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Report of the Bills Committee on Betting Duty (Amendment) Bill 2003

Purpose

This paper reports on the deliberations of the Bills Committee on Betting Duty (Amendment) Bill 2003.

Background

2. The Government announced on 26 November 2002 its decision to authorize and regulate football betting in Hong Kong, and to license the Hong Kong Jockey Club (HKJC) as an operator of football betting in Hong Kong for an initial period of five years.

3. Under the Gambling Ordinance (Cap. 148), all gambling activities are illegal except those expressly authorized by the Government under the Betting Duty Ordinance (Cap. 108) (i.e. the HKJC horse racing and Mark Six Lottery), those exempted under section 3 of the Gambling Ordinance (mainly social gambling), and those licensed by the Commissioner for Television and Entertainment Licensing (e.g. mahjong parlours).

4. To give effect to the Government's decision to authorize football betting by way of licensing and to impose a betting duty on the betting proceeds, amendments to the Betting Duty Ordinance are required.

The Bill

5. The Bill seek to amend the Betting Duty Ordinance to -
- (a) empower the Secretary for Home Affairs (SHA) to grant a licence to a company to conduct betting on football matches;
 - (b) charge a duty in relation to authorized betting on football matches;

- (c) abolish the Hong Kong Lotteries Board (the current licensee of the Mark Six Lottery) and empower SHA to grant a licence to a company to operate lotteries;
- (d) establish the Gaming Commission to advise the Government on matters relating to the regulation of betting on football matches and lotteries;
- (e) establish an Appeal Board to hear appeals against the SHA's decision on licensing matters; and
- (f) make other miscellaneous amendments.

The Bills Committee

6. At the House Committee meeting on 11 April 2003, members agreed that a Bills Committee should be formed to study the Bill. The membership list of the Bills Committee is in **Appendix I**.

7. Under the chairmanship of Hon Mrs Selina CHOW, the Bills Committee has held a total of 12 meetings (16 two-hour sessions) with the Administration, and met with 82 deputations and individuals at four of these meetings. A list of the organizations and individuals who have made submission to the Bills Committee is in **Appendix II**. The Bills Committee also discussed with HKJC the licensing conditions and preparatory work for the conduct of football betting at one of the meetings.

Deliberations of the Bills Committee

Authorization of football betting

8. The Bill provides SHA with the power to authorize by licence a company to conduct football betting and to impose conditions in the licence as he sees fit, including sanctions for non-compliance with the licensing conditions.

9. Nearly all the deputations, who are mostly from the religious, education and social service sectors, have expressed strong objection in principle to the Bill. They are concerned that authorization of football betting would have adverse impact on the community and juveniles in particular on the grounds that it would lead to an increase in gambling opportunities, in the number of problem and pathological gamblers, in family and social problems. They do not believe that authorization of football betting can combat illegal football gambling.

10. Members belonging to the Democratic Party are also opposed to the authorization of football betting. They express concern that as football is popular among juveniles and with more publicity work on football betting after authorization, juveniles would easily be attracted to football betting. These members also consider that authorization of football betting would have adverse social impact. Since the Administration has not provided the relevant data, they are not convinced that the revenue generated would be able to offset the social costs incurred. These members also point out that authorization of football betting would not help eradicate illegal football gambling activities, but on the contrary, would lead to an increase in such activities.

11. Members belonging to the Liberal Party are supportive of authorization of football betting. They point out that there is no conclusive evidence that football betting would lead to an increase in problem and pathological gamblers. These members further point out that gambling-related problems have all along existed in Hong Kong and authorization of football betting should not be taken as the cause to these problems. They stress that authorization of football betting does not mean that the Government will be adopting a policy of unregulated gambling. These members consider that the most important issue is how the Government would implement measures to address gambling-related problems, in particular the problem of underage betting, and provide assistance to problem and pathological gamblers.

12. Some other members of the Bills Committee, including Hon Cyd HO, Hon Abraham SHEK, Hon Michael MAK and Hon Audrey EU, have also expressed concern about the impact of authorization of football betting on the community and juveniles in particular. These members consider that the Administration must take adequate and effective measures to address the problem of underage betting and pathological gambling if football betting is authorized.

13. The Administration has responded that the Government's long-standing gambling policy is to restrict gambling opportunities to a limited number of authorized and regulated outlets only. The underlying rationale is not to encourage gambling. In essence, our established gambling policy strikes a balance between the need to meet the demand for gambling (so that it would not otherwise turn to illegal channels) and the need to minimize the negative impact of gambling.

14. Regarding the impact of authorization of football betting on the community and juveniles in particular, the Administration informs the Bills Committee that it would put in place appropriate measures to minimize any negative social impact of authorization of football betting. These measures include -

- (a) setting up an independent Gaming Commission to ensure effective regulation;
- (b) a stringent three-tier operational and regulatory framework, i.e. statutory provisions proposed in the Bill, licensing conditions to be issued by SHA and the codes of practice to be issued by SHA from time to time to give guidance on how the licensing conditions should be compiled with; and
- (c) setting up a dedicated fund for addressing gambling-related problems.

15. The Administration explains that effective measures, such as prohibition of credit and underage betting and restriction on promotion and advertising, would be introduced after authorization of football betting to help minimize the adverse effect on juveniles. Persons under the age of 18 years would be prohibited from opening betting accounts with HKJC and they would therefore not be able to place bets through telecommunication means. The Administration further points out that while the number of gamblers might increase after authorization of football betting, according to the experience in other countries, authorization of football betting does not necessarily lead to an increase in pathological gamblers. Research also indicates that gambling activities which are “non-stop” in nature, such as casino gambling and not football betting, are more conducive to pathological gambling.

16. The Administration further explains that according to the findings of the survey conducted by the Hong Kong Polytechnic University on Hong Kong people’s participation in gambling activities, a high proportion of pathological gamblers have picked up gambling skills at an early age and most of them have been involved in social gambling for a considerable period of time before their gambling behaviour degenerated into a pathological state. The Administration does not believe that provision of an additional form of betting would increase the participation rate of juveniles in gambling activities. Given the increasing prevalence of illegal football gambling activities and their association with triad and other criminal activities, the Administration considers that there is an imminent need to authorize and regulate football betting as a means of combating the illegal football gambling problem and minimizing the negative social impact.

17. At the request of the Bills Committee, the Administration agrees that in his speech to be delivered during resumption of the Second Reading debate on the Bill, SHA will address the concern that authorization of football betting would lead to deteriorating moral standards in the community and explain how the Government would address the social problems arising from authorizing football betting.

18. Regarding whether authorization of football betting can combat illegal football gambling, the Administration explains that since there has been a sufficiently large demand for football betting which is being satisfied by illegal means and the problem cannot be fully tackled by law enforcement alone, authorization of football betting can divert the bets placed with illegal operators to the authorized channel. This would considerably reduce the magnitude of illegal gambling problem and income for illegal operations. The Police could then focus their enforcement efforts on clamping down on illegal gambling syndicates. As a result, the problem caused by illegal football gambling could be considerably alleviated and the associated social costs reduced.

19. Members belonging to the Democratic Party are not satisfied with the Administration's response. Hon Andrew CHENG points out that it is not right for the Administration to use gambling to fight against gambling, and the tactic contradicts the Government's long standing policy of not encouraging gambling. Hon James TO is of the view that authorization of football betting is a moral issue as the Administration is proposing to allow the licensed operator to offer fixed odds betting. Mr TO considers that the Government or its appointed agent should not directly bet with the general public. Mr TO points out that it is unprecedented for the Government to do so.

20. The Administration responds that the primary objective of authorizing and regulating football betting is to combat the growing problem of illegal football gambling, and not to encourage gambling. In other words, this serves as another means of tackling an existing social problem. The Administration also points out that illegal operators of football betting are offering mostly fixed odds betting. It is necessary to allow the licensed operators to offer fixed odds games, in addition to pari-mutuel games, in order to ensure the competitiveness of the licensed operators; hence effectiveness in combating illegal football betting.

21. Members belonging to the Democratic Party consider that the Administration should conduct comprehensive research on the possible impact of authorization of football betting on the community as well as the effectiveness of the preventive education programmes and treatment services to be provided before football betting is authorized. These members are of a strong view that the Government should not authorize football betting before the social cost is ascertained. They express dissatisfaction that the Government has failed to compile comprehensive and objective data on gambling-related issues.

