

Paper for the Bills Committee

Betting Duty (Amendment) Bill 2003

Administration's Response to the Views of Bills Committee

Purpose

This paper sets out the Administration's response to some points raised by Members of the Bills Committee at its meetings on 16, 20 and 23 June.

Scope of education measures to address gambling-related problems

2. In response to Members' request, the Administration would consider including prudent financial management as part of the public and school education programmes which seek to prevent gambling-related problems. These programmes would be implemented with the use of the dedicated fund set up for the purpose.

Effectiveness of authorization of football betting in combatting illegal football betting activities

3. A member enquired whether the Administration could provide statistics and evidence to illustrate the effectiveness of authorization of football betting in combatting illegal football betting activities. As the proposal to authorize football betting in Hong Kong has yet to come into effect, we consider it impracticable to provide any statistical evidence to illustrate its effectiveness at this point in time. However, we believe that our proposed regulatory approach regarding authorized football betting (betting duty on gross profits, adequate flexibility in bet types, and a proper regulatory framework to ensure protection of punters' interests) should be able to divert a substantial demand for football betting from the illegal to the regulated avenue. We would nevertheless take into account all the relevant facts and circumstances in monitoring and assessing the effectiveness of our proposal to authorize and regulate football betting in achieving its intended objective, after it has come into operation.

Relationship between authorized football betting and development of problem and pathological gambling behaviour

4. A Member sought the Administration's view on the relationship between authorized football betting and the development of problem and pathological gambling behaviour. We consider that there is no direct casual relationship between these two issues, which should hence be dealt with separately.

5. Football betting is but one of the many existing types of gambling activities through which gamblers may develop problems. Our proposal to authorize and regulate football betting seeks primarily to divert the existing demand for an existing gambling activity from illegal to the regulated channel. We are not introducing a brand-new gambling activity and create new demand for it. As such, our proposal could alleviate (instead of aggravate) the problems arising from the rampant illegal gambling situation, including those caused by excessive gambling.

6. On the other hand, we recognize the need to implement preventive and remedial measures for addressing gambling-related problems which have been long-standing problems in the community. It is for this reason that we have decided to set up a dedicated fund for this purpose, and have decided to do so regardless of whether or when to authorize and regulate football betting. The various measures would be implemented as from mid-2003.

Opening hours of betting premises

7. Members requested the Administration to provide further information on the opening hours of the betting premises for authorized football betting in the future. At present, the off-course betting centres (OCBBs) of the Hong Kong Jockey Club (HKJC) open until 11:15pm when there are night races. We understand from HKJC that they plan to open their OCBBs for the purpose of accepting bets for authorized football betting until around 11:30pm when football betting commences operation. We consider this arrangement acceptable as this should not create any additional nuisance to the neighbourhood. As mentioned in our previous response, the operating hours for the betting premises would

be set out in the licence for authorized football betting and lotteries. For the extension of operating hours of betting premises beyond 11:30p.m. in the future, they would be considered on a case by case basis by the Secretary for Home Affairs (SHA) and relevant local bodies, including the District Council, would be consulted as appropriate.

Betting duty

8. Members requested the Administration to provide a flowchart to illustrate the calculation of betting duty for authorized football betting as proposed under the Bill. A chart for this purpose is attached at the Annex A for Members' reference.

New section 6Z

9. Some Members considered that the present drafting of the proposed new section 6Z might preclude the appeal board from varying the financial penalty imposed on licensed operator by SHA after it had ruled that the penalty was not proportionate and reasonable in relation to the failure that gave rise to the penalty. We consider that the present drafting should not preclude the Appeal Board from doing so, and there are provisions in other legislation which is similar to the proposed new section 6Z such as section 36C of the Telecommunication Ordinance (Cap. 106) (at Annex B).

Record-keeping requirement

10. Some Members considered that the penalty for contravention of section 6ZF(1) on the keeping of records of authorized football betting or lotteries might be too low. We agree that in order to increase the deterrent effect, the penalty should be raised to level 6 (i.e. \$100,000). It would also bring it in line with the level of penalty for similar offence under the Inland Revenue Ordinance (cap. 112).

Code of practice

11. Members requested the Administration to consider whether there should be an appeal channel for issuance and variation of codes of

practice and also to provide information regarding the public participation in the issuance of codes of practice. Under the proposed new section 6X, SHA could issue codes of practice to provide practical guidance on how the licensing conditions could be complied with. The code of practice is an administrative means to provide guidance to the licensed operator how they could comply with the licensing conditions. If the licensed operator acts in contravention of the code of practice, and SHA considers this amounts to non-compliance with licensing conditions and decides to impose sanction on the licensed operator, the latter could appeal against the decision in the Appeal Board. We therefore do not consider there is any need to provide an appeal channel for issue and variation of codes of practice.

12. The proposed Gaming Commission (to be retitled as Football Betting and Lotteries Commission) would advise SHA on the licensing and regulatory matter and the issuance of codes of practice should fall within its purview. This should ensure the public scrutiny of the issuance of codes of practice. The Legislative Council Home Affairs Panel would also be consulted on the issuance of codes of practice as appropriate. Similar to the licensing conditions for authorized football betting and lotteries, the issued codes of practice would be information open to the public.

Fit and proper person

13. A member considered that whether the proposed directors, principal officers or controller of the licensed operator is a shareholder or has substantial involvement in the operation of an overseas bookmaker should be taken into account in determining whether a person is fit and proper as this may give rise to conflict of interest in the operation of authorized football betting in Hong Kong. We agree that conflict of interest should also be included as one of the considerations for SHA to determine whether the licensed operator and its related person is fit and proper and the relevant Committee Stage Amendment has been submitted for Members' consideration.

