young generation will have spent a formative year both working from home, and seeing their parents do the same. That generation has already had its 'home/workplace norms' set differently to the generation before. Thousands have seen the concept of leaving home to go to university completely altered – something that again may be a permanent shift, as we have all discovered that learning yoga, cookery or French are all perfectly possible at a distance. Examinations and ways of rating achievement more generally will also permanently change. The lesson for our educators, is that some types of

experience that had previously considered only to be suitable for ‘real world’ teaching could in fact be engaged with adequately (or even optimally) through remote technology. Again, it is not that these things were not possible before the pandemic – but just that they are now a widely accepted alternative.

Home – the new entertainment hub

This conveniently brings us to highlight home as the new hub of entertainment. Of course, our living spaces and mobile devices had become the venues for streamed music, entertainment, sport (and increasingly gambling). But in 2020, home also became our shopping mall, restaurant and bar. In the UK, between November 2019 and November 2020 online food delivery increased by 107 per cent. Conversely, by comparison with the number of seated diners in February 2020, the UK figures for February 2021 were reduced by 99.88 per cent. Even when and if those restaurants return, it seems to me that they will be differently regarded. Expectations in terms of what constitutes value for money will have been reset.

Shopping is both a necessary activity and for many a form of entertainment. So far as its necessities are concerned, we have moved profoundly from a ‘travel and browse’ to a ‘click and receive’ model. The level of service provided by online retailers supported by a much enhanced and digitally managed supply chain has provoked a revolution in the way that we shop. It will be interesting to see the effect that this has on what might be called ‘leisure shopping’ – including for lifestyle goods and clothes. Again, a decline in land-based retail has been occurring over the last decade, but the pandemic has surely had a permanent impact. As restrictions are removed there will no doubt be a resurgence of interest in the high street – but probably not to the levels seen before. While there will still be strong demand for public places to enjoy retail experiences, certain types of shopping (for example normal grocery shopping) may well permanently move to an online model. The question then is how, without the support of traditional tenants like supermarkets, fashion, consumer goods and bookmakers will be able to maintain their presence on the high street and in shopping centres.

What does this mean for land-based gambling? As with shopping generally, we have seen certain types of gambling product transfer substantially from a land-based to an online model. To take one example, National Lottery ticket sales that were predominantly retail based, declined by 18 per cent with the onset of the pandemic, but online registrations subsequently rose by more than 1.3 million. This change is actually a win-win situation for lottery operators and customer alike. The operator now has a direct relationship with customers and does not have to use a retail network to sell tickets or pay commissions. It can know its customer better, check spending patterns, cross market and observe potentially damaging behaviour. For the customer, purchase of tickets is rendered simple, tickets are never lost and numbers are automatically checked. In short, a product that was always very suitable for a remote medium has been pushed by circumstances from retail to online, and it seems unlikely that it will ever go back again. Will the same be true of betting shops adult gaming centres and casinos? I think that it seems clear that casinos will still be seen as entertainment destinations. But the future for adult gaming centres and retail bookmakers seems less certain.

Travel away from home

One sector that has been disproportionately affected by the pandemic is that of international travel. The future of that industry is very interestingly poised. On the one hand, there is

clearly a very large pent-up demand for tourist travel but, on the other, international travel brings with it a host of difficulties in terms of containment of the virus, and may also involve the public stepping outside its comfort zone. For every tourist eager to get back to normal holidays, there are others concerned by new variants. Restrictions on travel generally have had a significant impact on the world's carbon emissions (indeed we have seen the largest annual decrease in carbon emissions since 1900). So will we go back to a life of weekend breaks and convenience tourism? I think that the answer is probably 'yes, we will'. After all, at least for those in the northern parts of Europe and America, holiday travel involves one type of experience that cannot yet be delivered online – sunshine!

The picture for travel therefore seems a nuanced one: it will be harder to justify business travel, when we are not even commuting as much, but it seems likely that tourism will quickly revive to its pre-pandemic levels. Such travel will of course include the traditional gambling and sport hotspots, and hopefully attendance at sporting and tourist event will soon recover – something very much needed by many economies that have suffered profoundly in the past year.

ii The richer and poorer

The pandemic has caused a monumental economic shock. The FTSE, Dow Jones and Nikkei all saw huge losses in the early months of 2020, with the FTSE dropping 14.3 per cent during 2020, its worst performance since the credit crisis of 2008. The announcement of vaccines has caused many of the major indices to rise sharply, many to well above pre-pandemic levels, but stock prices are to some extent speculative reflections of future hopes, and do not adequately reflect the huge long term borrowing in which almost every government has had to engage. Those who print money, have placed their reputations on the line, and over the next decade are either going to have to grow or tax their way out of the crisis. Some extra burden will inevitably fall on the public.

