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HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE No. 29 OF 2003

L.S.

TUNG Chee-hwa
Chief Executive
10 July 2003

An Ordinance to amend the Betting Duty Ordinance to empower the Secretary for Home Affairs to authorize betting on football matches, to charge a duty on the net stake receipts derived from the conduct of authorized betting on football matches, to allow companies that conduct authorized betting on football matches to bet on football matches for hedging purpose, to amend the law relating to the authorization of lotteries, to provide for the dissolution of the Hong Kong Lotteries Board, and to establish a body to be known as the “Football Betting and Lotteries Commission”; to provide for the vesting of rights and liabilities of the Hong Kong Lotteries Board in the Hong Kong Jockey Club; and to provide for related matters.

[]

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Betting Duty (Amendment) Ordinance 2003.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Home Affairs by notice published in the Gazette.

PART 1**AMENDMENTS TO BETTING DUTY ORDINANCE AND
ITS SUBSIDIARY LEGISLATION****Betting Duty Ordinance****2. Long title substituted**

The long title to the Betting Duty Ordinance (Cap. 108) is repealed and the following substituted—

“To provide for the authorization of cash-sweeps, lotteries, betting on horse or pony races and betting on football matches; to charge duties in relation to those authorized betting activities; to establish a body to be known as the “Football Betting and Lotteries Commission”; to amend the law relating to gambling; and to provide for related matters.”.

3. Part heading added

The following is added before section 1—

“PART 1

PRELIMINARY”.

4. Section added

The following is added—

“1A. Interpretation

In this Ordinance, unless the context otherwise requires—

“authorized betting activity” (獲批准投注活動) means the betting activity that is authorized under section 2, 3, 6I or 6X;

“charging period” (課稅期) means, in relation to a football betting conductor, a charging period as defined under section 6M;

“Collector” (署長) means the Collector of Stamp Revenue appointed under section 3 of the Stamp Duty Ordinance (Cap. 117);

“company” (公司) means a company within the meaning of the Companies Ordinance (Cap. 32), or a company registered under Part XI of that Ordinance;

“football” (足球) does not include American football, Australian Rules Football or rugby;

“football betting conductor” (足球投注舉辦商) means a company that is authorized under section 6I to conduct betting on football matches;

“lottery conductor” (獎券活動舉辦商) means a company that is authorized under section 6X to conduct lotteries;

“net stake receipts” (淨投注金收入) means the net stake receipts as calculated under section 6K and adjusted under section 6L;

“specified form” (指明格式) means a form specified under section 7(3).”.

5. Part heading added

The following is added before section 2—

“PART 2

CASH-SWEEPS AND BETTING ON HORSE OR PONY RACES”.

6. Appointment, function and constitution of Hong Kong Lotteries Board

Section 4A is repealed.

7. Meetings of the Board

Section 4B is repealed.

8. Allocation of proceeds of a lottery

Section 4C is repealed.

9. Authorization of lotteries

Section 4D is repealed.

10. Interpretation

Section 4E is repealed.

11. Restriction on sale of tickets

Section 5 is amended—

(a) by renumbering it as section 5(1);

(b) by adding—

“(2) A person who contravenes subsection (1) commits an offence and is liable to a fine at level 5.”.

12. Duty in relation to cash-sweeps and betting on horse or pony races

Section 6 is amended—

(a) in subsection (1), by repealing “Ordinance” and substituting “Part”;

(b) by repealing subsection (1A);

- (c) in subsection (3), by repealing “, (1A)”;
- (d) in subsection (5), in the definition of “overseas bet”—
 - (i) by adding “Hong Kong Jockey” before “Club”;
 - (ii) by repealing “Ordinance” and substituting “Part”.

13. Section added

The following is added immediately after section 6—

“6A. Offences and penalties under Part 2

(1) If a person acts in contravention of or fails to comply with this Part or any condition imposed under this Part, the person commits an offence and is liable to, if no other penalty is provided by this Part, a fine at level 3.

