

**Replies from the Administration to the letter of 28 April 2006 from
the Assistant Legal Adviser of the Legislative Council**

Clause 3(6)

1. *In the definition of “first horse race betting conductor”, would you give example to illustrate the meaning of “or another licence” referred to in paragraph (b) of the definition?*

The licence is granted and renewed on an annual basis. The term “another licence” refers to the licence for the second year or subsequent years.

2. *In the definition of “guarantee period”, would you give example to illustrate the meaning of a series of successive periods with interruption and a series of successive periods without interruption referred to in paragraph (b) of the definition?*

Interruption will occur when there is a break between the two licences granted to the betting conductor.

Example of a series of successive periods with interruption:

| Licence period | Guarantee | |
|-----------------------------|-----------------------------|---------------|
| | Period | No. of months |
| January to December 2007 | January to December 2007 | 12 |
| March 2008 to February 2009 | March 2008 to February 2009 | 12 |
| April 2009 to March 2010 | April 2009 to March 2010 | 12 |
| Total | | 36 |

Example of a series of successive periods without interruption:

| Licence period | Guarantee | |
|--------------------------|--------------------------|---------------|
| | Period | No. of months |
| January to December 2007 | January to December 2007 | 12 |
| January to December 2008 | January to December 2008 | 12 |
| January to December 2009 | January to December 2009 | 12 |
| Total | | 36 |

3. *In the definition of “relevant cancelled race meeting” would it serve the same purpose by using the formulation of “the partially relevant charging period” instead of using the proposed formulation in paragraph (a)(ii)?*

Paragraph (a)(ii) refers to the part of the partially relevant charging period that falls within the guarantee period. It does not refer to the whole partially relevant charging period. For example, in a partially relevant charging period from April 2009 to March 2010 where only April to December 2009 is within the guarantee period, only those race meetings cancelled during April to December 2009 will be taken into account when considering whether there is any “relevant cancelled race meeting”.

4. *In the definition of “relevant day”, when will we next have 29 February? Why is “29 February” excluded?*

29 February will appear in the year 2008 (a leap year). “29 February” is excluded to ensure that the number of relevant days in the charging period will not be 366, so as to ensure the correctness of the computation in those formulae with time apportionment. For example, in the definition of “shortfall of race meetings”, the following formula is adopted:

$$78 \times \frac{\text{number of relevant days in that charging period}}{365}$$

Clause 3(7)

5. *In new section 1(A)(2)(b), would you give example to illustrate the meaning of an arrangement which is not legally enforceable referred to in paragraph (b)?*

We will respond to this point separately.

6. *The term “director” is currently defined under section 6B(1). Does the term “director” in paragraph (c) carry the same meaning? If so, would it be necessary to move the definition to new section 1A(1)?*

We agree that the definition of the term is the same and therefore should be moved to section 1A(1).

Clause 15

7. *There is inconsistency in the rendition for the term “liable” (有法律責任就) in the Chinese text of new section 6GA(2)(b) and the same term (須就) in the Chinese text of section 6K(2)(b).*

We consider that it is more accurate to render the English expression “liable” in new section 6GA(2)(b) as “有法律責任就” though it is inconsistent with the Chinese rendition of “須就” in the existing section 6K(2)(b). Upon enactment of the Bill, we will prepare an order under section 4D of the Official Languages Ordinance (Cap.5) to amend the Chinese rendition in the existing section 6K(2)(b) in due course.

8. *There is inconsistency in the rendition for the term “liable” (有法律責任就) in the Chinese text of new section 6GA(3)(b)(ii) and the same term (須就) in the Chinese text of section 6K(3)(b)(ii).*

We consider that it is more accurate to render the English expression “liable” in new section 6GA(3)(b)(ii) as “有法律責任就” though it is inconsistent with the Chinese rendition of “須就” in the existing section 6K(3)(b)(ii). Upon enactment of the Bill, we will prepare an order under section 4D of the Official Languages Ordinance (Cap.5) to amend the Chinese rendition in the existing section 6K(3)(b)(ii) in due course.

9. *In new section 6GA(3)(a), would you illustrate with example as to show how a horse race betting conductor’s licence is “otherwise terminated”?*

The term “terminated” is used in existing sections 6H and 6M in the sense of the expiry of the licence other than by revocation. An example is that the licence may be terminated upon surrender by the betting conductor.

10. *In new section 6GA(3)(b), would you consider adding “revocation or” before “termination” wherever it appears in the provision?*

New section 6GA(3)(a) refers to a licence being “revoked or otherwise terminated”. Revocation is one of the ways in which a licence may be terminated. Thus, it would be sufficient to refer to

“termination” in new section 6GA(3)(b). This is modeled on existing section 6K(3) of the Betting Duty Ordinance (Cap. 108).

