

BETTING DUTY (AMENDMENT) BILL 2003

COMMITTEE STAGE

Amendments to be moved by the Secretary for Home Affairs

<u>Clause</u>	<u>Amendment Proposed</u>
Long title	By deleting "Gaming Commission" and substituting "Football Betting and Lotteries Commission";".
2	In the proposed long title, by deleting "Gaming" and substituting "Football Betting and Lotteries".
4	In the proposed section 1A, in the definition of "football", by adding ", Australian Rules Football" before "or".
11(b)	In the proposed section 5(2), by deleting "3" and substituting "5".
New	By adding - "12A. Section added The following is added immediately after section 6 - "6AA. Offences and penalties under Part 2 (1) If a person acts in contravention of or fails to comply with this Part or any condition imposed under this Part, the person

commits an offence and is liable to, if no other penalty is provided by this Part, a fine at level 3.

(2) If a club acts in contravention of or fails to comply with this Part or any condition imposed under this Part, the secretary, treasurer and every steward or member of the committee or management of the club commit an offence and each is liable to, if no other penalty is provided by this Part, a fine at level 3."."

- 13 (a) By deleting the heading of the proposed Division 1 and substituting -

"Division 1 - Preliminary".

- (b) By deleting the proposed section 6A and substituting -

"6A. Interpretation of Part 3

- (1) In this Part -

"associate" (相聯者) means, in relation to a person -

- (a) the wife, husband or a minor child (including a minor step-child) of that person;
- (b) a body corporate of which that person is a director;

(c) an employee or partner of that person; or

(d) if that person is a body corporate -

(i) a director of that body corporate;

(ii) a subsidiary of that body corporate; or

(iii) a director or employee of any such subsidiary;

"controller" (控制人) means, in relation to a company, a person who, alone or with any associate or through a nominee, is entitled to exercise, or control the exercise of, 15% or more of the voting power at any general meeting of the company, or a body corporate of which the company is a subsidiary;

"director" (董事) includes any person occupying the position of director by whatever name called;

"financial penalty" (罰款) means a financial penalty imposed under section 6Z;

"juvenile" (未成年人士) means a person under the age of 18 years;

"principal officer" (主要人員) means, in relation to a company, a person employed by the company who -

- (a) either alone or with any person, is responsible under the immediate authority of the directors of the company for the conduct of the business of the company; or
- (b) under the immediate authority of a director of the company or a person employed by the company, exercises managerial functions in respect of the company;

"Secretary" (局長) means the Secretary for Home Affairs;

"subsidiary" (附屬公司) has the same meaning as in the Companies Ordinance (Cap. 32).

(2) A reference in this Part to a condition of a licence shall be a reference to a condition subject to which the licence is issued, or to continue in force."

- (c) By adding immediately after the proposed section

**"6AAA. Determining if a person is a
"fit and proper" person**

In determining for the purpose of any provision of this Part if a person is a fit and proper person, the Secretary shall, having regard to that purpose, take into account -

- (a) the person's financial status and financial integrity;
- (b) the person's qualifications and experience;
- (c) the person's ability to act competently, honestly and fairly;
- (d) the person's reputation and reliability;
- (e) whether or not the person has any potential or actual conflict of interest;
- (f) whether or not the person has been charged with or convicted of any offence, whether in Hong Kong or elsewhere; and
- (g) any other matter that the Secretary considers relevant."

(d) In the heading of the proposed Division 2, by deleting "**Gaming**" and substituting "**Football Betting and Lotteries**".

(e) In the proposed section 6B -

- (i) in subsection (1) -
 - (A) by deleting "Gaming" and substituting "Football Betting and Lotteries";
 - (B) by deleting "博彩" and substituting "足球博彩及獎券";
- (ii) in subsection (2)(c), by adding "appointed under paragraph (b)" before "as";
- (iii) by adding -
 - "(2A) Of the persons appointed under subsection (2)(b) -
 - (a) at least one shall be a registered social worker within the meaning of the Social Workers Registration Ordinance (Cap. 505);
 - (b) at least one shall be eligible under the Legislative Council Ordinance (Cap. 542) to be registered as an elector for the education functional constituency specified in section

20(1)(e) of that

Ordinance; and

(c) at least one shall -

(i) occupy in

any

organized

religion

any office

associated

with the

teaching

of, the

giving of

guidance

on, or the

promotion

of

adherence

to, the

precepts of

the

religion;

or

(ii) be engaged

in the

teaching of

any

theology,

philosophy
or ethics.

(2B) If -

(a) a person appointed
under subsection
(2)(b) ceases to be a
member; and

(b) as a result, the
total number of
members appointed
under that subsection
falls below 8,

the Chief Executive shall, within 3
months after the date on which the
person ceases to be a member,
appoint another person as a member
under that subsection.