22. At members' request, the Administration has undertaken that the Government will review its policy of authorization of football betting against certain benchmarks, such as the changes in the intensity of illegal gambling activities and the number of problem and pathological gamblers, and report the results to the Panel on Home Affairs around two years after

the legislation (if passed) has come into effect. The Government will also commission academic institutions to conduct tracking surveys on the impact of authorization of football betting on the prevalence of problem and pathological gambling.

23. Although the Administration has informed the Bills Committee that it is the Administration's intention to authorize only one company as the operator of football betting, some members note with concern that SHA is empowered under the proposed licensing regime to authorize more than one company to conduct football betting. These members point out that if more than one operator is authorized to conduct football betting, there would be a substantial increase in betting options and gambling opportunities. This would also bring about aggressive competition and promotion in football betting.

24. To address members' concern, the Administration has agreed that SHA would clearly state in his speech to be delivered during the resumption of the Second Reading debate on the Bill that it is the Government's intention to authorize only one operator to conduct football betting.

Dedicated fund and measures to address gambling-related problems

25. The Administration plans to set up a dedicated fund for financing the following activities -

- (a) research and studies on gambling-related issues and problems;
- (b) public education and other measures to prevent gambling-related problems; and
- (c) counselling and treatment as well as other remedial services for problem and pathological gamblers, and those affected by them.

26. In respect of paragraph 25(c) above, the Administration plans to set up two pilot dedicated counselling and treatment centres for problem and pathological gamblers, each to be run by a non-Government organization (NGO), for a period of three years.

27. According to the Administration, the use and application of the dedicated fund would be determined by SHA. The money from the fund would be used to finance the measures and activities within the ambit of the fund, as well as to cover the expenses necessarily incurred in managing and administering the fund. A dedicated committee would also be set up for the purpose of managing the fund. As regards financial arrangements, the Administration has reached an agreement with HKJC whereby the latter would contribute to the fund in the following manner -

- (a) \$24 million for the first two years of the football betting licence period; and
- (b) \$12 million to \$15 million each year from the third to the fifth year of the football betting licence period.

28. Some members, including Hon Cyd HO, Hon MAK Kwok-fung and Hon Audrey EU, have expressed concern that early betting behaviour may easily lead to problem and pathological gambling at a later stage. They note with concern that while the estimated number of probable pathological gambling among the underage population is estimated to be around 12 000 in the study on Hong Kong people's participation in gambling activities conducted by the Hong Kong Polytechnic University, the Administration has only planned to earmark resources to handle calls from up to around 4 700 persons, and provide counselling and other follow-up services for up to around 2 300 persons in each year, through the two pilot dedicated counselling and treatment centres. These members query whether the measures to be taken by the Government are effective and adequate in addressing gambling-related problems arising from the authorization of football betting. These members stress that the Administration should review the demand for the services regularly and provide the required resources to meet the additional demand. They consider that the Administration should also ensure that the counselling and treatment services for problem and pathological gamblers would be provided by qualified experts

29. Hon Tommy CHEUNG does not consider that authorized football betting would lead to pathological gambling. He, however, points out that there are many pathological gamblers in Hong Kong who have not been given the required attention and assistance from the Government. Mr CHEUNG is of the view that the Government should enhance the counselling services and other assistance to these people and their families, irrespective of whether or not football betting would be authorized.

30. In response to members' concerns about possible problem and pathological gambling behaviour among juveniles, the Administration informs the Bills Committee that it plans to implement an education programme targeting at juveniles, school students, teachers and parents on gambling-related issues. The objectives are mainly to enhance understanding of the risks of gambling as well as problem and pathological gambling, and to strengthen one's ability to exercise self-control so as to prevent the development of compulsive and addictive behaviour in gambling and any other activities. In response to members' request for an early start of the education programme, the Administration plans to advance the starting date from around October 2003 to late July or early August 2003 through the following measures -

- (a) a co-ordinated dissemination of civic and moral education programmes on gambling and related themes such as “how to handle adversities in life”, “how to spend vacations” etc.;
- (b) the provision of basic information about problem and pathological gambling and simple warning messages about the possible harms and risks of gambling; and
- (c) the launching of a small-scale “sports summer” project targeting at school students. The project seeks to encourage students to participate in various sports activities during this coming summer, as a means of developing a balanced and healthy life which is conducive to preventing oneself from being addicted to gambling.

31. The Administration further informs the Bills Committee that the Education and Manpower Bureau (EMB) (formerly the Education Department) has been implementing various educational measures targeting at school students to help them develop a healthy life style. For example, teaching exemplars on how to deal with gambling issues have been compiled for teachers’ reference in July 2003.

32. The Bills Committee has discussed with representatives of EMB the educational measures which would be implemented to enhance the understanding of school students about gambling problems. Members have requested EMB to expedite the implementation of these measures since football betting may be authorized in the near future. They also point out that apart from educational materials, these measures should cover informative materials so that school students would have a good understanding about authorization of football betting such as prohibition of underage betting and credit betting.

33. To address members’ concerns about the effectiveness of the counselling and treatment services for problem and pathological gamblers, the Administration informs the Bills Committee that the Administration is drawing up the appropriate benchmarks and performance indicators for the two pilot dedicated counselling and treatment centres. The Administration has engaged the National Association for Gambling Care, Educational Resources and Training in the United Kingdom (UK), which is an established national centre for information, advice and practical help with regard to the social impact of gambling, as its consultant for the study. After completion of the study, the Administration would proceed to invite NGOs to submit applications for running the dedicated service centres on the basis of the benchmarks and indicators so derived.

34. The Administration explains that the applicants would be required to provide information relating to the qualifications and experience of their staff, and to propose appropriate training for their staff. This could ensure that the counselling and treatment services for problem and pathological gamblers would be provided by individuals with relevant qualifications and experience. The Administration further informs the Bills Committee that the Administration would commission an academic institute to monitor and evaluate the performance and effectiveness of the two dedicated service centres by the end of the three years' pilot period, with a view to deciding how the services should continue to be provided in the longer term. The Administration would also monitor the service needs and the resource requirements after the service has come into operation and would respond to those needs as appropriate.

35. Hon Cyd HO is of a strong view that authorized football betting should not be conducted before the Administration has introduced measures to address gambling-related problems. She urges the Administration to expedite the implementation of the measures to address gambling-related problems so that the preventive education programmes and provision of treatment services for problem and pathological gamblers would commence before the operation of authorized football betting. Ms HO has informed the Bills Committee that she would move a Committee Stage amendment (CSA) to clause 1 of the Bill to the effect that the Amendment Ordinance would come into operation on 1 January 2004.

36. The Administration responds that it recognizes the need to implement the preventive and remedial measures for addressing gambling-related problems (not particular to football betting) on a long-term basis through the dedicated fund set up for that purpose. The various measures would start to be implemented as from mid-2003 regardless of whether the Bill is passed or not. The Administration also informs the Bills Committee that it would proceed to invite NGOs to submit applications for running the dedicated service centres in June 2003 and these centres should be able to operate in October or November 2003. The Administration further points out that it would take time for the preventive and remedial measures on gambling-related problems to produce any material impact on the community. Given the increasing prevalence of illegal football gambling and its associated problems, there is an urgent need to combat it through authorization and regulation of football betting. The Administration considers the concurrent implementation of law enforcement, authorization and regulation, as well as the preventive and remedial measures for gambling-related problems a pragmatic and effective approach in tackling the problems caused by illegal football gambling.

37. At the request of the Bills Committee, the Administration has undertaken that it would make a progress report to the Panel on Home Affairs at its first regular meeting in the next legislative session on the following -

- (a) implementation of the educational measures as well as provision of counselling and treatment services to address gambling-related problems; and
- (b) enforcement action taken by the Police in combating illegal football gambling activities.

38. Some members, including Hon Cyd HO and Hon Andrew CHENG, have expressed concern that the contribution from HKJC to the dedicated fund might not be adequate to implement the necessary measures to address gambling-related problems. Ms Cyd HO considers that being the only licensed gambling operator in Hong Kong, HKJC should demonstrate a greater commitment in funding measures to address gambling-related problems. Mr CHENG points out that as the Government has estimated that the gross profit margin of conducting football betting would be as high as 10% and the annual turnover would be \$30 billion, HKJC should have undertaken to contribute more to the dedicated fund. He suggests that part of the betting duty collected should be allocated to the dedicated fund.

39. The Administration responds that it is not appropriate to hypothecate part of the proceeds from authorized football betting to finance measures to address gambling-related problems, for the following reasons -

- (a) as problem and pathological gambling behaviour is attributable to all kinds of gambling activities instead of football betting alone, the dedicated fund should not be tied to proceeds from authorized football betting; and
- (b) the arrangement proposed by the Administration would immunize the fund from the risk inherent in the operation of authorized football betting, hence ensuring certainty of funding availability. The arrangement would also facilitate the planning of preventive and remedial measures on gambling-related problems.