Giving away betting tickets to juveniles

14. A member raised at the meeting on 23 June that the giving away of betting tickets to juvenile should be criminalized so as to increase the deterrent effect against using gifts as a cover-up for the sale of betting tickets to juveniles. We do not consider it appropriate to criminalize the giving away of betting tickets to juveniles for the following reasons:

- (a) The issue of using gifts as a cover-up for the sale of betting tickets is a problem about the gathering of evidence for the offence of sale of betting ticket;
- (b) The sale of football betting tickets by persons other than the licensed operator or its agents is an offence under proposed new section 6R already and the financial penalty for the offence has been proposed to be raised to level 5 (i.e. \$50,000). We consider that this should carry sufficient deterrent effect against the sale of betting tickets to others; and
- (c) As one of the licensing conditions, the licensed operator shall not pay dividends to juveniles. This would make it difficult for the juvenile to place bets through buying of betting tickets from a third party.

**Home Affairs Bureau
June 2003**

Annex A

**Flowchart to illustrate the calculation of betting duty
for authorized football betting**

1/9	5/9	(60 days after 5/9) 4/11	10/11
1/2	1/2	1/2	1/2
\$100 bet placed (A)	match played and \$80 dividend becomes payable (B)	\$20 of dividends that have become payable on 5/9 remain unclaimed (C)	\$10 of unclaimed dividends paid out to punters (D)
S.6I		S.6J	

1/2	1/2
\$5 hedging bet placed (F)	\$10 dividends on hedging bet (E)
S. 6J	

$$\begin{aligned}
 \text{Net stake receipt} &= (A-B) + (C-D) + (E-F) \\
 &= (100-80) + (20-10) + (10-5) \\
 &= 35
 \end{aligned}$$

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Chapter:	106	Title:	TELECOMMUNICATIONS	Gazette Number:	36 of 2000
			ORDINANCE		
Section:	36C	Heading:	Authority or court may impose financial penalties	Version Date:	16/06/2000

(1) The Authority may, by notice in writing addressed to a licensee, require the licensee to pay to the Government the financial penalty specified in such notice in any case where the licensee fails to comply with-

- (a) any licence condition;
- (b) any provision of this Ordinance or any regulation made thereunder; or
- (c) any direction issued in respect of the licensee by the Authority under section 36AA(1) or 36B(1)(a). (Amended 36 of 2000 s. 23)

(2) The Authority may, by notice in writing to any person of the description mentioned in section 36B(1)(b), require that person to pay to the Government the financial penalty specified in such notice in any case where that person fails to comply with the requirement of any direction issued in respect of that person by the Authority under that section. (Amended 36 of 2000 s. 23)

(3) A financial penalty imposed under subsection (1) or (2) shall not exceed-

- (a) \$200000 for the first occasion on which a penalty is so imposed;
- (b) \$500000 for the second occasion on which a penalty is so imposed; and
- (c) \$1000000 for any subsequent occasion on which a penalty is so imposed. (Amended 36 of 2000 s. 23)

(3A) Without prejudice to subsections (3) and (3B), the Authority may, by notice to a licensee who has committed a breach of a licence condition or provision in this Ordinance or regulation made thereunder, or a breach of a direction, require the licensee-

- (a) to disclose to the public, to a particular person or to a class of persons, in such manner as is specified in the notice, such information, or information of such a kind, as is so specified, being information that relates to the breach and is in the possession of the licensee or to which the licensee has access;
- (b) to publish, at its own expense, in newspapers corrective advertisements in such manner, at such times and on such terms as are specified in the notice and for this purpose, the Authority may specify among other things the newspapers in which the advertisements shall be published, the languages that shall be used, the days on which the advertisements shall be published, the content of the advertisements and the size and prominence of the advertisements in the newspapers. (Added 36 of 2000 s. 23)

(3B) Where the Authority considers that if he were to impose a financial penalty under subsection (3) it would not be adequate for a breach referred to in subsection (1)-

- (a) the Authority may-
 - (i) within 3 years of the commission of the breach; or
 - (ii) if the breach comes to the notice of the Authority within 3 years of its commission,

within 3 years of it so coming to the notice of the Authority,
whichever is the later, make an application to the Court of First Instance; and
(b) upon such application, the Court of First Instance may, without prejudice to any powers conferred on the Authority by any provision of this Ordinance or any regulation made thereunder or any licence condition, impose upon the licensee who has committed the breach a financial penalty of a sum not exceeding 10% of the turnover of the licensee in the relevant telecommunications market in the period of the breach, or \$10000000, whichever is the higher.
(Added 36 of 2000 s. 23)

(4) The Authority shall not impose a financial penalty under this section unless, in all the circumstances of the case, the financial penalty is proportionate and reasonable in relation to the failure or series of failures concerned giving rise to that penalty. (Replaced 36 of 2000 s. 23)

(5) Subsection (1), (2) or (3A) shall not apply in the case of the licensee or person concerned unless the Authority is satisfied that the licensee or person, as the case may be, has been afforded a reasonable opportunity of complying with the requirement of any licence condition, provision of this Ordinance or regulation made thereunder, or direction, in respect of which that subsection is sought to be applied. (Replaced 36 of 2000 s. 23)

(5A) A financial penalty imposed under this section shall be recoverable as a civil debt due and payable to the Government. (Added 36 of 2000 s. 23)

(6) The imposition of a financial penalty under this section, in relation to a licence, shall not be construed as affecting the application of section 34(4).

(7) The Authority shall, before imposing a sanction under this section on a licensee or person concerned, afford the licensee or person concerned, as the case may be, a reasonable opportunity to make representations and shall consider all representations made before the Authority decides whether or not to impose such sanction. (Added 36 of 2000 s. 23)

(Added 38 of 1993 s. 7)

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