11. *In new section 6GB(1), would you give example to illustrate the fixed odds betting or pari-mutuel betting on “contingencies relating to horse races”?*

Reference to betting on “contingencies relating to horse races” is intended to give the betting conductor the flexibility to respond to the new bet types offered by illegal bookmakers. For illustration purpose, this could be a bet on the winning margin between the first and the second horses offered by some offshore bookmakers.

12. *New section 6GB(6) provides for an exception to advertising the conduct of betting on horse races on television or radio. Why is the same exception not found in section 6I relating to advertising the conduct of betting on football matches on television or radio?*

The betting conductor is not allowed to broadcast local football matches. The new section 6GB(6) on horse race betting is intended to allow the betting conductor to conduct live broadcast of local horse racing which is conducted by the betting conductor.

13. *Procedurally, how is a designation made by the Secretary under new section 6GC(1)?*

An example is that the betting conductor can make an application to the Administration on the proposed arrangement. Taking into account relevant factors including the views of the Financial Services and Treasury Bureau on the financial arrangements, the Secretary for Home Affairs (SHA) would consider making the designation.

14. *In new section 6GC(3)(b), would you illustrate with example as to the conditions which the Secretary may impose?*

Examples of conditions which the Secretary may impose include –

- The conductor has to inform the Secretary for Financial Services and the Treasury (SFST) when it has reached an agreement with its overseas counterpart for a discount rate lower than those specified in Schedule 2 of the Ordinance, and to seek the approval of SFST before formally entering into such agreement.

- The requirement for the betting conductor to furnish to SHA information related to the arrangement as SHA may reasonably require.

15. *In new section 6GD(2)(b)(i), do you have in mind the places outside Hong Kong (other than a specified place) which would accept qualified bets?*

The Administration does not have in mind any particular places outside Hong Kong which would accept qualified bets. It is up to the betting conductor to negotiate with other racing jurisdictions on the arrangements.

16. *In new section 6GD(2)(b)(iii), would you illustrate with example of “non-qualified” bets?*

“Non-qualified” bets are intended to be Hong Kong bets and/or bets accepted outside Hong Kong but which do not come under “qualified bets” and therefore not subject to the discount arrangement when computing betting duty.

17. *In new section 6GD(3), would you illustrate with figures the operation of the mathematical formulae in subsections (a) to (c)?*

An illustration is attached at the Annex.

18. *Why is it considered to be appropriate to provide for amending procedure under section 35 of Cap. 1 relating to new section 6GD(6) whereas to provide for amending procedure under section 34 of Cap. 1 relating to new section 6GD(7)?*

The intention is that as Schedule 1 deals with the duty rates which form the basis for calculation of all horse race betting duty, it is therefore essential that any proposal to amend the duty rates should be approved by the Legislative Council before implementation.

Schedule 2 deals with the discount rates for places outside Hong Kong. As the agreed rates are the results of detailed negotiations between the betting conductor and other racing jurisdictions, the flexibility for subsequently changing the rates is limited. We therefore propose that as long as the rate does not exceed 50%, Schedule 2 can be amended by the Chief Executive in Council (CE in C) by an order published in the Gazette.

19. *In relation to new section 6GE, would you illustrate with figures as to the operation of collection of further horse race betting duty?*

An illustration is attached at the Annex.

20. *In new section 6GF(1), in Y, is there any formula or rule to determine the dividends or rebates payable? Should there be any empowering provision in the Bill to authorize the horse race betting conductor to give rebates?*

The intention is to give the betting conductor the flexibility to vary the take-out rates for different pools in order to compete with illegal bookmakers. Towards this end, the betting conductor is authorized through a licence to accept bets and is not prohibited to provide rebates and dividends which could vary according to the betting conductor's assessment of market changes.

The new section 6GF(1) is largely derived from the existing section 6K(1). It is not necessary to include any additional empowering provision in the Bill to authorize the betting conductor on horse racing to give rebates.

21. *In new section 6GF(2), would you consider adding "revocation or" before "termination" wherever it appears in the provision?*

New section 6GF(2) refers to a licence being "revoked or otherwise terminated". Revocation is one of the ways in which a licence may be terminated. Thus, it would be sufficient to refer to "termination" in new section 6GF(2). This is modeled on existing section 6K(3) of the Betting Duty Ordinance (Cap. 108).

22. *In relation to new 6GG(1) and (2), would you illustrate with figures the operation of the two provisions?*

An illustration is attached at the Annex.

23. *In relation to new section 6GI, would you illustrate with figures the operation of making of provisional payments?*

An illustration is attached at the Annex.