40. The Administration assures members that the dedicated fund would be adequate to finance the measures and activities to deal with problem gambling within the five years of the football betting licence period. The Administration also explains that some organizations in the education and religion sectors would organize activities to deal with problem gambling, and these activities could also be financed by the dedicated fund.

41. Hon Cyd HO stresses that the Administration must establish a mechanism to ensure the provision of funding for the continuous operation of the dedicated fund, and in turn the continuation of the measures to address

gambling-related problems, even if the operation of authorized football betting is to be discontinued in future.

42. The Administration responds that it has reached an agreement with HKJC, whereby the latter would contribute to the fund in the first five years of the football betting licence period. The dedicated fund would also accept donations from other sources. The Administration would review the funding arrangement in the light of the demand as and when it proceeds with implementing the measures. At the Bills Committee's request, the Administration has agreed that SHA will give an undertaking in his speech to be delivered during the resumption of the Second Reading debate on the Bill that the Government would ensure that there would be adequate funding for the implementation of measures to address gambling-related problems.

43. Hon Cyd HO considers that the management committee to be set up for advising SHA on the management and the use of the dedicated fund should comprise representatives from the sectors of religion, education, social work and research. The Administration points out that it intends to invite representatives from various sectors, including the education, social welfare, and religious sectors, to sit on the management committee of the dedicated fund.

Definition of "football"

44. According to the definition of "football" in the proposed new section 1A, it does not include American football or rugby. Hon Andrew CHENG suggests that for the sake of clarity, the Administration should make reference to the interpretation of "football" adopted by the Fédération Internationale de Football Association. After consideration of Mr CHENG's suggestion, the Administration has agreed to amend the definition of "football" to also exclude Australian Rules Football.

Football betting duty

45. The Bill proposes to impose a betting duty on football betting, and to charge it on the basis of gross profits from both fixed odds and pari-mutuel games. Gross profits would be the difference between the total football bets accepted by a football betting conductor and the total payouts to bettors in respect of matches played within a specified period.

46. The Bill also specifically proposes that betting duty on football betting will be set at a flat rate of 50% on gross profits, and the gross profits will be assessed on an annual basis (annual accounting period) without any roll-over from one accounting period to another. The Legislative Council (LegCo) may amend the rate by resolution.

47. Hon SIN Chung-kai has enquired whether it is financially viable for the conductor to conduct football betting if a 50% betting duty is imposed on gross profits. The Administration responds that the percentage may seem very high as compared with overseas countries e.g. the UK where the betting duty on football betting is set at 15% only. The Administration, however, points out that the competition among the 1 500 licensed operators in the UK is very keen, but only one conductor will be authorized to conduct football betting in Hong Kong. The Administration considers that the proposed tax rate of 50% strikes a reasonable balance between the need to ensure the competitiveness of the conductor football betting operation vis-à-vis illegal operators, and the need to secure a reasonable amount of tax revenue for Government.

48. The Bill proposes to require a football betting conductor to make monthly provisional payment on the basis of the gross profits in the relevant month and the past month(s) within the same charging period, subject to a final assessment by the end of the accounting period. The Bill also proposes to provide the Collector of Stamp Revenue appointed under the Stamp Duty Ordinance (Cap. 117) (the Collector) with the powers to raise an assessment on the conductor in respect of betting duty chargeable on football betting, to collect betting duty, to recover any betting duty required to be paid to Government, and to do other specified things incidental to the effective exercise of such powers.

49. The Administration explains that the duty is payable after the end of a charging period, but the conductor is required to make monthly provisional payment within a charging period. All provisional payments are to be applied towards settlement of the football betting duty. The Collector is empowered under the proposed new section 6N to make an assessment of the net stake receipts in relation to a charging period. Members note that the Administration will move a CSA to add a new section 6NA so that the Collector is empowered to make an additional assessment for that charging period, if he 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 of assessment given under the proposed new section 6N.

50. Under the proposed new section 6O, if a football betting conductor fails to make payment in accordance with a notice of assessment, the Collector may demand the conductor to pay a surcharge of not exceeding 5% of the amount that the conductor has failed to pay. The Administration informs the Bills Committee that it will move a CSA to the proposed provision to the effect that the Collector may impose a further surcharge on the conductor if payment is not made at the end of six months after the date specified in a notice of assessment or a notice of additional assessment, and that the further surcharge shall not exceed 10% of the unpaid part of the amount of the payment to be made and the unpaid part of the surcharge.

51. Members note that under the proposed new section 6P, a football betting conductor has the right to appeal against the assessment made by the Collector to the District Court within one month after the date on which the notice of assessment is given. The Administration has informed the Bills Committee that the Administration will move a CSA to the proposed new section 6P(6) to the effect that the Collector may, at the request of the conductor, order the payment to be held over pending the final determination of the appeal. The Administration also proposes to add a new section 6PA to set out the detailed arrangements of holding over. The Administration has also confirmed that the drafting of the proposed new section 6PA is consistent with the relevant provision of the Inland Revenue Ordinance (Cap. 112).

52. Members note that the Bill imposes on a football betting conductor a number of requirements relating to betting duty, including filing of betting duty returns, making duty payment and keeping of records. Regulation 3A of the Betting Duty Regulations (Cap. 108 sub. leg. A) imposes a duty on the conductor to submit an audit report prepared by a qualified person to the Collector.

53. The Administration informs the Bills Committee that it would move a CSA to amend the proposed regulation 3A to clearly specify that the qualified person shall state in the audit report whether, in the opinion of the qualified person, the following statements are true -

- (a) the conductor has kept records in accordance with the Ordinance;
- (b) the financial statement has been prepared and audited in accordance with those records; and
- (c) the net stake receipts shown in the statement has been calculated in accordance with the Ordinance.

54. Hon Andrew CHENG has pointed out that given the total turnover of legal betting activities in the UK is \$108 billion only in 2002, the turnover of authorized football betting at \$30 billion in Hong Kong, as predicted by the Administration, is an over-estimation. According to the experience of overseas bookmakers, he also queries that the Administration might have overestimated the gross profit margin of authorized football betting at 10%.

55. The Administration responds that there are different legal gambling outlets in the UK including casinos, lottery and sports betting, etc., and casino gambling constitute the bulk share of the gambling turnover. Due to the difference in market conditions, it would not be appropriate to make a direct comparison between the situation in Hong Kong and the UK. Having regard mainly to indicators of prevalence of illegal football gambling in Hong Kong,

the Administration considers the rough estimate of \$30 billion annual betting turnover on average, and hence \$1.5 billion annual betting duty (at 50% of gross profits) reasonable.

56. As regards the estimation of gross profit margin, the Administration points out that the Government will be charging betting duty for football matches on gross profits. The Government will allow the licensee to offer different types of fixed-odds and pari-mutuel betting on football matches, and will permit it to lay off bets for hedging purpose. The Administration is of the view that these arrangements would provide the conductor with adequate flexibility to ensure its competitiveness vis-à-vis illegal operators, as well as to sustain its business with a manageable profit margin.

57. Hon Andrew CHENG and Hon Timothy FOK are of a strong view that a certain percentage of the tax revenue generated from football betting should be earmarked for the promotion of the football sport. The Administration stresses that the tax revenue generated from football betting should go to the government revenue for appropriation to various policy areas. It does not consider it appropriate to hypothecate part of the proceeds from authorized football betting to finance local football development. The major reason is that the development of local football activities should primarily be funded by public expenditure from the Government. The Administration also points out that the primary objective of authorizing and regulating football betting is to combat illegal football gambling problem. This has nothing to do with raising funds for developing local football or any other kinds of sports activities.

Hedging or laying-off of bets

58. The proposed new section 6Q in the Bill allows a football betting conductor to lay off bets with overseas bookmakers as a risk management measure. The conductor is also exempted from the offence of betting with an unauthorized bookmaker under section 8 of the Gambling Ordinance, and the bookmakers who accept such hedging bets from the conductor from the offence of unauthorized bookmaking under section 7 of the Gambling Ordinance.

59. Some members, including Hon Cyd HO and Hon WONG Sing-chi, express concern that the proposed provision may subject to abuse and the conductor may place bets with overseas bookmakers for profit-making instead of risk management. They consider that there should be a proper monitoring mechanism against such possibility.