At the household level, the pandemic has not treated everybody equally. Hundreds of thousands have lost their jobs, spent their savings and face an uncertain future. The burden has fallen particularly heavily on the young, who are most likely to be those working in the hospitality and leisure industries. By contrast others have done relatively well. In the UK, there are reports of as many as 9 million 'unexpected savers' who have faced a combination of either working from home or having their incomes supplemented by furlough schemes, and at the same time have been unable to spend anything on entertainments. Certainly, unlike other recessions, there is no 'systemic weakness' in the economy. Strangely, 2020 has seen not only record debts, but also record levels of personal savings.

Thus, while currency of all gambling – leisure spend – has been significantly reduced, in many cases it is a question of fun postponed rather than removed altogether. In the UK, the beginning of the pandemic came serious warnings from regulators asking operators to ensure that their customers, often bored, solitary and impoverished by loss of employment, did not succumb to excess gambling. So what happened? The latest statistics from the UK Gambling Commission (January to November 2020) showed no significant increase in gambling, despite the stories peddled by the media. There was, as might be expected, a continued growth in online gambling, and equivalent decline in the use of retail premises for bookmaking. But these trends are probably what one would have expected whether there was a pandemic or not. It is curious how constant gambling behaviour is in our society.

All of us have had our views changed over the past 12 months, and all of us have tried to maintain a sense of normality in unusual circumstances. It will be very interesting to see

how our society changes as a result. But in the meantime, our group of author-lawyers have at least been able to keep busy working to serve our clients, and monitor developments in this fascinating and evolving area of law.

I wish to thank my contributors for their usual careful and detailed analysis of the gambling laws of their individual jurisdictions. *The Gambling Law Review* now contains 33 chapters, and I hope that next year's guide will cover still more. I also add a note of personal thanks to those in my own domestic and work bubble, my partner Vanessa and my son Louis, who have both had to put up with more of me in the last 12 months than anyone rightly should have to suffer, and to whom therefore I dedicate my own part in this year's edition.

Carl Rohsler

Memery Crystal

London

May 2021

HONG KONG

*Vincent Law and Alan Linning*¹

I OVERVIEW

In Hong Kong, the most common types of lawful gambling available to the general public are lotteries, horse racing and football betting. They are run by the Hong Kong Jockey Club, which is the only racing club and legal bookmaker in the territory, and so has a monopoly. Casino gambling in a land-based casino is not legal in Hong Kong. Macao, a major gaming city, is just about an hour away by road or ferry.

The position on online gambling is less certain, given that the main statute that regulates gambling looks at gambling in the traditional way where people have to be physically present in the same place to deal with each other. However, betting with illegal bookmakers, whether through the telephone, internet or otherwise, is specifically prohibited.

Gambling is not against Hong Kong's public policy, so any gaming credit granted in another jurisdiction or loan given for the purpose of gambling may be enforced through the Hong Kong courts as long as they are legal under the applicable governing law. This is in contrast with the situation in mainland China where lawsuits related to gaming credit or gambling will not be accepted. Hong Kong thus provides a useful forum for the collection of gaming credit obtained by mainland Chinese punters who have assets in Hong Kong.

Even though casinos do not legally exist in Hong Kong, marketing activities for gaming are not prohibited. Many large casino groups have marketing offices in Hong Kong to promote their products and services to high-rollers in the region. Hong Kong is also a strategic location for such activities in view of its proximity to Macao and mainland China. Gambling in general and gambling-related marketing activities remain unlawful in mainland China, notwithstanding most of the revenues to the major gaming hubs in Asia and beyond are contributed by punters from mainland China.

