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Mr Henry YIM
Principal Assistant Secretary (Home Affairs)
Home and Youth Affairs Bureau
Home Affairs Branch
Home Affairs Division
13/F, West Wing, Central Government Offices
2 Tim Mei Avenue, Tamar, Hong Kong

Dear Mr YIM,

Betting Duty (Amendment) Bill 2025

We are scrutinizing the captioned Bill with a view to advising Members on its legal and drafting aspects. To facilitate Members' consideration of the Bill, we should be grateful if you could clarify the matters as stated in the **Appendix**.

Please let us have your response in both Chinese and English before the second meeting of the Bills Committee.

Yours sincerely,

(Clara WONG)
Assistant Legal Adviser

Encl.

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Clause 4 of the Bill: Meaning of “basketball”

1. Section 1A(1) of the Betting Duty Ordinance (Cap. 108) currently provides that “football” does not include American football, Australian Rules Football or rugby. It is noted that the Bill does not provide for a proposed definition of “basketball”. According to the Concise Oxford English Dictionary, “basketball” means “a game played between two teams of five players in which goals are scored by throwing a ball through a netted hoop fixed at each end of the court”. Please clarify whether it is the Administration’s legislative intent that “basketball” would also include “3 x 3 basketball” (which is a variation of basketball played by three players on each team in a half-court setup with one backboard)¹ under the Bill. Please consider whether a proposed definition of “basketball” should be provided for in the Bill.

Clause 15 of the Bill

2. Under the proposed new section 6WH(4)(d) of Cap. 108, a basketball betting conductor (“Conductor”) must not advertise the conduct of betting on basketball matches on television or radio between the hours of 4:30 pm and 10:30 pm on any day. It is noted that a similar restriction is also imposed on a football betting conductor under section 6I(4)(d) of Cap. 108. On the other hand, a horse race betting conductor must not, pursuant to section 6GB(4)(d) of Cap. 108, advertise the conduct of betting on horse races on television or radio (a) between the hours of 9:30 am and 10:30 pm on any Saturday or Sunday; or (b) between the hours of 4:30 pm and 10:30 pm on any other day. Please clarify the reason(s) for adopting the advertising restriction that is applicable to football betting for betting on basketball matches. Further, given that advertising on websites and mobile applications (e.g. via social media) is prevalent nowadays, please clarify the reason(s) for only imposing a restriction on advertisements on television or radio, but not on other channel(s) as well.

3. Under the proposed new section 6WH(5) of Cap. 108, the issuance of a basketball betting licence would, in addition to those conditions referred to in the proposed new section 6WH(4) of Cap. 108, be subject to any other conditions that the Secretary for Home and Youth Affairs (“Secretary”) considers appropriate to impose, including conditions relating to the categories of matches on which betting may be conducted as set out in the proposed new section 6WH(5)(a) of Cap. 108. It is noted that the Secretary also has similar power in respect of betting on horse races (section 6GB(5)(a) of Cap. 108) and betting on football matches (section 6I(5)(a) of Cap. 108). According to paragraph 17(c) of the Legislative Council (“LegCo”) Brief, one of the licensing conditions to be imposed on a Conductor would be the prohibition to accept bets on basketball matches involving Hong Kong teams and/or matches that take place in Hong Kong, so as to promote a betting-free and healthy environment for the sport in Hong Kong (“Specified Condition”). Please clarify whether it is the Administration’s legislative intent that the Specified Condition would be imposed by the

¹ Please refer to the website of the International Basketball Federation (<https://about.fiba.basketball/en/our-sport/3x3-basketball>) for further information on “3 x 3 basketball”.

Secretary pursuant to the power to be exercised by her under the proposed new section 6WH(5)(a) of Cap. 108. If so, please clarify why the Specified Condition should not simply be provided for in the proposed new section 6WH(4) of Cap. 108.

4. Under the proposed new section 6WQ(7)(b) of Cap. 108, the Collector of Stamp Revenue (“Collector”) may, at the request of the Conductor and subject to any conditions that the Collector may impose, order that payment of the whole or part of the basketball betting duty that is payable under the proposed new section 6WO or 6WP of Cap. 108 be held over pending the final determination of the appeal made by the Conductor to the District Court under the proposed new section 6WQ of Cap. 108. It is noted that similar provisions are also provided for in Cap. 108 currently in respect of betting on horse races (section 6GN(8)(b) of Cap. 108) and betting on football matches (section 6S(7)(b) of Cap. 108). Please provide examples of the condition(s) that may be imposed by the Collector if the Conductor’s request for the holding over of the basketball betting duty would be allowed.