60. The Administration responds that to prevent abuse, the Bill proposes to restrict the exemption from sections 7 and 8 of the Gambling Ordinance to those hedging bets made by the conductor in its company's capacity (as opposed to by individual employees of the conductor). The hedging bets should also be those related to the operation of authorized football betting.

Specifically, the hedging bets must be confined to those bets on the particular matches for which the conductor has also been taking bets, the hedging bets must be placed for the purpose of hedging against the risk of loss that the licensee may suffer from the conduct of betting on the match, and the bets are placed with bookmakers in places outside Hong Kong where such bets could be received in accordance with the laws of those places.

61. The Administration further explains that both the amount of hedging bets placed and the winnings from hedging bets will be included in the calculation of betting duty, whereby the amount of bets placed will be deducted from, and winnings be added to, the gross profits for duty purpose. This would enable the conductor to reduce its risk exposure, thereby operate on a higher betting turnover. The Administration also informs the Bills Committee that it will move a CSA to add a new section 6QA to the Bill to the effect that a football betting conductor is required to submit its hedging policy to the Collector for approval. If the conductor does not place its bet with overseas bookmaker according to the hedging policy, the bet shall not be taken as a hedging bet and will not be included in the calculation of betting duty.

62. At the Bills Committee's request, the Administration agrees that in his speech to be delivered during the resumption of the Second Reading debate on the Bill, SHA will give an undertaking that the placing of hedging bets by a football betting conductor will be closely monitored and will set out the areas that would be included in the hedging policy submitted by a football betting conductor.

Authorization of lotteries

63. Members note that the Bill proposes to abolish the Hong Kong Lotteries Board (the current licensee of the Mark Six Lottery) and empower SHA to grant a licence to a company to operate lotteries. According to the Administration, a wholly-owned subsidiary of HKJC will be licensed to operate lotteries. SHA may impose conditions in the licence similar to those in the licence of football betting. Betting duty will be set at the rate of 25% on the proceeds of each lottery. Other allocation of proceeds of a lottery is the same as the current arrangement.

The Gaming Commission

64. The Bill proposes to establish the Gaming Commission to advise SHA on the following aspects -

- (a) regulation of the conduct of football betting and lotteries in accordance with the provisions of the Betting Duty Ordinance and the licensing conditions;

- (b) compliance with the licensing conditions by the licensee;
- (c) handling of public complaints relating to the compliance of the licensing conditions by the licensees;
- (d) imposition of financial penalties on the licensees; and
- (e) issuance and revocation of football betting and lottery licences; and variation of the conditions of such licences.

65. Members note that at the suggestion of Hon Abraham SHEK, the Administration has proposed to retitle the Gaming Commission as “Football Betting and Lotteries Commission” so as to better reflect its function, and will move a CSA to such effect.

66. According to the composition of the Gaming Commission (now proposed to be retitled as “Football Betting and Lotteries Commission”) provided for in the Bill, the Chief Executive (CE) will appoint three public officers and not less than eight persons who are not public officers as members of the Commission, and one of the members as the chairperson of the Commission. The Administration informs the Bills Committee that it is expected that CE would appoint the three public officers from the policy bureaux in respect of social welfare, education, security, and commerce and industry.

67. Hon Cyd HO suggests that as it is the Government’s intention to appoint a non-official member as the chairperson of the Commission, it should be so specified in the Bill. The Administration has agreed to move a CSA to the proposed new section 6B to the effect that the chairperson of the Commission will be a non-official member.

68. Hon Cyd HO expresses concern that the scope of football betting activities would be expanded rapidly in the future. She is of the view that the Commission which is a statutory body should comprise members holding opposing views to authorization of football betting in order to prevent any unregulated expansion in the future.

69. At Hon Cyd HO’s suggestion, the Administration has agreed to make reference to the wording of section 20E of the Legislative Council Ordinance (Cap. 542) and section 4 of the Human Reproductive Technology Ordinance (Cap. 561) and specify in the Bill that the composition of the Commission will include one member each from the education, social welfare and religious sectors. The Administration will move a CSA to the proposed new section 6B accordingly.

70. Hon Andrew CHENG queries why CE's power of removal has not been specified in the Bill. The Administration explains that under section 42 of the Interpretation and General Clauses Ordinance (Cap. 1), the power of appointment includes the power to appoint, as well as "to remove, suspend, dismiss or revoke the appointment of, and to re-appoint or reinstate any person appointed". It is therefore not necessary to specify the power of removal in the Bill.

71. To prevent possible vacuum in membership, Hon Cyd HO suggests that if a member of the Commission is deceased, ceased to be a member or resigned, CE should be required under the proposed new section 6B to appoint the replacement within three months. The Administration has agreed to move a CSA to the effect that CE will be required to appoint a replacement if the number of non-official members is lower than eight, or if the position of any of the three members from the education, social welfare and religious sectors is vacant.

72. Under the proposed new sections 6E(3) and 6E(4), the Commission may transact its business by circulation of paper, and a resolution of the Commission in writing that is approved on circulation of papers by a majority of the members of the Commission shall be valid as if the resolution had been passed at a meeting of the Commission. While members consider that there may be a need for the Commission to transact its business by circulation of papers under very urgent circumstances, such circumstances should be specified in the Bill.

73. To address members' concern, the Administration agrees to specify in the proposed new section 6E that the business of the Commission may transact through circulation of paper only if the chairperson reasonably believes that it is impracticable to call a meeting. The Administration has also proposed to add a new subsection (1A) to the proposed new section 6E to the effect that the quorum for a meeting of the Commission shall be not less than six members or one-third of the total number of members of the Commission, whichever is the greater.

74. Hon Andrew CHENG has enquired about the basis on which SHA would consider the advice of the Commission. The Administration responds that SHA is required to consider the advice of the Commission in the regulation of the conduct of betting on football matches. However, it is up to SHA to decide whether to accept the advice or not. If SHA decides not to accept the advice of the Commission, he is ultimately accountable to the public and LegCo for his decision.

75. Members in general are of the view that the operation of the Commission should be made transparent as far as possible. Hon Andrew CHENG considers that meetings of the Commission should be open to the

public and the papers should be made available to the public, in order to facilitate the public and LegCo to monitor the decision of SHA.

Licences for football betting and lotteries

Licensing conditions

76. Under the proposed new section 6G of the Bill, SHA may, by issuing a licence to a company, authorize the company to conduct betting on the results of, or contingencies relating to, football matches. Similarly, under the proposed new section 6S, SHA may, by issuing a licence to a company, authorize the company to conduct lotteries.

77. Under the proposed new section 6G(3) of the Bill, the licence for football betting includes 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 enter such premises;
- (d) the persons from whom bets may be accepted;
- (e) the conduct of advertising and promotional activities;
- (f) the provision of information to SHA; and
- (g) the adoption of preventive measures against problems relating to gambling.

78. Under the proposed new section 6S(3), the licence for lotteries includes the conditions as set out in paragraph 77(d) to (g) above. In addition, it also includes conditions relating to -

- (a) the types of lotteries that may be conducted;
- (b) the manner in which lotteries may be drawn; and
- (c) the manner in which the results of lotteries may be announced.

79. According to the Administration, the Bill proposes to grant the licences for football betting and lotteries to two separate wholly-owned subsidiaries of HKJC set up specifically for the purposes. This arrangement would help to ensure that each of these two businesses would be commercially viable in its

own right, which is conducive to maintaining their competitiveness against illegal bookmakers, and the stability of betting duty revenue. The Administration has also provided the Bills Committee with draft provisions of the licences for conducting football betting and lotteries.

Credit betting

80. Members note that the licensee will not be allowed to offer any credit for betting or to accept credit cards for settlement of betting transactions in order to prevent excessive gambling among bettors. Hon Howard YOUNG has asked whether the Administration has made reference to the existing operation of illegal football gambling and assessed the percentage of credit betting in annual turnover of illegal football gambling.

81. The Administration responds that illegal local operators of football gambling would accept bets through every possible means and some offshore bookmakers would accept credit cards for settlement of betting transactions. However, it is an offence under the Gambling Ordinance for an offshore bookmaker to accept a bet placed from Hong Kong and credit card-issuing institutions would not allow cardholders to use their cards in cross-border gambling. The Administration considers that although prohibiting credit betting would unavoidably affect the competitiveness of the licensee for football betting, it is a responsible way to do so in order to prevent excessive gambling among bettors.

Underage betting and privacy protection

82. Members note that to prevent underage betting, the licensee shall not accept bets from any person under the age of 18 years. It shall also not accept any request for payment of winnings from any person under the age of 18 years. The licensee is required to take reasonable measures to prevent admission of persons below the age of 18 years to its betting premises. Moreover, the licensee will not be allowed to disclose the identity of any person who has won any winnings, except in the event that the disclosure is required by law.