(2C) If -

(a) a person appointed
under subsection
(2)(b) ceases to be a
member; and

(b) as a result,
subsection (2A) is no
longer complied with,

the Chief Executive shall, within 3
months after the date on which the
person ceases to be a member,

appoint another person as a member under subsection (2)(b) so that subsection (2A) will be complied with." ;

(iv) by adding -

"(3A) If one of the reasons for appointing a person under subsection (2)(b) is to comply with subsection (2A), the notice published under subsection (3) in relation to the person shall contain a statement of that fact."

(f) In the proposed section 6E -

(i) by adding -

"(1A) The quorum for a meeting of the Commission shall be not less than 6 members or one-third of the total number of members of the Commission, whichever is the greater." ;

(ii) in subsection (3), by deleting everything before the comma and substituting -

"(3) If the Chairperson of the Commission reasonably believes that it is impracticable to call a meeting of the Commission".

(g) In the proposed section 6F, by adding -

"notice of additional assessment" (補加評估通知)

means a notice of additional assessment given under section 6NA;" .

(h) In the proposed section 6G -

(i) in subsection (1) -

(A) by deleting "The" and substituting

"Subject to subsection (1A), the";

(B) by adding "fixed odds betting or pari-mutuel" before "betting";

(ii) by adding -

"(1A) The Secretary shall not issue the licence to a company unless the Secretary is satisfied that the company, and all the directors, principal officers and controllers of the company, are fit and proper persons for the purpose of this section.";

(iii) by deleting subsection (3) and substituting -

"(3) Issuance of the licence to a company is subject to the conditions that the company -

(a) shall not accept, or authorize any person to accept, bets from juveniles;

- (b) shall not accept bets
in any premises to
which juveniles are
permitted to have
access;
- (c) shall not pay
dividends to
juveniles;
- (d) shall not advertise
the conduct of
betting on football
matches on television
or radio between the
hours of 4.30 p.m.
and 10.30 p.m. on any
day;
- (e) shall not, in
conducting any
advertising or
promotional
activity -
 - (i) target
juveniles;
 - (ii) exaggerate
the
likelihood
of winning;
or

(iii) expressly or impliedly suggest that betting on football matches is a source of income or a viable way to overcome financial difficulties;

(f) shall not accept bets on credit, or accept credit cards as a means of payment for placing bets; and

(g) shall conspicuously display and keep displayed notices that comply with subsection (5) -

(i) in any premises where the company accepts bets; and

(ii) on any web
site
through
which the
company
accepts
bets.

(4) Issuance of the licence is also subject to such conditions as the Secretary may think fit to impose, including but not limited to conditions relating to -

- (a) the categories of matches on which betting may be conducted;
- (b) the manner and form in which bets may be accepted;
- (c) the keeping of premises for accepting bets, the number of such premises and the persons who may have access to such premises; and

(d) the provision of
information to the
Secretary.

(5) Any notice referred to in
subsection (3)(g) shall -

(a) contain a warning of
the seriousness of
the problems caused
by excessive
gambling; and

(b) provide information
on the services and
facilities available
in Hong Kong to
problem gamblers and
pathological
gamblers.

(6) In this section -

"fixed odds betting" (固定賠率投注)

means betting on the terms that
any dividend payable on a bet
is fixed at the time when the
bet is placed;

"pari-mutuel betting" (彩池投注) means

betting on the terms that any
dividend payable on a bet
depends on the respective

shares of all winning bettors
in the total amount of
dividends available."

- (i) In the proposed section 6J(4)(b), by adding ", subject to section 6QA(6)," after "means".
- (j) In the proposed section 6M(3), by deleting "If a" and substituting "If the".
- (k) In the proposed section 6N(4) -
 - (i) in paragraph (a), by deleting "of the" and substituting "of";
 - (ii) in paragraph (d), by adding "manner in which and the" before "date".
- (l) By adding -

"6NA. Additional assessment

(1) Despite having given a notice of assessment to a football betting conductor in relation to a charging period, if the Collector reasonably believes that the net stake receipts that were derived from the conduct of authorized betting on football matches by the conductor in respect of that charging period exceed the amount of net stake receipts as specified in the notice, the Collector shall make an additional assessment of the net stake receipts that were derived in respect of that charging period.

(2) The additional assessment may only be made within 6 years after the end of that charging period.

(3) As soon as practicable after making the additional assessment, the Collector shall give the conductor a notice of additional assessment in writing, specifying -

(a) the amount of net stake receipts as additionally assessed; and

(b) the amount of additional football betting duty that is payable by the conductor, and the manner in which and the date on or before which the amount shall be paid.