24. *To achieve consistency in drafting, would you consider adding*

provisions similar to new section 6GL(1)(b), (2)(b) and (3) (relating to horse race betting duty) to section 6Q?

The existing section 6Q on football betting is simpler than the proposed new section on horse race betting because the computation of football betting duty is much simpler (i.e. the football betting duty is at 50% of the net stake receipts).

The horse race betting duty is compiled according to more complex formulae under the new section 6GD. It is therefore necessary to put in place a separate assessment of duty payable under the new section 6GK and the additional assessment under the new section 6GL.

25. *In new section 6GN(7), the District Court is not allowed to rescind or vary or make any order relating to the Secretary's decision under new section 6GC relating to the designation of bets relevant to the charging period concerned as qualified bets. What is your policy justification for introducing the limit on the Court's power?*

SHA's decision on designation of qualified bets is intended to be different in nature and should therefore be separated from the subsequent duty assessment by the Collector of Stamp Revenue, in the sense that SHA's decision has to take into account various policy decisions, including those relating to cross-jurisdictional matters.

Clause 19

26. *Does it mean that a horse race betting conductor can lodge an appeal with the Registrar of the District Court against an assessment under new section 6GN and at the same time apply to the Collector for a correction of an assessment 6ZO(1)? If yes, should the Collector defer his decision pending the outcome of the court's decision? If a parallel decision could be made, how do you resolve a conflict between the court's and the Collector's decision?*

The new section 6ZO(2) requires the Collector of Stamp Revenue to correct an assessment if satisfied the duty charged is excessive by reason of certain matters. If the conductor is lodging an appeal under new section 6GN at the same time, the Collector is unable to ascertain the final amount of duty charged (and thus, whether the duty charged is excessive) until the appeal has been decided. For this reason, the Collector will have to defer his decision pending the outcome of the appeal.

27. *In relation to new section 6ZO(5)(b), would you explain with example the meaning and operation of the provision?*

To lodge an appeal, the conductor has to give notice of appeal in writing to the Registrar of the Court and the Collector under section 6GN(3), otherwise the appeal will be invalid. Section 6ZO(5)(b) provides that the conductor cannot make an application to the Collector under section 6ZO to validate such an invalid appeal.

Clause 20(2)

28. *In comparing to section 7(1)(a), why is it necessary to introduce a new section 7(1)(aa)?*

The intention is to provide a channel for the Collector to request additional information from the betting conductor.

Under section 7(1)(a), the CE in C may make regulations requiring a betting conductor to provide to the Collector information specified by the regulations or the Collector. It is the regulations that require the conductor to provide information.

Under section 7(1)(aa), the CE in C may make regulations empowering the Collector to require a betting conductor to provide to the Collector information specified by the Collector. Thus, the requirement may be issued by the Collector rather than set out in the regulations.

May 2006

Illustrations on computation of horse race betting duty

| | | |
|---|--------------------------|----|
| Wholly Relevant Charging Period: | April 2007 to March 2008 | |
| Number of race meetings held: | | 77 |
| Number of relevant cancelled race meetings: | (J) | 1 |

| | <u>Formula</u> | <u>Race Meetings (cumulative figures)</u> | | | |
|--------------------------------------|--|---|----------------------|---------------------------|--|
| | | <u>Ref.</u> | No. 1 (\$billion) | No. 1 to 2 (\$billion) | (and so on) No. 1 to 77 (\$billion) |
| Hong Kong bets | (Q) - (R) | | 1.00 | 2.50 | 100 |
| Macau bets | (T) | | 0.10 | 0.20 | 10 |
| Other qualified bets | (S) | | 0.40 | 0.80 | 40 |
| Total bets | (Q) | | 1.50 | 3.50 | 150 |
| Dividends and rebates payable | (Y) | | 1.35 | 3.16 | 136 |
| Unclaimed dividends | (L) | | 0.05 | 0.07 | 5 |
| Unclaimed rebates | (M) | | 0.02 | 0.02 | 1 |
| Unclaimed dividends and rebates paid | (N) | | 0.07 | 0.08 | 5 |
| s. 6GF | <u>Net Stake Receipts ("NSR")</u> | (K) | 0.15 | 0.35 | 15 |