83. Members express concern as to how the future licensed operator can ensure compliance with the licensing conditions, in particular those relating to age restriction and protecting the privacy of winners. Hon Michael MAK points out that there are cases in which persons under the age of 18 years have been admitted to betting premises. He queries whether HKJC has adequate measures to prevent admission of persons under the age of 18 years to its betting premises.

84. The Administration informs the Bills Committee that HKJC has put in place measures to prohibit persons under the age of 18 years from participating in betting. These measures include the following -

- (a) the betting rules set out that no person under the age of 18 years or in school uniform shall be permitted to tender a bet, to enter any betting premises, to open a telephone betting account, or to use self-vending terminal. The bets found to be placed by a person under the age of 18 years may also be declared void;
- (b) the operation manual for the staff of betting premises require them to request any person who is under the age of 18 years or is suspected to be under the age of 18 years and fails to present proof of his age to leave the premises immediately; and
- (c) posters and signage are displayed in betting premises and on self-vending terminals to warn that persons under the age of 18 years are prohibited from entering the betting premises, placing bets or collecting dividends.

85. According to the Administration, HKJC has formulated a “Responsible Gambling Policy” in order to minimize the negative impact of gambling and to promote responsible gambling among gamblers. To implement this policy, HKJC has displayed responsible gambling messages in its betting premises, publication and web sites. Responsible gambling messages are also announced during the waiting time of telephone betting service. HKJC will also organize employee awareness programmes to ensure that their staff understand the issues relating to problem gambling, and that they are able to act according to the policy.

86. The Administration further informs the Bills Committee that HKJC has an internal control mechanism to protect the privacy of the personal information of the winners. All its employees are required to sign an undertaking whereby they would not divulge to any outsider, or retain or use any confidential information (including personal information of winners) unless it is necessary for the performance of their duties. HKJC has also appointed a Data Privacy Compliance Officer to ensure compliance with the principles and requirements of the Personal Data (Privacy) Ordinance (Cap. 486) to safeguard customers’ privacy with respect to personal data.

87. Notwithstanding the Administration’s response, some members reiterate their concern that the measures to be adopted by HKJC might not be adequate to prevent underage gambling. They are concerned that juveniles can easily participate in football betting through an intermediary who is either their relative or an adult schoolmate studying in senior secondary education.

Restriction on advertising

88. Members note that in order to protect juveniles from being attracted to gambling, the licensee will not be allowed to advertise football betting on

television or on the radio during the family viewing hours prescribed by the Broadcasting Authority, advertise in ways which would exhort the public to bet, or target persons under the age of 18 years in their advertisements. SHA could issue codes of practice on advertising as and when appropriate. According to the Administration, this would enable SHA to prescribe detailed guidelines on particular aspects of advertising on football betting and to tackle any specific issues of concern in this area which may arise after the licence has been granted.

89. Members are of the view that it is of primary importance to protect juveniles from being attracted to gambling by advertisement after authorization of football betting. Hon Cyd HO considers that it is not adequate to prohibit advertisement on football betting on television or on the radio only from 4:30 pm to 8:30 pm as proposed by the Administration.

Mandatory conditions in the licences for football betting and lotteries

90. To address members' concerns about the possible negative impact of authorized football betting on the community, the Administration agrees to prescribe specific licensing conditions relating to age restriction, prohibition of credit betting, restrictions on promotion and advertising and adoption of measures to prevent gambling-related problems as mandatory conditions in any football betting licence to be issued by SHA under the Bill. The Administration also agrees to prohibit advertisement on football betting on television or on the radio from 4:30 pm to 10:30 pm on any day. The Administration will move CSAs to the proposed new section 6G accordingly. Similarly, the Administration will also move CSAs to the proposed new section 6S in respect of authorization of lotteries.

Types of matches and types of bets

91. Hon Andrew CHENG points out that given the licensee will be authorized under the proposed new section 6G(1) to conduct betting on the results of, or contingencies relating to, football matches, and the licensing conditions for football betting will not specify the types of matches and bets allowed, HKJC will have a free hand to offer as many betting options as possible in order to compete with illegal operators and expand its business. It would, as a result, lead to a tremendous increase in betting options, and hence encourage more people to participate in gambling activities. Mr CHENG is of a strong view that LegCo should have a monitoring role over the future licensing conditions. He has requested that the types of matches and bets allowed should be clearly specified in the licensing conditions and these conditions should be stipulated in the Bill or in a schedule to the Bill by way of subsidiary legislation subject to scrutiny by LegCo.

92. The Administration responds that it is appropriate to set out only the generic match types and bet types in the licence, instead of spelling out a finite list of specific match types and bet types (even with a mechanism for seeking SHA's approval for revisions) in the legislation or the licensing conditions. The reasons are as follows -

- (a) given the highly competitive nature of the global football betting market, the flexibility to promptly adjust the bet types, betting rules and match types within the generic categories set out in the licence is essential to ensuring that the licensed operator can effectively compete with illegal bookmakers around the world. Any attempt to specify such operational details in the licence or the legislation would seriously undermine the licensee's competitiveness and henceforth the effectiveness of authorized football betting to combat illegal gambling activities. This would defeat the objective of authorizing and regulating football betting in Hong Kong; and
- (b) given the dynamic nature of the football betting business, it would be practically difficult to conclusively set out both the names and technical descriptions of the various matches and bet types in the licence or the legislation for the purpose. This would also mean the need to seek approval for changes from time to time, hence impacting adversely on the licensee's flexibility and competitiveness.

93. The Administration, however, has agreed to specify in the Bill that the licensed operator can only conduct fixed-odds and pari-mutuel betting. The Administration will move a CSA to the proposed new section 6G to such effect.

94. Hon Andrew CHENG has expressed dissatisfaction with the Administration's position. Mr CHENG informs the Bills Committee that he will move a CSA to specify the categories of football matches to be authorized in a schedule to the Bill which can be varied by LegCo by resolution. He will also move a CSA to amend the proposed new section 6G to the effect that SHA may only authorize the licensed operator to conduct football betting in respect of the categories of football matches specified in that schedule.

Keeping premises for accepting bets

95. Members note that there will be a maximum number of betting outlets as determined by SHA from time to time, and that SHA's prior approval will be required for the opening of new outlets. Members express concern that as many major international football matches will be held during late hours, operation of betting outlets would cause disturbance to the residents nearby.

96. The Administration informs the Bills Committee that at present, the off-course betting branches (OCBBs) of HKJC are open until 11:15 pm when there are night races. HKJC plans to open their OCBBs for the purpose of accepting bets for authorized football betting until around 11:30 pm when football betting commences operation. The Administration considers this arrangement acceptable as this should not create any additional nuisance to the neighbourhood.

97. The Administration further points out that the operating hours for the betting premises will be set out in the licence for authorized football betting and lotteries. For the extension of operating hours of betting premises beyond 11:30 pm in the future, they would be considered on a case by case basis by SHA and relevant local bodies, including the District Council concerned, would be consulted as appropriate. The Administration also assures the Bills Committee that in determining the opening hours of the betting outlets, in particular whether to allow an OCBB to open during late hours, the following factors would be taken into account -

- (a) the physical distance between the betting outlet and residential areas;
- (b) whether the outlet is located in purpose-built building or commercial complex;
- (c) whether the operation of the outlet at night would create nuisance to the neighbourhood;
- (d) the demand for betting services at night in the neighbourhood; and
- (e) the views of the residents in the vicinity of the outlets.

98. Hon Andrew CHENG finds the Administration's response unsatisfactory. He points out that even if a betting outlet is located in a commercial complex, its operation may still affect the residents nearby. Mr CHENG considers that there should be a restriction on the operating hours of betting outlets which should be specified in the Bill. Mr CHENG informs the Bills Committee that he will move a CSA to specify the closing hours of betting premises in a schedule to the Bill which can only be varied by LegCo by resolution.

Compliance with the licensing conditions

99. Taking into account members' concerns about the need for safeguards to ensure compliance with specific licensing conditions for conducting football

betting and lotteries, the Administration proposes to introduce a “fit and proper person” requirement for the licensed operators of authorized football betting and lotteries (under the proposed new sections 6G and 6S) and will move CSAs to such effect. Specifically, the Administration proposes that any licensed operator and its related persons (including its principal officers, directors and major shareholders) will be subject to the “fit and proper person” requirement. In determining whether a person is fit and proper, SHA shall take into account the following factors -

- (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 the person has been charged with or convicted of any offence, whether in Hong Kong or elsewhere; and
- (f) any other matter that the SHA considers relevant.