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

14. Parts added

The following are added—

“PART 3

BETTING ON FOOTBALL MATCHES AND LOTTERIES

Division 1—Preliminary

6B. Interpretation of Part 3

- (1) In this Part—
- “associate” (相聯者) means, in relation to a person—
- (a) the wife, husband or a minor child (including a minor step-child) of that person;
 - (b) a body corporate of which that person is a director;
 - (c) an employee or partner of that person; or
 - (d) if that person is a body corporate—
 - (i) a director of that body corporate;
 - (ii) a subsidiary of that body corporate; or
 - (iii) a director or employee of any such subsidiary;

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

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

“financial penalty” (罰款) means a financial penalty imposed under section 6ZE;

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

“principal officer” (主要人員) means, in relation to a company, a person employed by the company who—

(a) either alone or with any person, is responsible under the immediate authority of the directors of the company for the conduct of the business of the company; or

(b) under the immediate authority of a director of the company or a person employed by the company, exercises managerial functions in respect of the company;

“Secretary” (局長) means the Secretary for Home Affairs;

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

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

6C. Determining if a person is a “fit and proper” person

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

(a) the person’s financial status and financial integrity;

(b) the person’s qualifications and experience;

(c) the person’s ability to act competently, honestly and fairly;

(d) the person’s reputation and reliability;

(e) whether or not the person has any potential or actual conflict of interest;

(f) whether or not the person has been charged with or convicted of any offence, whether in Hong Kong or elsewhere; and

(g) any other matter that the Secretary considers relevant.

Division 2—Football Betting and Lotteries Commission**6D. Establishment and composition**

(1) There is established a body called the “Football Betting and Lotteries Commission” in English and “足球博彩及獎券事務委員會” in Chinese.

(2) The Chief Executive shall appoint—

(a) 3 public officers as members of the Commission;

(b) not less than 8 persons, who are not public officers, as members of the Commission; and

(c) one of the members appointed under paragraph (b) as the Chairperson of the Commission.

(3) Of the persons appointed under subsection (2)(b)—

(a) at least one shall be a registered social worker within the meaning of the Social Workers Registration Ordinance (Cap. 505);

(b) at least one shall be eligible under the Legislative Council Ordinance (Cap. 542) to be registered as an elector for the education functional constituency specified in section 20(1)(e) of that Ordinance; and

(c) at least one shall—

(i) occupy in any organized religion any office associated with the teaching of, the giving of guidance on, or the promotion of adherence to, the precepts of the religion; or

(ii) be engaged in the teaching of any theology, philosophy or ethics.

(4) If—

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

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

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

(5) If—

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

(b) as a result, subsection (3) is no longer complied with, the Chief Executive shall, within 3 months after the date on which the person ceases to be a member, appoint another person as a member under subsection (2)(b) so that subsection (3) will be complied with.

(6) As soon as practicable after a person is appointed as, or has ceased to be, a member of the Commission, the Secretary shall publish a notice of that fact in the Gazette.

(7) If one of the reasons for appointing a person under subsection (2)(b) is to comply with subsection (3), the notice published under subsection (6) in relation to the person shall contain a statement of that fact.

(8) A member of the Commission may resign at any time from membership by notice in writing given to the Chief Executive.

6E. Function

(1) The function of the Commission is to advise the Secretary on matters provided for or otherwise relating to this Part, including—

- (a) the regulation of the conduct of betting on football matches and lotteries;
- (b) the issuance and revocation of licences under this Part, and the variation of the conditions of such licences;
- (c) in relation to a licence issued under this Part—
 - (i) the compliance with the conditions of the licence; and
 - (ii) the handling of complaints that relate to non-compliance with the conditions of the licence; and
- (d) the imposition of financial penalties.

(2) The Commission is neither a servant nor an agent of the Government and does not enjoy any status, immunity or privilege of the Government.

6F. Performance of function

The Commission may perform its function at the request of the Secretary or on its own initiative.

6G. Meetings and procedure

(1) The Commission shall meet at such times and at such places as its Chairperson may appoint.

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

(3) The Commission may make rules regulating the procedure at its meetings.

(4) If the Chairperson of the Commission reasonably believes that it is impracticable to call a meeting of the Commission, the Commission may transact its business by circulation of papers.

(5) A resolution 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 by the votes of the members so approving the resolution.

