

**President's ruling on
Committee Stage Amendments to
Betting Duty (Amendment) Bill 2006
proposed by Hon Andrew CHENG Kar-foo and
Dr Hon Fernando CHEUNG Chiu-hung**

Hon Andrew CHENG Kar-foo and Dr Hon Fernando CHEUNG Chiu-hung have each given notice to move Committee Stage Amendments ("CSAs") to the Betting Duty (Amendment) Bill 2006 ("the Bill"), if the Bill gets its Second Reading at the Council meeting to be held on 12 July 2006. I am required to rule whether they are admissible under the Council's Rules of Procedure. Before making this ruling, I have invited the Secretary for Home Affairs ("SHA") to offer his comments on the CSAs, and Hon Andrew CHENG Kar-foo and Dr Hon Fernando CHEUNG Chiu-hung to offer their response. I have also sought the advice of Counsel to the Legislature.

Purposes of the proposed amendments

2. Hon Andrew CHENG Kar-foo's proposed CSAs seek to amend clauses 15 and 16 of the Bill.
3. Dr Hon Fernando CHEUNG Chiu-hung's proposed CSAs seek to amend clauses 13 and 15 of the Bill.

The Administration's View

Hon Andrew CHENG Kar-foo's proposed CSAs

4. SHA advises that Hon Andrew CHENG Kar-foo's proposed CSA to clause 16 of the Bill seeks to amend section 6I, which deals with the authorization of betting on football matches, of the Betting Duty Ordinance (Cap. 108) whereas the scope of the Bill is clearly confined to dealing with betting relating to horse racing. The proposed amendment is not relevant to the subject matter of the Bill, nor to the subject matter of the clause to which it relates. Clause 16 is nothing more than a technical drafting amendment reflecting a repositioning of the definitions of "fixed odds" and "pari mutuel" betting in the Ordinance. It does not in any way introduce the substance of football match issues into the Bill.

Dr Hon Fernando CHEUNG Chiu-hung's proposed CSAs

5. SHA advises that Dr Hon Fernando CHEUNG Chiu-hung's proposed amendment to clause 13 of the Bill is beyond the scope of the Bill. Clause 13 only proposes to change the name, not the composition, of the Football Betting and Lotteries Commission to reflect its extended functions.

Responses from the Members

Hon Andrew CHENG Kar-foo's response

6. Hon Andrew CHENG Kar-foo does not agree to SHA's view. He argues that:

- (a) since the heading of clause 16 is "Authorization of betting on football matches", the proposed amendment is relevant to the subject matter of clause 16;
- (b) the President's previous ruling on proposed CSAs to the Mass Transit Railway Bill established the principle that the President will consider information in the relevant LegCo Brief to determine the subject matter of a bill; and
- (c) according to the LegCo Brief on this Bill, the Administration is proposing "to rationalize the regulatory regime of horse betting in order to bring it broadly into line with authorized football betting and lotteries under the Ordinance". The subject matter of the Bill is therefore to bring authorized horse race betting broadly into line with authorized football betting. The fact that his proposed amendment to clause 16 to allow the Legislative Council the power to amend licensing conditions is to bring it into line with his proposed CSA to clause 15 in relation to horse racing, which SHA does not dispute.

Dr Hon Fernando CHEUNG Chiu-hung's response

7. Dr Hon Fernando CHEUNG Chiu-hung is of the view that clause 13 should not only propose to change the name of the Football Betting and Lotteries Commission but should also standardize the composition of its members. The main purpose of the Bill is to reform the duty system for horse racing. The major part of the reform is to combat off-course betting in horse racing. To do so, the functions of the present Football Betting and Lotteries Commission will be expanded to cover horse racing. Clause 13 of the Bill does not stand alone but arises in consequence of clause 14 which changes the function of the Commission. His amendment proposes a further change in

consequence to the change of function: the composition of the Commission should change in the light of the new function, to avoid a real or apparent conflict of interest.

Advice of Counsel to the Legislature

8. Counsel to the Legislature advises that the object, and therefore the subject matter, of the Bill is to give effect to proposals to reform the betting duty system for bets on horse racing, and to rationalise the regulatory regime for the conduct of betting on horse races. Details of the proposals are reflected in provisions of the Bill, and the policy background and justifications for these proposals are found in the LegCo Brief. The proposals which are connected with the CSAs proposed by Hon Andrew CHENG Kar-foo and Dr Hon Fernando CHEUNG Chiu-hung are:

- (a) the setting up of a general licensing system for horse race betting whereby SHA could, by issuing a licence to a company, authorise the company to conduct fixed odds betting or pari-mutuel betting on the results of, or contingencies relating to, horse races;
- (b) to provide, under the licensing system for horse racing, two categories of licensing conditions i.e. one prescribed by legislation and the other by SHA under delegated authority; and
- (c) to expand the functions of the existing Football Betting and Lotteries Commission to include advising SHA on the regulation of the conduct of betting on horse racing, as well as compliance with licensing conditions by the licensee.