Q - Y + (L +M - N)

s. 6GD(3) Notional duty on NSR

Duty rates:

| | | | | |
|------------------|--------|---------|---------|----------|
| \$11 billion | 72.50% | 0.10875 | 0.25375 | 7.97500 |
| next \$1 billion | 73.00% | | | 0.73000 |
| next \$1 billion | 73.50% | | | 0.73500 |
| next \$1 billion | 74.00% | | | 0.74000 |
| next \$1 billion | 74.50% | | | 0.74500 |
| | (P) | 0.10875 | 0.25375 | 10.92500 |

s. 6GD(3)(a) Duty for Other qualified bets

$(P \times S/Q) - (K \times S/Q \times 72.5\% \times 50\%)$

0.01450 0.02900 1.46333

s. 6GD(3)(b) Duty for Macau bets

$(P \times T/Q) - (K \times T/Q \times 72.5\% \times 40\%)$

0.00435 0.00870 0.43833

s. 6GD(3)(c) Duty for Hong Kong bets

$P \times (Q-R)/Q$

0.07250 0.18125 7.28333

s. 6GI(1) Provisional payments

[within 15 days after each reporting day]

s. 6GI(2)(a) Duty for non-qualified bets

(G) 0.07250 0.18125 7.28333

| | | | | |
|--|-----|-------------|-------------|---------|
| Less: Provisional payments up to last reporting day | (U) | 0.00000 | 0.07250 | |
| | | <hr/> | <hr/> | |
| | | 0.07250 | 0.10875 | |
| s. 6GI(2)(b) Duty for qualified bets | (H) | 0.01885 | 0.03770 | 1.90167 |
| Less: Provisional payments up to last reporting day | (V) | 0.00000 | 0.01885 | |
| | | <hr/> | <hr/> | |
| | | 0.01885 | 0.01885 | |
| Total Provisional payments payable for current reporting day | | <hr/> <hr/> | <hr/> <hr/> | |
| | | 0.09135 | 0.12760 | |

s. 6GI(3) Further provisional payment

[within 15 days after the charging period]

| | | | | |
|---|-----|--|--|-------------|
| s. 6GI(4)(a) \$8 billion x 365/365 | | | | 8.00000 |
| Less: Total provisional payments for non-qualified bets | (W) | | | 7.28333 |
| | | | | <hr/> |
| | | | | 0.71667 |
| | | | | <hr/> <hr/> |

| | | | | |
|---|--|-------------------|--|-------------|
| Note: | | | | |
| In case it is a partially relevant charging period, say only 3 months (April to June) are under guarantee. Further provisional payment is computed as follows:- | | | | |
| s. 6GI(4)(b) \$8 billion x 91/365 | | | | 1.9945 |
| Less: Relevant portion of total provisional payments for non-qualified bets | | [7.2833 x 91/365] | | 1.8158 |
| | | | | <hr/> |
| | | | | 0.1787 |
| | | | | <hr/> <hr/> |

s. 6GG **Guaranteed amount**

| | | |
|-----------------|------------------------------------|-----------|
| s. 1A(1) | Shortfall of race meetings: | |
| | 78 x 365/365 | 78 |
| | Less: number of race meetings held | <u>77</u> |
| | Shortfall | <u>1</u> |

| | | |
|------------------|---|----------------------|
| s. 6GG(2) | Guaranteed amount | |
| | \$8 billion x 365/365 - (\$100,000,000 x 1) | <u><u>7.9000</u></u> |

| | | |
|---|-----------------------|--------|
| Note: | | |
| If there is no shortfall of race meetings, the guaranteed amount will be: | | |
| s. 6GG(1) | \$8 billion x 365/365 | 8.0000 |

s. 6GD **Horse race betting duty**

| | | |
|---------------------|---|--------|
| s. 6GD(3)(a) | Duty for qualified bets (unspecified place) i.e. Other qualified bets | 1.4633 |
| | (P x S/Q) - (K x S/Q x 72.5% x 50%) | |

| | | |
|---------------------|---|--------|
| s. 6GD(3)(b) | Duty for qualified bets (specified place) i.e. Macau bets | 0.4383 |
| | (P x T/Q) - (K x T/Q x 72.5% x 40%) | |

| | | |
|--|---|---------------|
| s. 6GD(3)(c) Duty for non-qualified bets i.e. Hong Kong bets | | 7.2833 |
| P x (Q-R)/Q | | |
| | Total | <u>9.1850</u> |
| s. 6GE | <u>Further horse race betting duty</u> | |
| | Guaranteed amount | 7.9000 |
| | Less: Duty for non-qualified bets | <u>7.2833</u> |
| s. 6GE(2)(b) | Further horse race betting duty | <u>0.6167</u> |

Note:

In case it is a partially relevant charging period, say only 3 months (April to June) are under guarantee and there is 1 relevant cancelled race meeting. Further horse race betting duty is computed as follows:-

| | | | |
|--------------|---|---|---------------|
| s. 6GG(2) | Guaranteed amount | [\$8billion x 91/365 - (\$100,000,000 x 1)] | 1.8945 |
| s. 6GE(2)(b) | Less: Relevant portion of duty for non-qualified bets | [7.2833 x 91/365] | <u>1.8158</u> |
| | Further horse race betting duty | | 0.0787 |

- END -