II LEGAL AND REGULATORY FRAMEWORK

The main legislation governing gambling in Hong Kong is the Gambling Ordinance (Cap. 148). The general position is that gambling is unlawful unless the act falls within one of the exemptions under the statute. The definitions of various key terms are laid out under Section 2. Gambling is defined to include 'gaming', 'betting' and 'bookmaking.' Historically, the law is targeted towards gambling at unlicensed establishments and betting with illegal

¹ Vincent Law and Alan Linning are partners at Mayer Brown. The information in this chapter was accurate as at May 2020.

bookmakers. Private bets, gaming carried out in private premises on social occasions and certain types of games carried out in licensed premises on social and non-social occasions are not unlawful under the Gambling Ordinance.

i Gaming

A 'game', which is one form of gambling, is widely defined to include 'a game of chance, a game of chance and skill combined and a pretended game of chance or chance and skill combined' and 'gaming' is defined to mean 'the playing of or at any game for winnings in money or other property whether or not any person playing the game is at risk of losing any money or other property'. Under these wide definitions, whatever activities where an element of chance is involved and the participants stand to win something will be a form of gambling, and will, therefore, be unlawful. One classic example of a game is a lucky draw, which is also a lottery. To lawfully conduct the game, the organiser has to obtain a licence and fulfill the conditions of the licence in conducting the game.

By the same token, a game played on an online gambling platform or virtual casino, which offers the players a chance to win money or other property falls within the definition of a game. However, a person who takes part in online gambling will usually do it at home in front of his or her computer, so the person cannot be charged with the offence of gambling in a gambling establishment under Section 6 of the Gambling Ordinance, where 'gambling establishment' is defined to include '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'. Although Section 13 makes it an offence for someone to gamble in a place that is not a gambling establishment, one crucial element is that the place where the gambling takes place must be the place where the other person operates or manages or otherwise controls the unlawful gambling. In the case of online gambling, the physical location where the online gaming operator controls the gambling, usually in a jurisdiction where such operations are legal, will not be the same place as where the punter gambles. Theoretically speaking, both the operator and the punter can be in the same physical location in Hong Kong when the online gambling takes place, but it is only in this unlikely and narrow scenario that the statute can be applied against them.

For these reasons, there seems to be a loophole in the current legislative framework as regards online gambling (as opposed to betting, which is specifically regulated under the same statute), as historically the law was drafted to regulate traditional gambling activities where people have to be in front of each other in a physical location. Although one cannot safely assume playing poker or a casino-style game online at home, where real money is at stake, is immune from prosecution, it is at least questionable which specific offence is committed under the Gambling Ordinance in that situation.

In recent years, whether or not electronic sports is a form of gambling has become a hot topic. As the definition of a 'game' is 'a game of chance, a game of chance and skill combined', the sport concerned will not be a game if the playing of which is purely based on the player's skill and not chance and skill combined. For instance, a ping-pong game played on a ping-pong table is not a game because its outcome is solely based on the skill of the players, notwithstanding sometimes sports players will attribute the outcome of a match to their 'luck'. This is in contrast with someone's luck in a lucky draw where the participants have no control in the results at all.

ii Betting and bookmaking

The legal position on betting is much clearer. The Gambling Ordinance under Section 8 specifically prohibits betting with a bookmaker, whether or not the bet is received within or outside Hong Kong. Unauthorised bookmaking is also a crime in Hong Kong, but the law specifically provides that betting with a bookmaker authorised under the Betting Duties Ordinance (Chapter 108), (i.e., the Hong Kong Jockey Club) is lawful. As such, the only way to lawfully bet with a bookmaker in Hong Kong is to patronise the Hong Kong Jockey Club.

Betting with overseas bookmakers, even if they are legal in the jurisdiction where they operate, is an offence regardless of how the bet is placed. In practice, however, it is difficult to see how law enforcement can meaningfully crack down on this type of illegal betting given the ease of making a phone call and gaining access to the internet. The law seems to be more effective in deterring overseas bookmakers from soliciting business in Hong Kong, as most prominent bookmakers will deny access to their platforms if they detect that the users are accessing their webpage from Hong Kong.

iii Wager

A 'bet' can also be made between persons where none of them is a bookmaker, which is not prohibited by the Gambling Ordinance. This type of bet is more formally known as a 'wager'.