Hon Andrew CHENG Kar-foo's proposed amendment to clause 16

9. Regarding Hon Andrew CHENG Kar-foo's proposed amendment to clause 16, Counsel advises that clause 16 of the Bill seeks to repeal section 6I(7) which provides the definitions of "fixed odds betting" and "pari-mutuel betting" for the purposes relating to the authorization of betting on football matches by SHA. The repealed definitions are reproduced by clause 11(2) as section 6B(1) of Part 3 of the Betting Duty Ordinance. Section 6B is the interpretation section for Part 3 of the Ordinance. The positioning of these definitions in section 6B(1) has the effect of applying them to section 6I and the proposed new section 6GB (under Part 3 as well) which provides that SHA may, by issuing a licence to a company, authorize the company to conduct fixed odds betting or pari-mutuel betting on the results of horse races. Section 6B appears to be a logical position to place these two definitions as Part 3

would contain more than one provision (i.e. section 6I and the new section 6GB) where the same expressions would appear. Clause 16 is a technical amendment. It does not seek to bring about any change in substance to section 6I.

10. Hon Andrew CHENG Kar-foo's proposed CSA to clause 16 is to substitute it by a clause which not only repeals section 6I(7) (same as what clause 16 seeks to achieve), but also adds in a new provision which provides a mechanism to amend the licensing conditions for conducting football betting by way of a resolution of the Legislative Council.

11. Counsel advises that Hon Andrew CHENG Kar-foo's proposed CSA to clause 16 is beyond the scope, and is therefore not relevant to the subject matter of the Bill which does not concern the regulation of the licensing conditions for conducting football betting.

Dr Hon Fernando CHEUNG Chiu-hung's proposed amendment to clause 13

12. Counsel advises that Dr Hon Fernando CHEUNG Chiu-hung's proposed CSA to clause 13 is to add a new subsection (3A) to section 6D of the Ordinance. The existing section 6D(1) provides for a body called the "Football Betting and Lotteries Commission" which the Bill seeks to amend by renaming it as the "Betting and Lotteries Commission". Section 6D(2)(a) and (b) empowers the Chief Executive to appoint three public officers and not less than eight non-public officers as members of the Commission. Section 6D(2)(c) requires the Chief Executive to appoint one of the non-public officer members as the Chairperson of the Commission. Dr Hon Fernando CHEUNG Chiu-hung's proposed new subsection (3A) imposes a restriction on the Chief Executive's exercise of the power of appointment under section 6D(2)(a) and (b), by providing that "of the persons appointed under subsection 2(a) and (b), no one shall be a Voting Member of the Hong Kong Jockey Club if the Hong Kong Jockey Club is holding a licence which is in force issued under section 6I(1) or 6GB(1)".

13. Counsel advises that the points made by Dr Hon Fernando CHEUNG Chiu-hung in paragraph 7 are apparently of importance from the policy point of view. However, the question before the President is a purely procedural one, i.e. whether the substance of the proposed CSA is within the scope of, and relevant to, the subject matter of the Bill. The President does not consider the merits of proposed amendments to bills.

My opinion

14. Rule 57(4)(a) of the Council's Rules of Procedure provides that "An amendment must be relevant to the subject matter of the bill and to the subject

matter of the clause to which it relates."

15. I accept Counsel's advice on the object and the subject matter of the Bill, which is detailed in the LegCo Brief on the Bill and the provisions in the Bill. I have also stated in my previous rulings relating to Rule 57(4)(a) that I cannot consider the merits of proposed amendments to bills.

16. With regard to Hon Andrew CHENG Kar-foo's arguments in paragraph 6 above, I am of the opinion that:

- (a) the heading of a clause does not determine the subject matter of the Bill. It is the substance of the clause that I should look at. Clause 16 does not involve any issues of substance relating to the authorization of betting on football matches;
- (b) I consider any information or material that is relevant to the determination of the subject matter of a bill. The extent to which the information contained in a LegCo Brief is relevant or useful to my consideration depends on the facts of each case; and
- (c) proposals for bringing the regulatory regime of horse race betting broadly into line with authorized football betting and lotteries are specified in paragraph 15 of the LegCo Brief. These proposals are reflected in the Bill. They concern the regulation of horse race betting only. The Bill's subject matter does not extend to including the regulation of the licensing conditions under section 6I of the Betting Duty Ordinance by the Legislative Council being given the power to amend them by resolution. Hon Andrew CHENG Kar-foo's proposed CSAs to clause 15 are admissible because they relate to the licensing conditions for conducting horse race betting. However, it does not follow that this would provide justification for the admission of the proposed CSA to clause 16 for dealing with a matter which is outside the scope of the Bill.

17. I am of the view that Hon Andrew CHENG Kar-foo's proposed CSA to clause 16 is beyond the scope of, and is therefore not relevant to, the subject matter of the Bill.

18. With regard to Dr Hon Fernando CHEUNG Chiu-hung's proposed CSA to clause 13, I accept SHA's view and Counsel's advice that clause 13 only seeks to change the name of the Football Betting and Lotteries Commission to reflect its extended functions. Clause 13 does not relate to provisions in the Ordinance on the composition of the Commission, which Dr Hon Fernando CHEUNG Chiu-hung's CSA seeks to change.

Ruling

19. I rule that Hon Andrew CHENG Kar-foo's proposed CSA to amend clause 16 and Dr Hon Fernando CHEUNG Chiu-hung's proposed CSA to amend clause 13 of the Bill are not relevant to the subject matter of the Bill and the two clauses in question. They are not admissible under Rule 57(4)(a) of the Rules of Procedure.

(Mrs Rita FAN)
President
Legislative Council

10 July 2006