

II. REPORT

The date of First Reading of the Bill is 24 April 2013. Members may refer to the LegCo Brief (File Ref.: S/F(3) to HAB/CR 1/17/99) issued by the Home Affairs Bureau in April 2013 for further details.

Object of the Bill

2. The main purpose of the Bill is to amend the Betting Duty Ordinance (Cap. 108) (the Ordinance) to abolish the duty for bets accepted outside Hong Kong in relation to the conduct of authorized betting on local horse races and to charge a duty at a flat rate of 72.5% on horse races held outside Hong Kong.

Background

3. Under section 6GB of the Ordinance, the Secretary for Home Affairs may, by issuing a licence to a company, authorize the company to conduct betting on horse races (horse race betting conductor). Under section 6GD, during a charging period within which the licence issued to the horse race betting conductor is in force, a duty is charged at a progressive rate from 72.5% to 75%¹ on the net stake receipts derived from the conduct of authorized betting on horse races in respect of each charging period. A horse race betting conductor will be charged further horse race betting duty under section 6GE where the guaranteed amount for a wholly or partially relevant charging period² exceeds the horse race betting duty charged under section 6GD.

4. According to paragraph 2 of the LegCo Brief, the Hong Kong Jockey Club (HKJC) Horse Race Betting Limited is at present the only licensed horse race betting conductor in Hong Kong to conduct betting on both local and simulcast overseas horse races. A local betting conductor may manage a local betting pool as a "separate pool", or manage the local and non-local betting pools together as a "commingled pool" whereby the participating jurisdictions would follow the same dividend distribution rates for the bet type(s) concerned. A betting duty would be charged on both local and non-local bets on local horse races managed under an inbound commingled pool but a discount rate³ would apply to non-local bets accepted at a place outside Hong Kong.

¹ Section 6GD(1) of, and Schedule 1 to, the Ordinance

² Under section 1A of the Ordinance, a wholly (or partially) relevant charging period means a charging period, the whole (or part) of which falls within the three-year guarantee period.

³ Section 6GD(2), (3) and (5) of, and Schedule 2 to, the Ordinance

5. According to the Administration, the prevailing international norm and practice is that betting duty would only be levied at source by the jurisdiction where the bet is made, and would not be charged on non-local bets even if they are managed in a commingled pool. The levy of betting duty on non-local bets under a commingled pool described in paragraph 4 above is not in line with the international norm and results in such non-local bets being doubly taxed by both the non-local jurisdiction (i.e. tax at source) and Hong Kong. Further, according to paragraph 8 of the LegCo Brief, all non-local bets on Hong Kong horse races are now placed in separate pools managed by non-local betting conductors so that the Government currently receives no betting duty from any inbound commingled pools.

6. According to paragraph 11 of the LegCo Brief, HKJC has been accepting bets of Hong Kong bettors on some prestigious non-local races and managing such local bets in separate pools on which betting duty is charged in the same manner as local bets placed on local horse races under the Ordinance. If HKJC were to accept local bets under an outbound commingling arrangement whereby local bets from Hong Kong bettors are commingled with non-local bets accepted by a non-local horse race betting conductor in respect of the same bet type of the same non-local race, in the absence of a separate and specific betting duty structure for this arrangement under the existing Ordinance, such bets would be subject to the progressive betting duty rates from 72.5% to 75% stipulated in Schedule 1 to the Ordinance. Paragraph 13 of the LegCo Brief states that in reality, no outbound commingling arrangement has ever been carried out by HKJC.

Provisions of the Bill

7. The Bill seeks to amend the Ordinance to facilitate the conduct of inbound and outbound commingling on horse race betting. The major amendments are summarized in the following paragraphs.

8. Clause 6 proposes amending section 6GD of the Ordinance:

- (a) to make the progressive rates specified in Schedule 1 to the Ordinance only apply to net stake receipts derived from the conduct of authorized betting on local horse races;
- (b) to abolish the duty on bets accepted outside Hong Kong in relation to the conduct of authorized betting on horse races; and
- (c) to add a new section 6GD(3A) to provide for a flat rate of 72.5% specified in a new Schedule 3 in respect of net stake receipts derived from authorized betting on non-local horse races.

9. The Bill also proposes a new mechanism for calculating the guaranteed amount and the charging of further betting duty for local bets placed on non-local horse races. The new section 6GGA of the Ordinance proposes a fixed sum of \$175 million⁴ per year as the guaranteed amount for non-local races. The new section 6GEA provides for the imposition of a further duty if, in respect of a charging period that falls within the three-year guarantee period, the duty charged on the net stake receipts derived from non-local horse races under the new section 6GD(3A) is less than the guaranteed amount proposed in the new section 6GGA. The further duty would be of such a sum as to make up the shortfall between the guaranteed amount and the duty actually charged under the proposed section 6GD(3A).

10. Clause 9 seeks to amend section 6GF to provide for the calculation of the net stake receipts derived from authorized betting on horse races. Under the proposed mathematical formula in respect of non-local horse races as set out in the new section 6GF(1A) and (1B), any extra amount (e.g. licence fees) payable by HKJC for the rights to use sounds, visual images or other information relating to the non-local race and to conduct betting on the race in Hong Kong that exceeds 1.5% of the total amount of bets accepted by HKJC on the race would be deducted from the net stake receipts in calculating the amount of betting duty payable on the local bets placed on the race.

11. The Bill also proposes consequential amendments to the Ordinance and to the Betting Duty Regulations (Cap. 108 sub. leg. A).

Commencement

12. The Bill, if enacted as an ordinance, would come into operation on 1 September 2013.

Public Consultation

13. According to paragraph 26 of the LegCo Brief, the Betting and Lotteries Commission (BLC), which was consulted in 2008 and February 2013, was worried that the legislative proposal would lead to a heightened gambling atmosphere. BLC would seek to review the situation in one year's time after commencement of the enacted ordinance on 1 September 2013.

⁴ According to paragraph 19 of the LegCo Brief, the proposed guaranteed amount of \$175 million represents the average of the preceding three years' betting duty receipts (i.e. from 2009/10 to 2011/12 racing seasons) arising from Hong Kong bets on non-local races simulcast by HKJC.

Consultation with LegCo Panel

14. As advised by the Clerk to the Panel on Home Affairs (the Panel), the Panel was consulted on the Administration's proposals to amend the Ordinance to facilitate the conduct of two-way commingling on horse race betting at its meeting on 18 February 2013, which was also attended by some non-Panel Members. Some Members expressed support for the Administration's proposals, considering that they would not encourage the growth of gambling culture and would also help combat off-shore and illegal bookmaking activities. However, there were concerns that the implementation of two-way commingling arrangement would lead to an increase in betting opportunities and encourage more people to participate in gambling activities. Concern was also expressed about the measures taken by the Administration to prevent the prevalence of problem and pathological gambling.

Conclusion

15. The Legal Service Division is seeking clarification from the Administration on certain technical and drafting issues relating to the Bill. In the light of the views expressed by BLC and the concerns raised at the above Panel meeting, Members may consider whether to study the policy aspects of the Bill in detail.

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