'Wager' is not defined in the Gambling Ordinance. As a common law jurisdiction and a former British colony, Hong Kong benefits from a rich body of case law applicable to gaming contracts and their enforcement. Traditionally, the courts had been asked to determine disputes relating to a 'wagering contract,' which is not defined in any statute. The term 'wagering' has been described judicially in *Carlill v. Carbolic Smoke Ball Co* [1892] 2 QB 484 as:

A wagering contract is one by which two persons professing to hold opposite views touching the issue of a future uncertain event, mutually agree that, dependent upon the determination of that event, one shall win from the other, and that other shall pay or hand over to him, a sum of money or other stake; neither of the contracting parties having any interest in that contract than the sum or stake he will so win or lose, there being no other real consideration for the making of such contract by either of the parties.²

This judicial description of wager, or bet, should not be treated in the same way as a statutory definition. It is possible that the meaning of the word will be reinterpreted or redefined in other cases. While this judicial definition of a wager is limited to a contract between two persons, the position in Hong Kong is that a bet made between two or more persons is lawful provided that none of the parties to the contract is a bookmaker or does it as a trade or business. As such, where there are more than two persons participating with their stakes forming a common fund to be paid over to the winner, such multipartite arrangement is lawful if none of the parties is a bookmaker.

At common law, betting is not illegal and a wagering contract is enforceable provided that it does not incite a breach of the peace and is not immoral or otherwise contrary to public policy. This is in contrast with some jurisdictions where a wagering contract is made unenforceable by statute.

² [1892] 2 QB 484, 490, per Hawkins J.

iv Contract for difference

A 'contract for difference' is defined in the Gambling Ordinance to mean 'an agreement the purpose or effect of which is to obtain a profit or avoid a loss by reference to fluctuations in the value or price of property of any description or in an index or other factor designated for that purpose in the agreement'. The Gambling Ordinance does not apply to any contracts for differences that are listed on any specified stock exchange or traded in any specified futures exchange.

III ADVERTISING AND MARKETING

While gambling per se is unlawful in Hong Kong unless exempted by statute or licensed, marketing activities for gambling and gambling-related services are not prohibited in Hong Kong. Many well-known international groups of land-based casinos have marketing offices in Hong Kong and employ executives to attract high-rollers in the region to visit their properties in major gaming cities. It is worth pointing out that such marketing activities remain prohibited in mainland China, although punters from the mainland contribute a significant share of revenue to these big gaming operators.

Although the law in Hong Kong does not prohibit the advertisement or promotion of gambling, very rarely are such advertisements seen in the public. Major casinos and cruise ships usually only advertise their resorts and offers on rooms and dining without mentioning the gambling side. Promotion of casinos and gambling related services will usually be conducted by the marketing executives to targeted customers.

i Legal bookmakers and regulators

The Gambling Ordinance allows businesses to apply for licences to run trade promotion competitions that will otherwise be illegal, but it is basically impossible for anyone to enter into the lotteries or bookmaking market that has always been monopolised by the Hong Kong Jockey Club.

The Hong Kong Jockey Club is licensed and authorised by the Hong Kong government to conduct horse racing, football betting and lotteries. The government's power to license and authorise comes from the Betting Duty Ordinance (Chapter 108). Under the same statute, a Betting and Lotteries Commission is established comprising members appointed by the Chief Executive. The main functions of the Commission are to advise the government on, among other things, the regulation of the conduct of betting on horse races and football matches and lotteries, and the issuance and revocation of licences and the variation of the conditions of such licences. As such, the Commission's role is advisory instead of regulatory and the ultimate power to issue and revoke licences remains with the government.

In addition to a racing club, the Hong Kong Jockey Club is a private club with clubhouses in Hong Kong and Beijing. Only members of the club may own horses. Personal membership is not transferrable and will only be granted to applicants with the support of voting members subject to the ultimate decision of the Board of Stewards, which comprises a few voting members. Admission to the club's membership is always sought after among the local elites.

The betting operations and the membership arm are independent from each other and both are run by professional management teams, governed by the Board of Stewards. Thanks to the betting duties levied on the bets, the Hong Kong Jockey Club has been the largest

tax payer in Hong Kong for many years. The profits made from the betting operations are applied to a charity trust set up by the club on donations and social projects for the general welfare of the public.

ii Enforcement of gaming credit

Punters cannot bet on credit with the Hong Kong Jockey Club. They have to either bring cash to buy a betting slip at the counter or deposit money with their betting accounts and apply the funds in the accounts for betting. Therefore there will not be any instance of outstanding credit or loss that must be collected by the club. This makes betting with illegal bookmakers somehow attractive to many people as they are not required to deposit cash up front with the bookmakers, which also offer better odds most of the time.

