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3 May 2003

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By Fax  
2877 5029

Dear Mr. Lam,

**Betting Duty (Amendment) Bill 2003**

Thank you for your letter of 23 April 2003 and our reply to your comments is set out below in seriatim:

**Clause 13**

*Section 6B*

2. Under the proposed new section 6B(4), the public officer could tender a resignation of his appointment as member of the Gaming Commission. However, we do not expect that the public officers would resign during the term of appointment as the public officers are appointed in official capacity and they should be serving on the Commission as part of their official duties.

*Section 6I*

3. The proposed new section 6I(2)(a) refers mainly to the situation whereby the bettor loses. The proposed section 6J(2)(b) refers mainly to the situation whereby the bettor wins.

### *Section 6I and 6J*

4. Section 6I sets out the formula of calculating “net stake receipts” for the purpose of charging betting duty on football betting. The terms “become payable” and “becomes liable to pay” both denote the situation whereby the bettor wins and the conductor starts to be liable to pay dividend within the relevant charging period. Different forms of words are used because the relevant subjects of the sentences are different. When the subject is the conductor, the term “becomes liable” is used, such as in the proposed new section 6I(2)(b), whereas the term “becomes payable” is used when the subject is the dividend, such as in E of the proposed new section 6J(1).

5. Section 6J sets out the formula for adjusting the net stake receipts in respect of a charging period. The term “are payable” in C(a) of the proposed new section 6J(1) seeks to qualify the unclaimed dividend by referring to the total amount of dividend that are payable by the conductor. The term “are payable” in F(a) of the proposed new section 6J seeks to qualify the hedging bets by referring to the total amount of hedging bets payable by the conductor to the overseas bookmaker. The term “are payable” is used instead of “becomes payable” because the timing at which the dividend or bet becomes payable is irrelevant for the purpose of calculating the amount of adjustment during the charging period.

6. The word “are paid” in F(a) of the proposed new section 6J(1) refers to the hedging bets that have actually been paid during the charging period by the conductor to the overseas bookmaker for placing hedging bets. The use of “paid or payable” ensures that the entire amount of such hedging bets will be captured by variable F to the formula, whether the conductor has paid for the bet, or is yet to pay for it where the bet is placed on credit terms.

### *Section 6O(2)*

7. We intend to adopt the existing policy on the imposition of surcharge on the default payment of taxes under the Inland Revenue Ordinance whereby a surcharge will generally be imposed up to 5% of the unpaid balance of betting duty under section 6O. Only in exceptional circumstances will the surcharge levied be less than the 5%. Such circumstances include the case where the Collector is satisfied that the delay in payment is not due to the fault of the conductor and the case where the

duty payer faces extreme hardship but shows sincerity in settlement of the unpaid duty.

*Section 6P(4)*

8. As you have pointed out, the provision does not directly state that the reference point should be the day on which the last copy of the case is served. However, we believe that there should not be any ambiguity. By the proposed new section 6P(4), the 14 days should start to run only when all the copies have been duly served in accordance with the proposed new section 6P(3)(b) and it is sufficiently reflected by the present drafting.

*Section 6W(2)*

9. The effect of the new proposed section 6W is that the constitution of the licensed company cannot be amended without the prior approval of the Secretary for Home Affairs (the Secretary), and that any amendment without such approval is of no legal effect. Apart from this, we have no intention to change the application of company law principles to the licensed company. As regards the effect of acts being performed pursuant to amendments which are of no effect under this provision, and the related rights and liabilities of third parties, the position is governed by section 5B of the Companies Ordinance (Cap. 32) where applicable. Under section 5B of the companies Ordinance, an act of a company, including a transfer of property to or by the company, is not invalid by reason only that the company whose objects are stated in its memorandum carries on any business or does anything which it is not authorized.

*Section 6X*

10. We confirm that the code of practice mentioned in section 6X will not be subsidiary legislation.

*Section 6Y(1)*

11. It is intended that the Secretary may, when a licence is still in force, change its conditions or impose new licence conditions.

*Section 6Y(3), 6Z(4), 6ZA(3)*

12. There is no restriction on the form of representations or the person to make representations on behalf of the licence holder in the proposed new sections 6Y(3), 6Z(4) and 6ZA(3). The licence holder could present its representations in person, through its legal representative or other person or in other form.

13. Under the proposed new sections 6Y(3), 6Z(4) and 6ZA(3), the Secretary shall give the holder a reasonable opportunity to make representations and consider the representations before he imposes a financial penalty, vary the licence conditions or revoke the licence. He should also specify the reason of his decision in a written notice under the proposed new sections 6Y(2), 6Z(3)(a) and 6ZA(2). The reasons for not accepting the representations will also be given in the notice where appropriate.

*Section 6ZB(2)*

14. The Secretary shall consider the representations of the licence holder, if any, before making his decision, and the 30 days in the proposed new section 6ZB(2) begins to run only after the notice of decision has been sent to the licence holder. In this connection, no time will be lost as a result of the time taken by the Secretary to consider the representations made by the licence holder. We consider that 30 days should be adequate for the holder to lodge an appeal.

*Section 6ZB(3)*

15. We consider that in most circumstances, it would be more desirable to suspend the effect of the decision until the appeal, if made, has been decided as it may cause inconvenience or damage to the licence holder and the general public if a decision that has already taken effect is subsequently reversed or varied by the Appeal Board. However, we appreciate that there may be cases where it is more appropriate for the decision (such as revocation of licence) to take immediate effect such as when there is serious contravention of licensing condition by the licence holder the continuation of which will cause irreversible damage. In this connection, we agree that it is necessary to provide in the Bill that the Secretary has the power to state that any decision should take immediate effect until the appeal, if made, has

been decided.

### **Clause 15**

16. The term “club” is referred to in some existing provisions of the Betting Duty Ordinance. Section 8 of the Ordinance imposes penalties on certain specified members of a club. As the football betting conductor and lottery conductor will not necessarily be a club under the proposed new provisions in the Bill, and penalties for contravention of certain requirements have been separately spelt out in the proposed new provisions, we consider that section 8 should be repealed. However, we appreciate that the offences in other sections of the Betting Duty Ordinance may be inadvertently repealed as a result of the repeal of section 8 and we would consider how those offences could be reinstated.

Yours sincerely,

(Ms Esther Leung)  
for Secretary for Home Affairs