100. The Administration proposes that SHA can only issue licences for football betting and lotteries if the principal officers, directors and major shareholders are fit and proper persons. The licensed operator and its related persons should also remain to be fit and proper during the licence period and SHA can revoke the licence if it fails to comply with the requirement.

101. While most members welcome the Administration’s proposal, Hon Tommy CHEUNG expresses reservations about the proposed requirement. He points out that although a “fit and proper person” requirement has applied in some licensing regime e.g. applicant for liquor licence, the factors to be taken into account by SHA are too stringent, given the requirement will be applied to all related persons. He also considers it unfair that the assessment of whether someone is a fit and proper person will be left to the complete discretion of SHA and the applicant has no channel to appeal against SHA’s decision.

102. The Administration explains that although SHA has the sole discretion in the assessment, a licenced operator can appeal to the Appeal Board to be established under the proposed new section 6ZC, if SHA revoked its licence under the proposed new section 6ZA on the grounds that any of its principal officers, directors and major shareholders is not a fit and proper person.

103. Hon WONG Sing-chi considers 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. At members' suggestion, the Administration agrees 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. The Administration will amend the proposed provisions accordingly.

104. Hon Cyd HO has suggested that for the sake of preventing match-fixing, any licensed operator and its related persons should not have any involvement in the local football industry. However, the Administration does not agree with the suggestion for the following reasons -

- (a) a person's involvement in local football industry should not have any direct bearing on its fitness and properness for the purpose of being a director or principal officer of a company holding a licence for conducting football betting;
- (b) there is no conceivable conflict of interest between a licensee's involvement in the local football industry and its eligibility of holding a football betting licence, given that the licensee would only be allowed to receive bets on major international football matches which do not involve Hong Kong teams; and
- (c) imposing such restriction would preclude the licensee from engaging persons with expertise in football matches as its directors and principal officers.

Codes of practice

105. Under section 6X, SHA may issue codes of practice from time to time to give guidance on how the licensing conditions may be compiled with. According to the Administration, this would enable SHA to prescribe detailed guidelines on particular aspects of the operation of football betting and lotteries, and to tackle any specific issues of concern which may arise after the licence has been granted. However, the failure of the licensee to observe any such code of practice should not of itself be considered as a breach of any licensing condition, but would be taken into consideration as to whether the licensing condition has been contravened.

106. The Administration informs the Bills Committee that having regard to the codes of practice for regulating gaming activities in some overseas jurisdictions, and the codes of practice in other regulatory regimes in Hong Kong, the following provisions would be included in the code(s) of practice, as and when they are considered necessary in future -

- (a) Advertising and promotion : any advertisements for football betting and lotteries should -
 - (i) not allow any juveniles to participate in the presentation;
 - (ii) not feature any personality with particular appeal to juveniles;
 - (iii) not state or imply praise for those who participate in gambling or denigrate those who abstain;
 - (iv) not promote the consumption of alcohol while engaged in gambling activities;
 - (v) not feature excessive or reckless betting;
 - (vi) not promote gambling as a means of relieving financial or personal difficulties; and
 - (vii) not promote gambling as a means of enhancing social standing, employment or social prospects.
- (b) Measures to prevent gambling-related problems : the licensee should -
 - (i) adopt a responsible gambling policy seeking to protect bettors from the risk of excessive gambling;
 - (ii) provide sufficient information to bettors about the probability of winning and betting costs;
 - (iii) provide adequate information and messages at its betting premises and through different betting channels about the risk of excessive gambling and avenues available for counselling and treatment services for problem and pathological gambling;
 - (iv) provide suitable training for staff on responsible gambling measures, as well as issues relating to problem and pathological gambling; and
 - (v) properly manage its betting premises to prevent problem and pathological gambling.

107. Hon IP Kwok-him is of the view that LegCo should have a role to play in commenting on the codes of practice that may be issued in relation to

football betting and lotteries. He suggests that the Administration should consult the Panel on Home Affairs on the codes of practice before issuance. The Administration explains that SHA will only issue codes of practice to give guidance on how the licensing conditions may be complied with when it is necessary. For example, if SHA considers that some promotional activities by the licensed operator are in breach of the licensing conditions, he would issue codes of practice immediately to stop the licenced operators from continuing with these activities further. It is therefore not feasible for the Administration to consult the Panel on Home Affairs on the codes of practice to be issued. However, the Administration has agreed to consult the Panel on Home Affairs on the provisions which are expected to be included in the codes of practice.

108. Hon SIN Chung-kai and Hon Andrew CHENG are of the view that there should be room for participation of the general public in the drawing up of the codes of practice to be issued by SHA. They express dissatisfaction that SHA is given the sole authority in the issuance of codes of practice and there is no monitoring mechanism over the exercise of such authority. These members also consider that there should be an appeal channel for issuance and variation of codes of practice.

109. Regarding members' request for public scrutiny over the drawing up of the codes of practice, the Administration explains that the proposed Football Betting and Lotteries Commission would advise SHA on licensing and regulatory matters, and the issuance of codes of practice would fall within its purview. The Administration points out that the Panel on Home Affairs would also be consulted on the issuance of codes of practice as appropriate. Similar to the licensing conditions for authorized football betting and lotteries, codes of practice, after issuance, would be information open to the public.

110. As regards the availability of an appeal channel, the Administration explains that under the proposed new section 6X, SHA may issue codes of practice to provide practical guidance on how the licensing conditions can be complied with. The code of practice is an administrative means to provide guidance to the licensed operator on how they can comply with the licensing conditions. If the licensed operator acts in contravention of the code of practice, and SHA considers that this amounts to non-compliance with licensing conditions and decides to impose sanction on the licensed operator, the latter can appeal against the decision to the Appeal Board. The Administration therefore does not consider there is any need to provide an appeal channel for issuance and variation of codes of practice.

Restrictions relating to football betting and lotteries tickets

111. Under the proposed new section 6R, it is an offence for a person to make, print, issue, sell or offer to sell a football betting ticket unless the person is a football betting conductor; or so acting on behalf of a football betting

conductor. Under the proposed new section 6U, it is an offence for a person to make, print, issue, sell or offer to sell a lottery ticket unless the person is a lottery conductor; or so acting on behalf of a lottery conductor.

112. Members note that a person who contravenes any of these offences is liable to a maximum fine at level 3. They consider the penalty too low to have adequate deterrent effect. Members express concern that some people may sell football betting or lottery tickets to juveniles for profit-making. To address members' concern, the Administration has agreed to move CSAs to the proposed new sections 6R(2) and 6U(2) to the effect that the fine will be increased from level 3 to level 5. Members note that a corresponding amendment will also be made to the proposed amended section 5(2) in respect of restriction on sale of tickets on cash-sweeps and betting on horse or pony races.

113. Hon WONG Sing-chi is of the view that as football is popular among juveniles, it is necessary to prevent a possible loophole that a person may claim that he only gives away, instead of sells, a football betting ticket to a juvenile. He suggests that it should be specified in the proposed new section 6R that it is an offence for any person even to give away a football betting ticket to a juvenile. Hon Howard YOUNG and Hon Tommy CHEUNG query whether it is feasible to enforce the provision as proposed. They point out that the Police can easily combat these illegal activities through undercover operations.

114. The Administration is of the view that it is not 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) which 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.

115. Hon Cyd HO and Hon Andrew CHENG are of the view that for the sake of protecting juveniles, additional penalty should be imposed for the sale of betting tickets to them. They point out that as football is a popular sport

activity among juveniles, they may easily be induced by others to participate in football betting. These members stress that additional penalty is required to deter the adults from selling football betting tickets to juveniles. Hon Tommy CHEUNG queries whether it is necessary to impose additional penalty. He considers that the proposed penalty should be comparable to those in other legislation.

116. The Administration responds that the proposed increase in penalty up to level 5 (i.e. \$50,000) should have sufficient deterrent effect against the sale of betting tickets to others (including sale of the same to a juvenile). In determining the level of penalty that should be imposed on the offender, the court could take into account all relevant factors, and the sale of tickets to juveniles should be one of them. Under section 15A of the Smoking (Public Health) Ordinance (Cap. 371), the penalty for the sale of cigarettes to a juvenile is set at level 4 (i.e. \$25,000). The Administration therefore does not consider it necessary to raise the level of penalty for sale of betting tickets to juveniles.