(4) The conductor shall make payment to the Collector in accordance with the notice of additional assessment."

(m) By deleting the proposed section 60 and substituting -

"60. Surcharges

(1) If a notice of assessment, notice of additional assessment or notice of payment given under section 6PA(4) specifies that a football betting conductor shall pay an amount on or before a date, the Collector may, by

notice in writing given to the conductor,
demand the conductor to pay -

(a) a surcharge if that amount is
not fully paid on or before
that date; and

(b) a further surcharge if that
amount is not fully paid at the
end of 6 months after that
date.

(2) The surcharge shall not exceed 5% of
the unpaid part of the amount referred to in
subsection (1).

(3) The further surcharge shall not
exceed 10% of the total of -

(a) the unpaid part of the amount
referred to in subsection (1);
and

(b) if the surcharge is not fully
paid at the end of the 6 months
referred to in subsection
(1)(b), the unpaid part of the
surcharge.

(4) The Government may recover any
surcharge or further surcharge as a civil
debt."

(n) In the proposed section 6P -

(i) in the heading, by adding "**and holding
over of duty**" after "**assessment**";

- (ii) in subsection (1) -
 - (A) by adding ", or an additional assessment under section 6NA," after "6N";
 - (B) by adding "concerned" after "the assessment";
 - (C) by deleting everything after "Court" and substituting a full stop;
- (iii) by adding -
 - "(1A) The appeal may only be made within 1 month after the date on which the notice of assessment or notice of additional assessment, as the case may be, is given.";
- (iv) in subsection (3)(a)(i), by adding "concerned" after "assessment";
- (v) in subsection (3)(a)(ii), by adding "concerned" after "assessment";
- (vi) in subsection (5), by adding "concerned" after "assessment";
- (vii) by deleting subsection (6) and substituting -
 - "(6) If, according to the assessment concerned, an amount is payable by the conductor under section 6N or 6NA, as the case may be -

- (a) the making of the appeal does not affect the conductor's obligation to pay the amount; and
- (b) the Collector may, at the request of the conductor and subject to any conditions that the Collector may impose, order that payment of the whole or part of the amount be held over pending the final determination of the appeal."

(o) By adding -

"6PA. Provisions relating to holding over

(1) This section applies if -

- (a) a notice of assessment or notice of additional assessment, as the case may be, specifies that a football betting conductor shall pay an amount on or before a date; and

(b) the Collector has ordered under section 6P(6)(b) that payment of the whole or part of the amount be held over pending the final determination of an appeal made by the conductor.

(2) If the conductor withdraws the appeal, the conductor shall pay the Collector -

(a) the amount that was held over; and

(b) interest on the amount that was held over, calculated at the specified rate from the date referred to in subsection (1)(a) to the date on which the appeal is withdrawn.

(3) If, according to the final determination of the appeal, the amount that is payable by the conductor under the assessment concerned exceeds the amount that was not held over, the conductor shall pay the Collector -

(a) the difference between the 2 amounts; and

(b) interest on so much of the amount that is held over and becomes payable as a result of

the final determination,
calculated at the specified
rate from the date referred to
in subsection (1)(a) to the
date on which the appeal is
finally determined.

(4) Where an amount is payable by the
conductor under subsection (2) or (3) -

(a) the Collector shall give the
conductor a notice of payment
in writing, specifying -

(i) the total amount that
is payable; and

(ii) the manner in which
and the date on or
before which the
amount shall be paid;
and

(b) the conductor shall pay the
amount in accordance with the
notice given under paragraph
(a).

(5) The Government may recover any
interest payable under this section as a civil
debt.

(6) In this section, "specified rate" (指
明利率) means the rate determined by the Chief

Justice by order under section 50(1)(b) of the District Court Ordinance (Cap. 336).”.

(p) By adding -

“6QA. Hedging policies

(1) A football betting conductor may submit to the Collector for approval a hedging policy, setting out -

(a) the factors that the conductor undertakes to consider; and

(b) the procedure that the conductor undertakes to follow,

in placing a bet under section 6Q.

(2) As soon as practicable after receiving a policy submitted under subsection (1), the Collector shall, by notice in writing given to the conductor, inform the conductor if the policy is approved or not approved.

(3) A notice under subsection (2) shall, if the Collector approves the policy, specify the date on which the approval is to take effect.

(4) At any time after approving a policy, the Collector may, by notice in writing given to the conductor, withdraw the approval of the whole policy, or of any part of the policy.

(5) A notice under subsection (4) shall specify the date on which the withdrawal is to take effect.