Under the Gambling Ordinance, it is an offence to provide 'money or other property to a person knowing that it is to be used by any person in or for or in connexion with unlawful gambling or an unlawful lottery'. Therefore, it is a crime to knowingly loan money for the purposes of unlawful gambling, and such loan is irrecoverable.

On the other hand, in many gaming jurisdictions such as Macao, Singapore and Las Vegas, legislation has been passed to allow licensed casinos to give credit to the punters. The credit will usually be granted in the form of a credit line, whereby the punters will be allowed to draw on the credit line by taking gaming chips on credit. The punters will have to settle the outstanding credit by returning gaming chips, cash, or a combination of both. The legislations provide that gaming credit is enforceable as a debt, so the casinos can take legal action against the punters to recover outstanding credit.

People unfamiliar with the concept of gaming credit may see it as the loss suffered by the punter at the casino and that a legal action filed by the casino to recover the credit is an action to sue for the casino's winnings. This is a misconception. The casino wins at the completion of the wager that is conducted on the gaming table, and its winnings are collected when the gaming chips are collected by the dealer immediately after the completion of each game. On the other hand, gaming credit effectively means buying chips on credit. A punter has to repay such credit whether he or she loses or wins at the games in which such chips are used. Therefore an enforcement action taken by the casino is to recover the money it has lent to the punter to buy chips, as opposed to recover the winnings of the casino, which has already been physically collected on the table.

In Hong Kong, there is a long line of case authorities that provide an action can be filed in Hong Kong to recover gaming credit that was legal under the law of the jurisdiction where it was advanced. These debts are enforceable and the creditor will generally be able to get judgment summarily without incurring the time and expenses of a full trial. For instance, many casinos in Macao, Singapore and the United States have sued punters in Hong Kong where the punters reside or have assets.

On occasions, the punters will tender a personal cheque signed in blank to the casino, known as a 'cheque on board', as collateral of the credit. When the punters default, the casino will fill in the outstanding amount and deposit the cheque for settlement of the credit. If the cheque is dishonoured, this gives an additional cause of action for the casino to sue the punter. The Hong Kong courts recognise that a cheque is enforceable even if the underlying transaction may not be enforceable as long as the same is not illegal.

Some mainland Chinese punters have no residence or other presence in Hong Kong other than a bank account, and they tender cheques drawn on such accounts as cheques on board. When casinos have to take legal action against them, they may rely on the

dishonoured cheques to file the lawsuit in Hong Kong and apply for permission of the Hong Kong court to serve the court documents on the punters in the mainland. The courts may allow such application on the grounds that the cheque is governed by Hong Kong law and was dishonoured in Hong Kong. This is one possible way to bring mainland Chinese punters within the jurisdiction of the courts for recovery of gaming credit, even if the punter cannot be served with court process within Hong Kong.

The above example may arguably also apply to other situations where the punters reside in a country where suits on gaming debt are not recognised, but the punters have tendered cheques on board drawn with a bank situated in a jurisdiction where gaming credit and securities for gaming may be enforced.

iii Sanctions for non-compliance

The Gambling Ordinance contains a robust sanctions regime for non-compliance. As noted above, the Ordinance states that gambling is unlawful in Hong Kong save for a number of limited exceptions. The law creates a series of criminal offences relating to unlawful forms of gambling and lotteries including operating, managing or controlling a gambling establishment. The running of or participating in unlawful lotteries is an offence as is bookmaking. It is also an offence for owners, tenants, occupiers or persons in charge of premises to allow their premises to be used as a gambling establishment or as a bookmaker. The maximum penalties for these offences are a fine of HK\$5 million and seven years' imprisonment.

IV WRONGDOING

i Anti-money laundering

Worldwide, gambling is recognised as being susceptible to use by organised crime and by terrorist organisations to place or layer the proceeds of illegal activities in the financial system. Hong Kong has a well-developed legal structure to combat money laundering and terrorist financing.

In September 2019, the Financial Action Task Force (FATF) issued a generally positive report on Hong Kong's regime for combatting money laundering (and terrorist financing). FATF found that Hong Kong has a solid record of investigating and prosecuting money-laundering offences, with significant amounts of money being restrained and confiscated.

The relevant Hong Kong laws on anti-money laundering are: the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405), the Organised and Serious Crimes Ordinance (Chapter 455), the United Nations (Anti-Terrorism Measures) Ordinance (Chapter 575) and the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Chapter 615).