Appeals against financial penalties, variation of licence conditions and revocation of licences

117. The proposed new section 6Z of the Bill empowers SHA to impose financial penalties in the event that the licensee has contravened any condition in the licence, as follows -

- (a) \$500,000 for first substantiated breach;
- (b) \$1,000,000 for second substantiated breach; and
- (c) \$5,000,000 for third and subsequent substantiated breach.

118. Members note that according to the proposed section 6Z(5), SHA shall not impose a financial penalty unless, in all the circumstances of the case, the financial penalty is proportionate and reasonable in relation to the failure that gave rise to the penalty. They have expressed concern that the proposed provision as presently worded may preclude SHA from imposing a financial penalty if the Appeal Board has ruled that it is not proportionate and reasonable.

119. The Administration explains that the present drafting of the new proposed section 6Z should not preclude the Appeal Board from varying the financial penalty imposed on licensed operator by SHA after it has ruled that the penalty is not proportionate and reasonable in relation to the failure that gave rise to the penalty. The Administration informs the Bills Committee that there are provisions in other legislation which are similar to the proposed new section 6Z such as section 36C of the Telecommunication Ordinance (Cap. 106). The appeal mechanism under the Telecommunication Ordinance,

similar to that under the Bill, also provides an appeal channel (CE in Council in this case) with the power to confirm, vary or reverse the decision by the authority.

120. The Bill proposes to empower SHA to vary the conditions of a licence and impose new conditions by giving notice to the licensee. The Bill also proposes to empower SHA to revoke the licence by giving notice to the licensee, if the latter has failed to comply with provisions in the Betting Duty Ordinance or a condition of the licence; or if the licensee has gone into liquidation. SHA's decision to revoke a licence should be proportionate and reasonable in relation to the ground for revocation, having regard to all the facts and circumstances in the case.

121. Hon Andrew CHENG informs the Bills Committee that he will move a CSA to the proposed new section 6ZA to the effect that SHA shall not exercise his power to revoke a licence until after considering the recommendations of the Football Betting and Lotteries Commission. He will also move a CSA to the proposed new section 6ZA to the effect that the Commission is required to conduct a public hearing in a decision of revocation of licence made by SHA, to make information and papers available to any person it considers appropriate and publish a report of the public hearing as it considers fit.

122. The proposed new section 6ZB in the Bill provides the licensee with the right to appeal to an appeal board comprising members appointed by CE within 30 days after a notice is given relating to the decision concerned, if the licensee is not satisfied with the decision of SHA to impose a financial penalty, vary the conditions of the licence, or revoke the licence. Under the proposed new section 6ZC in the Bill, CE will appoint a person, who is qualified for appointment as a District Judge as the chairperson of the Board and not less than four other persons as members of the Board.

123. Under the proposed new section 6ZD, the Appeal Board shall determine the appeal by reversing, varying or confirming the decision that is appealed against, and the determination of the Board is final. In response to members' view that the operation of the Appeal Board should be made as transparent as possible, the Administration informs the Bills Committee that it will move a CSA to the proposed new section 6ZD to the effect that hearing of an appeal shall be held in public unless the chairperson decides otherwise.

124. Hon Andrew CHENG queries why the Administration does not propose similar amendment to the proposed new section 6E in respect of the meetings and procedure of the Football Betting and Lotteries Commission.

125. The Administration responds that unlike the Appeal Board under the Bill which is a forum to determine the "rights" of the licensed operator (hence preferring open meeting in order to ensure fair hearing for the operator), the

Commission is an advisory body to advise SHA on matters relating to the licensing and regulation of the conduct of football betting and lotteries. As each meeting of the Commission is expected to cover a variety of regulatory issues, it is likely that the discussions would involve intermittent exchange of sensitive or confidential information about the operation of the licensee. The Commission should therefore have the flexibility in determining whether the whole, or part of a particular meeting, should be open to public. Under the proposed new section 6E(2), the Commission may make rules regulating the procedures at its meeting. The Administration considers it more appropriate to leave it to the Commission to determine the rules governing the conduct of the meetings in the future.

126. Notwithstanding the Administration's explanation, Hon Andrew CHENG has indicated that he would consider moving a CSA to the proposed new section 6E to the effect that meetings of the Commission shall be held in public unless the chairperson decides otherwise.

127. The Administration informs the Bills Committee that it will move CSAs to the proposed new sections 6Y and 6Z to the effect that a variation of licence shall not take effect nor the licensee shall be required to pay the financial penalty before the expiry of the 30-day period referred to in the proposed new section 6ZB(2). The Administration will also move a CSA to the proposed new section 6ZB to specify that 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.

128. A person who conducts an authorized betting activity is required under the proposed new section 6ZF(1) to keep sufficient records of all receipts, payments and other transactions relating to the activity for a period of not less than seven years. A person who fails to do so is liable to a fine at level 3.

129. Some members consider that the penalty for contravention of section 6ZF(1) on the keeping of records of authorized football betting or lotteries is too low to have adequate deterrent effect. At members' suggestion, the Administration agrees that the penalty should be raised to level 6 (i.e. \$100,000) in order to bring it in line with the level of penalty for similar offence under the Inland Revenue Ordinance (Cap. 112). The Administration will move a CSA to the proposed new section 6ZF(3) accordingly.

Offences and penalties in respect of cash-sweeps and betting on horse or pony races

130. Clause 13 of the Bill proposes to repeal existing section 8 in respect of penalties from the Betting Duty Ordinance. The Administration informs the Bills Committee that the legal adviser to the Bills Committee has pointed out that if existing section 8 is repealed, there may be no penal provision to cover

certain acts in contravention of the Ordinance in respect of cash-sweeps and betting on horse or pony races. The Administration will move a CSA to add the proposed new section 6AA to the Bill which specifies the penalties for performing acts in contravention of Part 2 of the Ordinance or any condition imposed under this Part. The Administration also confirms that all the necessary penal provisions for the conduct of football betting and lotteries have been included in the Bill.

Resumption of Second Reading debate

131. The Administration has all along indicated that it intends to resume the Second Reading debate on the Bill on 9 July 2003, the last Council meeting in the 2002-03 legislative session. However, as the Bills Committee did not complete its deliberations on the Bill until 24 June 2003, the Administration was unable to give notice for resumption on 23 June 2003, in accordance with the Rules of Procedure.

132. The Administration has explained to the Bills Committee that there is a strong reason of public interest to resume the Second Reading debate on the Bill as soon as possible, i.e. 9 July 2003. The justifications provided by the Administration are -

- (a) given the increasing prevalence of illegal football gambling in Hong Kong, there is an imminent need to authorize and regulate the conduct of football betting before the onset of the upcoming football season in August this year;
- (b) the proposal to authorize and regulate football betting would reduce the negative impact of illegal gambling which could otherwise be aggravated with the upsurge in gambling demand in August this year;
- (c) the early provision of an authorized and regulated outlet for football betting would supplement the police' enforcement efforts against the expected upsurge of illegal football gambling activities from the commencement of the next football season in August this year;
- (d) an early effect to the proposal to authorize and regulate football betting would enable the timely realization of the estimated increase in betting duty arising from football betting in the 2003-04 Budget; and
- (e) HKJC recently made provisional employment offers to over 3 000 persons in preparation for the operation of authorized football betting in August 2003. Early implementation of the

authorization proposal would help mitigate the current unemployment situation in Hong Kong.

133. The Administration has sought the Bills Committee's support for its request to the President for the requisite notice period to be waived, in order that the Bill can resume the Second Reading debate on 9 July 2003. Hon Howard YOUNG, Hon Abraham SHEK and Hon Tommy CHEUNG are in support of the Administration's request on the grounds that scrutiny of the Bill has been allowed its due process and the Bills Committee has completed its scrutiny work only one day after the deadline of giving notice has expired.

134. Hon SIN Chung-kai and Hon Andrew CHENG do not support Administration's request. These two members are of the view that the Administration should have introduced the Bill into LegCo much earlier. They express dissatisfaction that given the short timeframe, members have not been given adequate time to conduct detailed and in-depth discussion on the Bill. These two members consider that it is too early to enact the Bill on 9 July 2003 because the measures to address gambling-related problems, as undertaken by the Administration, have not yet been properly implemented.

135. Hon Cyd HO is of the view that while she has no objection in principle to the Administration's request, the Bill, if passed, should not come into operation until 1 January 2004.

136. After taking a vote, the Bills Committee decides to recommend to the House Committee that the Administration's request to the President for the requisite notice period to be waived should be supported.