(6) For the purpose of section 6J, if a football betting conductor claims that a bet was placed under section 6Q, and -

(a) the conductor does not have a hedging policy that is approved under this section; or

(b) in relation to the placing of the bet, the Collector reasonably believes that the conductor has failed, in a material manner, to comply with the hedging policy that is approved under this section,

the bet shall not be taken as a hedging bet."

(q) In the proposed section 6R(2), by deleting "3" and substituting "5".

(r) In the proposed section 6S -

(i) in subsection (1), by deleting "The" and substituting "Subject to subsection (1A), the";

(ii) by adding -

"(1A) The Secretary shall not issue the licence to a company unless the Secretary is satisfied that the company, and all the

directors, principal officers and controllers of the company, are fit and proper persons for the purpose of this section.”;

(iii) by deleting subsection (3) and substituting -

“(3) Issuance of the licence to a company is subject to the conditions that the company -

(a) shall not accept, or authorize any person to accept, bets from juveniles;

(b) shall not accept bets in any premises to which juveniles are permitted to have access;

(c) shall not entertain claims by juveniles for prizes;

(d) shall not advertise the conduct of lotteries on television or radio between the hours of 4.30 p.m. and 10.30 p.m. on any day;

- (e) shall not, in
conducting any
advertising or
promotional
activity -
 - (i) target
juveniles;
 - (ii) exaggerate
the
likelihood
of winning;
or
 - (iii) expressly or
impliedly
suggest that
betting on
lotteries is
a source of
income or a
viable way to
overcome
financial
difficulties;
- (f) shall not accept bets
on credit, or accept
credit cards as a
means of payment for
placing bets; and

(g) shall conspicuously display and keep displayed notices that comply with subsection (5) -

(i) in any premises where the company accepts bets; and

(ii) on any web site through which the company accepts bets.

(4) Issuance of the licence is also subject to such conditions as the Secretary may think fit to impose, including but not limited to conditions relating to -

(a) the types of lotteries that may be conducted;

- (b) the manner in which lotteries may be drawn;
- (c) the manner in which the results of lotteries may be announced; and
- (d) the provision of information to the Secretary.

(5) Any notice referred to in subsection (3)(g) shall -

- (a) contain a warning of the seriousness of the problems caused by excessive gambling; and
- (b) provide information on the services and facilities available in Hong Kong to problem gamblers and pathological gamblers."

(s) In the proposed section 6U(2), by deleting "3" and substituting "5".

(t) In the proposed section 6Y -

(i) in subsection (1)(a), by deleting "of the licence" and substituting "that is imposed by the Secretary";

(ii) by adding -

"(1A) The variation shall not take effect before the expiry of the period referred to in section 6ZB(2), being the period within which the holder of the licence may appeal against the decision of the Secretary to make the variation.";

(iii) by deleting subsection (2) and substituting -

"(2) The notice shall specify -
(a) the reasons for varying the conditions of the licence; and
(b) the date on which the variation is to take effect.".

(u) In the proposed section 6Z, by adding -

"(1A) The holder shall not be required to pay the penalty before the expiry of the period referred to in section 6ZB(2), being the period within which the holder may appeal against the decision of the Secretary to impose the penalty.".

(v) In the proposed section 6ZA -

(i) by adding -

"(1A) The Secretary may also, by notice in writing given to the holder of a licence, revoke the licence if the Secretary is no longer satisfied that the holder, or any of the directors, principal officers or controllers of the holder, is a fit and proper person for the purpose of section 6G or 6S, as the case may be.";

(ii) by deleting subsection (2) and substituting -

"(2) The notice shall specify -
(a) the reasons for revoking the licence; and
(b) the date on which the revocation is to take effect.".

(w) In the proposed section 6ZB -

(i) in subsection (3), by adding "other than a decision to revoke a licence" before the comma;

(ii) by adding -

"(4) If an appeal is made against a decision to revoke a licence, the effect of the decision

is not suspended by the making of
the appeal."

(x) In the proposed section 6ZD, by adding -

"(2A) Hearing of an appeal shall be held
in public unless the Chairperson decides that
the hearing shall be held in private."

(y) In the proposed section 6ZF(3), by deleting "level
3" and substituting "level 6".

17(b) By deleting "者" and substituting "商".

19 In the proposed regulation 3A -

(a) in paragraph (1), by deleting "以";

(b) in paragraph (2)(b), by deleting "in
accordance with paragraph (3)";

(c) in paragraph (3) -

(i) by deleting everything before
subparagraph (a) and substituting -

"(3) The qualified person
shall state in the audit report
whether, in the opinion of the
qualified person and in
relation to that charging
period, the following
statements are true -";

(ii) in subparagraph (b), by deleting
"and audited".