Under these laws, it is a criminal offence to deal with property knowing, or having reasonable grounds to believe, that the property is the proceeds of an 'indictable offence' or of drug trafficking. The definition of 'indictable offence' includes the offences under the Gambling Ordinance described above.

There is also an obligation for a person to make a suspicious transaction report (STR) where he or she knows or suspects that any property in whole or in part directly or indirectly represents the proceeds of an indictable offence or drug trafficking or represents terrorist property. Failure to make a STR when required to do so by the legislation is a criminal offence.

The Joint Financial Intelligence Unit (JFIU) comprising officers from the Hong Kong Police Force and Hong Kong Customs and Excise manages the STR regime for Hong Kong. The JFIU receives and analyses STRs and shares them with law enforcement agencies in or outside Hong Kong or with financial intelligence units worldwide.

Further, a person arriving in Hong Kong and in possession of a large quantity of currency and bearer negotiable instruments of a total value more than HK\$120,000 must make a written declaration to the customs.

As there are no casinos in Hong Kong, the bulk of the STRs filed with the JFIU are from financial institutions. Once a STR has been filed, an account can effectively be frozen by the authorities through an administrative procedure involving a 'no consent letter'. Also, financial institutions often have a contractual right to block or close an account tainted by suspicious transactions. This type of unilateral action by financial institutions has become more common in view of rising expectations on their role in combating money laundering.

V OUTLOOK

The legal framework and jurisprudence in Hong Kong as regards gambling and enforcement of gaming credit have been quite settled. The law is not expected to change in any material way in the foreseeable future.

The Hong Kong Jockey Club will remain as the only racing club and betting operator in Hong Kong in the years to come, although the club has invested in a new racecourse in Conghua in mainland China, about 200km from Hong Kong. All stables currently in Hong Kong are expected to move there and the horses will be transported to the racecourse in Hong Kong whenever they race. Exhibition raceday has been held at this new racecourse, which will open the door for more similar events in mainland China. As to whether or not horse racing and betting will be legalised in mainland in the near future, this is something which everyone in the racing circuit is eager to find out.

More gaming resorts are being developed and built in Asian countries such as Japan, Taiwan, and the Philippines. If gaming credit is permitted and regulated by local legislation, it is expected Hong Kong will be a regular forum for enforcing gaming credit granted in those jurisdictions as traditionally high-rollers in the region will invariably have some assets or business interest in Hong Kong.

ABOUT THE AUTHORS

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Vincent Law is a partner at Mayer Brown. Vincent is a commercial litigator focusing on regulatory investigations and major commercial disputes. Among his various engagements in the regulatory regime, he has advised listed companies, directors, financial institutions and professional firms in investigations by regulatory bodies. He has also advised major corporations on internal investigations relating to suspected bribery, money laundering and other regulatory issues. In his litigation practice he has advised in major shareholders and family disputes, acts for liquidators and trustees-in-bankruptcy in insolvency litigation, and regularly represents gaming entities in gaming-related litigation. Outside court he advises the largest private club in Hong Kong on its disciplinary proceedings and internal regulatory matters.

Vincent is a solicitor-advocate who has been granted Higher Rights of Audience (HRA) in respect of civil proceedings in Hong Kong by way of exemption from assessment. Vincent is also a notary public.

Currently Vincent is a member of the Panel of the Board of Review (Inland Revenue Ordinance), a practising solicitor member of the Solicitors Disciplinary Tribunal Panel and a member of the Hong Kong SAR Passports Appeal Board.

Vincent's regular clients include gaming entities (from Macao, Singapore and the US), insolvency practitioners, financial institutions, the racing club, listed entities and their officers.

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Alan Linning is a partner at Mayer Brown and a member of the firm's litigation and dispute resolution practice. He has over 30 years of experience in commercial litigation and disputes with a focus on financial services regulatory matters and investigations. With the extensive experience gained from his roles in the finance sector as well as with the Hong Kong regulators, Alan is well placed to provide strategic advice and assistance to clients on both contentious and non-contentious regulatory matters including civil and criminal investigations and litigation, compliance issues and regulatory policy.

Alan is listed as a leading litigation and dispute resolution and financial services regulatory lawyer by *Chambers Global*, *Chambers Asia-Pacific*, The Legal 500 Asia Pacific and IFLR 1000. Clients praised his 'wealth of knowledge' (*IFLR 1000 Hong Kong 2021*)

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