Committee Stage amendments

137. Apart from the CSAs as discussed in paragraphs 44, 49, 50, 51, 53, 61, 65, 67, 69, 71, 73, 90, 93, 99, 103, 112, 123, 127, 129 and 130, the Administration has proposed some textual and consequential amendments to the Bill. The Bills Committee does not object to these CSAs.

138. The CSAs to be moved by Hon Andrew CHENG are discussed in paragraphs 94, 98, 121 and 126. The CSA to be moved by Hon Cyd HO is discussed in paragraph 35.

Follow-up actions by the Administration

139. At the request of the Bills Committee, the Administration has agreed that in his speech to be delivered during resumption of the Second Reading debate on the Bill, SHA will -

- (a) address the concern that authorization of football betting would lead to deteriorating moral standards in the community and explain how the Government would address the social problems arising from authorizing football betting (paragraph 17 above refers);
- (b) state that it is the Government's intention to authorize only one operator to conduct football betting (paragraph 24 above refers);
- (c) give an undertaking that the Government will ensure that there would be adequate funding for the implementation of measures to address gambling-related problems (paragraph 42 above refers); and
- (d) give an undertaking that the placing of hedging bets by a football betting conductor will be closely monitored and will set out the areas that would be included in the hedging policy submitted by a football betting conductor (paragraph 62 above refers).

140. The Administration has undertaken that -

- (a) the Government will review its policy of authorization of football betting against certain benchmarks, such as the changes in the intensity of illegal gambling activities and the number of problem and pathological gamblers, and report the results to the Panel on Home Affairs around two years after the legislation (if passed) had come into operation (paragraph 22 above refers);
- (b) the Government will commission academic institutions to conduct tracking surveys on the impact of authorization of football betting on the prevalence of problem and pathological gambling (paragraph 22 above refers);
- (c) the Administration would make a progress report to the Panel on Home Affairs at its first regular meeting in the next legislative session on the implementation of the educational measures as well as provision of counselling and treatment services to address gambling-related problems, and enforcement action taken by the Police in combating illegal football gambling activities (paragraph 37 above refers); and
- (d) the Panel on Home Affairs will be consulted on the provisions which are expected to be included in the codes of practice to be issued (paragraph 107 above refers).

Recommendation

141. Subject to the CSAs to be moved by the Administration, the Bills Committee supports that the Second Reading debate be resumed on the Bill on 9 July 2003.

Consultation with the House Committee

142. The Bills Committee reported to the House Committee on 27 June 2003 and sought the latter's support for the Administration's request to the President for the requisite notice period to be waived, in order that the Bill can resume the Second Reading debate on 9 July 2003.

Council Business Division 2
Legislative Council Secretariat
4 July 2003

Bills Committee on Betting Duty (Amendment) Bill 2003

Membership List

Chairman Hon Mrs Selina CHOW LIANG Shuk-yee, GBS, JP

Members Hon Cyd HO Sau-lan
Dr Hon Eric LI Ka-cheung, GBS, JP
Hon James TO Kun-sun
Hon SIN Chung-kai
Dr Hon Philip WONG Yu-hong, GBS
Hon Howard YOUNG, SBS, JP
Hon Ambrose LAU Hon-chuen, GBS, JP
Hon Andrew CHENG Kar-foo
Hon Timothy FOK Tsun-ting, SBS, JP
Hon Abraham SHEK Lai-him, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Michael MAK Kwok-fung
Hon WONG Sing-chi
Hon IP Kwok-him, JP
Hon Audrey EU Yuet-mee, SC, JP

(Total : 16 Members)

Clerk Miss Flora TAI Yin-ping

Legal Adviser Mr Stephen LAM Ping-man

Date 2 July 2003

Bills Committee on Betting Duty (Amendment) Bill 2003

**List of organizations and individuals who have made submissions
to the Bills Committee**

Organizations

1. A group of Secondary Five students
2. Aberdeen Baptist Church
3. Abundant Life Christian Church
4. Baptist Oi Kwan Social Service
- * 5. Basketball Sport Ministry
6. Breakthrough Ltd
7. Cedar Fund
8. China Alliance Press
9. Chinese Coordination Centre of World Evangelism
10. Christian Concern for the Homeless Association
11. Christian Grace Church
12. Christian Kwong Kei Church
13. “Committee Against Authorization of Football Betting” (「反對賭波合法化」小組) of The Christian & Missionary Alliance Lai Wan Church
14. Cooperation Scheme of School and Social Work
15. Echo Valley Evangelistic Association for the Handicaps Limited
16. Education Convergence
17. ELCHK Tuen Mun Lutheran Church
18. Hong Kong Cell Church Ministry Training College
19. Hong Kong Christian Anti-Soccer Gambling Alliance
20. Hong Kong Christian Council
21. Hong Kong Christian Service
22. Hong Kong Professional Teachers’ Union
23. Hong Kong Sex Culture Society Family Concern Group
- * 24. Hong Kong Young Women’s Christian Association
25. Kau Yan Church, Tsung Tsin Mission of Hong Kong
26. Kei Fuk Alliance Church
27. Kei Yam Alliance Church
28. King Lam Alliance Church
29. Kowloon General Association of Owners & Tenants
30. Lawyers Christian Fellowship

31. Mongkok Baptist Church
32. Prevocational School Educational Work's Association
33. Rehabilitation Centre for Problem Gamblers of the Industrial Evangelistic Fellowship
34. Scripture Union of Hong Kong Ltd
35. Shepherd Community Grace Church Tuen Yuan Congregation
36. Social Concern Group, North Point Alliance Church
37. The Baptist Convention of Hong Kong
38. The Boys and Girls Clubs Association of Hong Kong
39. The Christian & Missionary Alliance Bradbury Kwai Fong Study Centre
40. The Christian & Missionary Alliance Church Union of Hong Kong
41. The Christian & Missionary Alliance Goodrich Church
42. The Christian and Missionary Alliance Hau Tak Church
43. The Great Coalition to Oppose Legalization of Soccer Betting
44. The Hong Kong Association for School Discipline and Counselling Teachers
45. The Hong Kong Chinese Christian Churches Union
46. The Mission Covenant Church Yan Lam Church
47. The Society for Truth and Light
48. Touch the Bugs Hotline (Lutheran Media Centre)
49. Union of Heads of Aided Primary Schools of Hong Kong

Individuals

50. Rev CHAK Ho-chuen
- * 51. Ms Carman CHAN
52. Mr CHAN Hon-kwan
- * 53. Mr Michael CHAN
54. Mr Stanley CHAN
55. Mr CHAN Yut-wah
56. Miss Jenny CHANG Wing-fai
- * 57. Mr CHAU Yin-ming, member of Sai Kung District Council
- * 58. Ms Esther CHEUNG
59. Mr CHEUNG Kim-sing
60. Mr CHEUNG Koon-fook
- * 61. Mr CHEUNG Wan
62. Mr Daniel CHO Hung-fai
63. Miss CHOI Siu-yan
64. Mr CHUNG Kim-wah, Assistant Professor, Department of Applied Social Sciences, The Hong Kong Polytechnic University

65. Mr FONG Che-sing (Mr Simon FONG)
66. Miss Helen FU Dan-mui
67. Mr FUNG Kwok-keung
68. Dr HONG Kwai-wah
69. Ms HUI Wai-man
70. Mr Andrew HUNG Tsz-wan
71. Dr KWAN Kai-man, Assistant Professor, Department of Religion and Philosophy, Hong Kong Baptist University
72. Mr LAI Chi-lap, member of Yau Tsim Mong District Council
- * 73. Mr Joseph LAI
74. Ms LAM Siu-yan
- * 75. Ms LAU Yat-wai
76. Ms LAW Sau-yin
77. Mr John LEE
- * 78. Mr K C LEE
79. Mrs Mary LEUNG
80. Ms Belinder LIU Ching-ting
81. Dr LO Koon-cheung, Associate Professor, Department of Journalism and Communication, Chu Hai College
82. Ms LO Mi-kuen
83. Mr Lawrence LOUR Tsang-tsay
- * 84. Mr Stephen LUI
85. Ms POON Lai-kwan
86. Mr John TAI
87. Miss TAM Yat-chi
88. Mr TAM Yiu-ting
89. Dr Sandra TSANG Kit-man, Associate Professor, Department of Social Work and Social Administration, The University of Hong Kong
90. Ms TSANG Pui-hing
91. Ms WONG Yim-mei
- * 92. Mr YEUNG Wai-sing, member of Eastern District Council
93. Mr Sean YU Kwok-fu
94. Mr Patrick YUEN Hon-sing

* Written submissions only