Division 3—Betting on football matches

6H. Interpretation of Division 3

In this Division—

“football betting duty” (足球博彩稅) means the duty that is charged under section 6J;

“last charging period” (最後課稅期) means, in relation to a football betting conductor, the charging period that comes to an end when the conductor’s licence is terminated;

“notice of additional assessment” (補加評估通知) means a notice of additional assessment given under section 6Q;

“notice of assessment” (評估通知) means a notice of assessment given under section 6P;

“provisional payment” (暫繳付款) means the provisional payment that a football betting conductor is required to make under section 6N.

6I. Authorization of betting on football matches

(1) Subject to subsection (2), the Secretary may, by issuing a licence to a company, authorize the company to conduct fixed odds betting or pari-mutuel betting on the results of, or contingencies relating to, football matches.

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

(3) The term for which the licence is issued shall be specified in the licence.

(4) Issuance of the licence to a company is subject to the conditions that the company—

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

- (b) shall not accept bets in any premises to which juveniles are permitted to have access;
 - (c) shall not pay dividends to juveniles;
 - (d) shall not advertise the conduct of betting on football matches on television or radio between the hours of 4.30 p.m. and 10.30 p.m. on any day;
 - (e) shall not, in conducting any advertising or promotional activity—
 - (i) target juveniles;
 - (ii) exaggerate the likelihood of winning; or
 - (iii) expressly or impliedly suggest that betting on football matches is a source of income or a viable way to overcome financial difficulties;
 - (f) shall not accept bets on credit, or accept credit cards as a means of payment for placing bets; and
 - (g) shall conspicuously display and keep displayed notices that comply with subsection (6)—
 - (i) in any premises where the company accepts bets; and
 - (ii) on any web site through which the company accepts bets.
- (5) Issuance of the licence is also subject to such conditions as the Secretary may think fit to impose, including but not limited to conditions relating to—
- (a) the categories of matches on which betting may be conducted;
 - (b) the manner and form in which bets may be accepted;
 - (c) the keeping of premises for accepting bets, the number of such premises and the persons who may have access to such premises; and
 - (d) the provision of information to the Secretary.
- (6) Any notice referred to in subsection (4)(g) shall—
- (a) contain a warning of the seriousness of the problems caused by excessive gambling; and
 - (b) provide information on the services and facilities available in Hong Kong to problem gamblers and pathological gamblers.
- (7) In this section—
- “fixed odds betting” (固定賠率投注) means betting on the terms that any dividend payable on a bet is fixed at the time when the bet is placed;
- “pari-mutuel betting” (彩池投注) means betting on the terms that any dividend payable on a bet depends on the respective shares of all winning bettors in the total amount of dividends available.

6J. Football betting duty

(1) A duty is charged at the rate of 50% on the net stake receipts that are derived from the conduct of authorized betting on football matches by a football betting conductor in respect of each charging period.

(2) The duty shall be payable by the football betting conductor.

(3) The Legislative Council may, by resolution, amend the rate of duty specified in subsection (1).

6K. Calculation of net stake receipts

(1) Subject to any adjustments made under section 6L, the net stake receipts that are derived from the conduct of authorized betting on football matches by a football betting conductor in respect of a charging period is calculated by using the following mathematical formula—

$$A - B$$

where—

A represents the total amount of bets that are—

- (a) accepted by the conductor; and
- (b) relevant to that charging period;

B represents the total amount of dividends that have, within that charging period, become payable by the conductor.

(2) For the purpose of subsection (1), a bet is relevant to a charging period if, within that charging period, the conductor becomes—

- (a) entitled to forfeit the bet; or
- (b) liable to pay a dividend on the bet.

(3) If—

- (a) the conductor's licence is revoked or otherwise terminated; and
- (b) after the termination, the company to which the licence was issued becomes—
 - (i) entitled to forfeit a bet that was accepted before the termination; or
 - (ii) liable to pay a dividend on the bet,

then—

- (c) the bet is taken to be relevant to the last charging period; and
- (d) any dividend that becomes payable after the termination is taken to have become payable within the last charging period.