5. Under the proposed new section 6WU(4) of Cap. 108, the Collector may, at any time after approving a hedging policy, withdraw the approval of the whole policy, or of any part of it, by a written notice given to the Conductor. It is noted that the current section 6V(4) of Cap. 108 also contains similar power conferred upon the Collector in respect of a hedging policy submitted by a football betting conductor. Please clarify under what circumstance(s) the Collector would withdraw an approval of the whole or any part of the hedging policy submitted by the Conductor and whether the Collector would give reason(s) for the withdrawal in the written notice to be given to the Conductor.

Clauses 15 and 23 of the Bill: Proposed new offences

6. The Bill proposes to introduce the following four new offences which do not expressly require the proof of *mentes reae* (i.e. the mental elements) (and one of which is not provided with a statutory defence):

- (a) a Conductor failing to make a provisional payment to the Collector as required under the proposed new section 6WM(1) of Cap. 108 without reasonable excuse (the offence under the proposed new section 6WM(5) of Cap. 108);
- (b) a Conductor failing to submit a calculation sheet regarding the provisional payment in the specified form to the Collector as required under the proposed new section 6WM(3) of Cap. 108 without reasonable excuse (the offence under the proposed new section 6WM(5) of Cap. 108);
- (c) a person who is not a Conductor or who is not so acting on behalf of a Conductor, makes, prints, issues, sells or offers to sell a basketball betting ticket (the offence under the proposed new section 6WV(2) of Cap. 108); and

- (d) a Conductor failing to submit to the Collector a return in respect of the conduct of authorized betting on basketball matches in the specified form as required under the proposed new regulation 3B(1) of the Betting Duty Regulations (Cap. 108A) without reasonable excuse (the offence under the proposed new regulation 3B(4) of Cap. 108A).

7. Please clarify:

- (a) whether, according to the Administration's legislative intent, each of the proposed new offences referred to in paragraph 6(a), (b) and (d) above would be a strict liability offence (i.e. the prosecution needs not prove the existence of *mens rea* of committing the offence); and if so, whether it is the Administration's legislative intent that the implied common law defence of "honest and reasonable mistaken belief" would be available to a person charged with each of these proposed new offences;
 - (i) if it is the Administration's legislative intent that the implied common law defence of "honest and reasonable mistaken belief" would be available to a person charged with each of these proposed new offences, whether it is the Administration's legislative intent that the defendant would only bear an evidential burden (i.e. the second alternative referred to in *Kulemesin v HKSAR* (2013) 16 HKCFAR 195 ("*Kulemesin*")), or would be required to discharge a persuasive burden (i.e. the third alternative referred to in *Kulemesin*), as to the defendant's belief; and if it is the Administration's legislative intent that the third alternative referred to in *Kulemesin* would apply, how the derogation of the constitutional right to be presumed innocent under Article 87 of the Basic Law ("BL") and article 11(1) of the Hong Kong Bill of Rights ("HKBOR") could satisfy the rationality and proportionality tests laid down in *Hysan Development Co Ltd v Town Planning Board* (2016) 19 HKCFAR 372 ("*Hysan*"); and
 - (ii) if it is the Administration's legislative intent that the implied common law defence of "honest and reasonable mistaken belief" would not be available to a person charged with each of these proposed new offences, please clarify why the implied common law defence of "honest and reasonable mistaken belief" would be considered to be replaced or excluded by the statutory reasonable excuse defence (i.e. the fourth alternative referred to in *Kulemesin*); and
- (b) whether, according to the Administration's legislative intent, the proposed new offence referred to in paragraph 6(c) above would be an absolute liability offence (i.e. the fifth alternative referred to in *Kulemesin*), given that no statutory defence would be provided for this proposed new offence;

- (i) if so, please provide justification(s) for making it an absolute liability offence; and
- (ii) if not, please clarify the issues set out in subparagraph (a) (except subparagraph (a)(ii)) above in case it is the Administration's legislative intent that this proposed new offence would be a strict liability offence.