6L. Adjustments to net stake receipts

(1) For the purpose of section 6K, the net stake receipts that are derived from the conduct of authorized betting on football matches by a football betting conductor in respect of a charging period shall be adjusted by adding an amount that is calculated by using the following mathematical formula—

$$(C - D) + (E - F)$$

where—

- C represents the total amount of dividends that—
 - (a) are payable by the conductor; and
 - (b) have, within that charging period, become unclaimed dividends;
 - D represents the total amount of unclaimed dividends that are subsequently paid, within that charging period, by the conductor;
 - E represents the total amount of dividends that become, within that charging period, payable to the conductor on hedging bets placed by the conductor;
 - F represents the total amount of hedging bets that are—
 - (a) paid or payable by the conductor; and
 - (b) relevant to that charging period.
- (2) For the purpose of subsection (1)—
- (a) if the dividend payable on a hedging bet is expressed in a currency other than Hong Kong dollars, the amount of the dividend shall be converted to Hong Kong dollars at an exchange rate that is acceptable to the Collector as prevailing in Hong Kong when the dividend becomes payable;
 - (b) if the amount paid or payable for a hedging bet is expressed in a currency other than Hong Kong dollars, the amount shall be converted to Hong Kong dollars at an exchange rate that is acceptable to the Collector as prevailing in Hong Kong when the amount becomes payable; and
 - (c) a hedging bet is relevant to a charging period if, within that charging period, the person who received the bet becomes—
 - (i) entitled to forfeit the bet; or
 - (ii) liable to pay a dividend on the bet.
- (3) If, after the last charging period—
- (a) a dividend becomes an unclaimed dividend, the dividend is taken to have become an unclaimed dividend within the last charging period;

- (b) an unclaimed dividend is subsequently paid, the unclaimed dividend is taken to have been paid within the last charging period;
 - (c) a dividend becomes payable on a hedging bet, the dividend is taken to have become payable within the last charging period; and
 - (d) the person who has received a hedging bet becomes—
 - (i) entitled to forfeit the bet; or
 - (ii) liable to pay a dividend on the bet,the bet is taken to be relevant to the last charging period.
- (4) In this section—
- (a) if a dividend is not paid within 60 days after the day on which the dividend becomes payable, the dividend becomes an unclaimed dividend at the end of the 60 days;
 - (b) “hedging bet” (對沖投注) means, subject to section 6V(6), a bet that is placed by the conductor under section 6U.

6M. Definition of “charging period”

- (1) Subject to any agreement made under subsection (3), “charging period” (課稅期) means, in relation to a football betting conductor, a period within which the licence issued to the conductor is in force, being—
- (a) a period that begins with the day on which the licence comes into force and ends with—
 - (i) the next following 31 March; or
 - (ii) the date on which the licence is terminated, whichever is the earlier; or
 - (b) any subsequent period that begins with 1 April and ends with—
 - (i) the next following 31 March; or
 - (ii) the date on which the licence is terminated, whichever is the earlier.
- (2) For the purpose of subsection (1), if—
- (a) before the licence is terminated, the conductor is issued with a new licence under section 6I; and
 - (b) the term of the new licence is to start immediately after the termination of the original licence,
- that subsection applies as if the term of the new licence were an extended term of the original licence.
- (3) The Collector may agree with the conductor—
- (a) in relation to a charging period that has begun but not come to an end, to change the date on which that charging period is to come to an end; or

- (b) in relation to a charging period that has not begun, to change either or both of the following dates—
- (i) the date on which that charging period is to begin;
 - (ii) the date on which that charging period is to come to an end.
- (4) An agreement made under subsection (3) has no effect if, according to the agreement—
- (a) a day covered by a charging period is not covered by the term of the licence;
 - (b) a day covered by the term of the licence is not covered by any charging period; or
 - (c) a day covered by the term of the licence is covered by more than one charging period.

6N. Provisional payments

(1) Within 15 days after each accounting day in a charging period, a football betting conductor shall make a provisional payment to the Collector.

(2) The provisional payment is calculated by using the following mathematical formula—

$$X - Y$$

where—

X represents the amount of football betting duty that the conductor would be liable to pay if the accounting day were the last day of that charging period;

Y represents the total amount of provisional payments that the conductor has made for that charging period.