8. Please also clarify the reason(s) for not providing a statutory reasonable excuse defence for a person charged with the offence under the proposed new section 6WV(2) of Cap. 108.

9. Further, it is noted that for the proposed new offences mentioned in paragraph 6(a), (b) and (d) above, the offences under the current sections 6GI(6), 6N(5), 6ZI(6), 6ZK(3), 6ZL(2) and 6ZM(2) of Cap. 108, and the offences under the proposed amended or current regulations 3AA(6), 3A(4) and 4(4) of Cap. 108A, where each of these offences comes with a statutory reasonable excuse defence, there is no provision under Cap. 108, Cap. 108A or the Bill specifying the burden of proof for a person who seeks to invoke the statutory defence. Please clarify whether it is the Administration's legislative intent to impose only an evidential burden of proof on a person seeking to invoke the statutory defence under any of these offences. If so, please consider whether it is necessary to expressly provide so in the Bill. Please see, e.g. clause 57 of the Import and Export (Amendment) Bill 2025 (which was passed by LegCo at the Council meeting of 2 July 2025). If, on the other hand, it is the Administration's legislative intent that a persuasive burden of proof would be or is imposed on a person charged with any of these offences for invoking the statutory defence, please clarify how the derogation of the constitutional right to be presumed innocent under BL 87 and article 11(1) of HKBOR could satisfy the rationality and proportionality tests laid down in *Hysan*.

Drafting issues

Clauses 8, 11, 15 and 16 of the Bill

10. It seems that "mobile application", which appears in the proposed amended sections 6GB(4)(g)(ii), 6I(4)(g)(ii) and 6X(4)(g)(ii) of, and the proposed new section 6WH(4)(g)(ii) of, Cap. 108, is a new term which has not been used or referred to in any current legislation in Hong Kong. It is noted that "mobile application" is defined in regulation 2(1) of the Payment Services Regulations 2019 of Singapore to mean a software application that operates on mobile devices such as smartphones and tablet computers. Please consider whether a definition of "mobile application" should be provided for the purposes of those provisions under the Bill for the sake of clarity and certainty.

Section 6H of the Betting Duty Ordinance (Cap. 108)

11. For the purposes of aligning with the drafting approach of the proposed definitions of “basketball betting duty”, “notice of additional assessment”, “notice of assessment” and “provisional payment” set out in the proposed new section 6WG of Cap. 108, please consider, with respect to the following definitions currently contained in section 6H of Cap. 108:

- (a) replacing “section 6J” with “section 6J(1)” in the definition of “football betting duty”;
- (b) replacing “section 6Q” with “section 6Q(3)” in the definition of “notice of additional assessment”;
- (c) replacing “section 6P” with “section 6P(4)” in the definition of “notice of assessment”; and
- (d) replacing “section 6N” with “section 6N(1)” in the definition of “provisional payment”.

Proposed new section 6WT(4) of the Betting Duty Ordinance (Cap. 108)

12. Under the proposed new section 6WT(4) of Cap. 108, “approved hedging policy” is proposed to mean a policy submitted by the Conductor and approved by the Collector under the proposed new section 6WU of Cap. 108. Given that under the proposed new section 6WU(4) of Cap. 108, the Collector may withdraw the approval of the whole or any part of the hedging policy, please consider whether it is necessary to provide in the proposed definition of “approved hedging policy” that the approval has not been withdrawn by the Collector in whole or in part.

Proposed new or current provisions relating to placing a bet for hedging purpose under the Betting Duty Ordinance (Cap. 108)

13. For the purposes of clarity and certainty, please consider:

- (a) with respect to the proposed definition of “hedging bet” under the proposed new section 6WK(6) of Cap. 108, replacing “section 6WT” with “section 6WT(1)”, as there is a reference to “subject to section 6WT(3)”; and with respect to the definition of “hedging bet” under the proposed amended section 6L(5) of Cap. 108, replacing “section 6U” with “section 6U(1)”;

- (b) under the proposed new section 6WT(3) of Cap. 108, replacing “this section” (wherever appearing) with “subsection (1)”; and under the current section 6V(6) of Cap. 108, replacing “section 6U” with “section 6U(1)”; and
- (c) under the proposed new section 6WU(1)(a) of Cap. 108, replacing “section 6WT” with “section 6WT(1)”; and under the current section 6V(1) of Cap. 108, replacing “section 6U” with “section 6U(1)”.