(3) In making a provisional payment, the conductor shall submit to the Collector a calculation sheet, in the specified form, showing how the amount being paid has been arrived at.

(4) The Collector shall apply all provisional payments made by a football betting conductor for a charging period towards settlement of the football betting duty that is payable by the conductor for that charging period.

(5) A football betting conductor that, without reasonable excuse, contravenes this section commits an offence and is liable to a fine at level 3.

(6) In this section, “accounting day” (結算日) means any day within a charging period that is the last day of a month.

6O. Demand for provisional payment

(1) If a football betting conductor has not made a provisional payment in full, the Collector may, by notice in writing given to the conductor, demand payment of the unpaid amount.

(2) The notice shall specify the manner in which and the date on or before which the amount shall be paid.

(3) If the conductor fails to make payment in accordance with the notice, the Government may recover the unpaid amount as a civil debt.

6P. Assessment of net stake receipts

(1) As soon as practicable after the end of a charging period, the Collector shall assess the net stake receipts that were derived from the conduct of authorized betting on football matches by a football betting conductor in respect of that charging period.

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

(3) If, based on the assessment—

- (a) the football betting duty payable exceeds the provisional payments that have been made, the conductor shall pay the difference to the Collector in accordance with the notice of assessment; or
- (b) the provisional payments that have been made exceeds the football betting duty payable, the Collector shall refund the difference to the conductor.

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

- (a) the amount of net stake receipts as assessed;
- (b) the amount of football betting duty that is payable;
- (c) the total amount of provisional payments that have been made;
- (d) if subsection (3)(a) applies, the amount that the conductor shall pay, and the manner in which and the date on or before which the amount shall be paid; and
- (e) if subsection (3)(b) applies, the amount that the Collector shall refund.

6Q. Additional assessment

(1) Despite having given a notice of assessment to a football betting conductor in relation to a charging period, if the Collector reasonably believes that the net stake receipts that were derived from the conduct of

authorized betting on football matches by the conductor in respect of that charging period exceed the amount of net stake receipts as specified in the notice, the Collector shall make an additional assessment of the net stake receipts that were derived in respect of that charging period.

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

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

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

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

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

6R. Surcharges

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

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

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

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

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

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

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

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

6S. Appeal against assessment and holding over of duty

(1) A football betting conductor that is dissatisfied with an assessment under section 6P, or an additional assessment under section 6Q, may appeal against the assessment concerned to the District Court.

(2) The appeal may only be made within 1 month after the date on which the notice of assessment or notice of additional assessment, as the case may be, is given.

(3) The appeal shall be made by giving a notice of appeal in writing to the Registrar of the Court and the Collector.

(4) As soon as practicable after receiving the notice of appeal, the Collector shall—

(a) state and sign a case, setting out—

(i) a summary of the facts that are relevant to the assessment concerned; and

(ii) how the assessment concerned has been made; and

(b) serve a copy of the case on the conductor, the Registrar and the Secretary for Justice.

(5) The appeal may only be set down for hearing within 14 days after copies of the case have been served in accordance with subsection (4)(b).

(6) The Court shall determine the appeal by rescinding, varying or confirming the assessment concerned, and may make such other orders as the Court thinks fit.

(7) If, according to the assessment concerned, an amount is payable by the conductor under section 6P or 6Q, as the case may be—

(a) the making of the appeal does not affect the conductor's obligation to pay the amount; and

(b) the Collector may, at the request of the conductor and subject to any conditions that the Collector may impose, order that payment of the whole or part of the amount be held over pending the final determination of the appeal.

6T. Provisions relating to holding over

(1) This section applies if—

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

(b) the Collector has ordered under section 6S(7)(b) that payment of the whole or part of the amount be held over pending the final determination of an appeal made by the conductor.

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

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

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

- (a) the difference between the 2 amounts; and
- (b) interest on so much of the amount that is held over and becomes payable as a result of the final determination, calculated at the specified rate from the date referred to in subsection (1)(a) to the date on which the appeal is finally determined.

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

- (a) the Collector shall give the conductor a notice of payment in writing, specifying—
 - (i) the total amount that is payable; and
 - (ii) the manner in which and the date on or before which the amount shall be paid; and
- (b) the conductor shall pay the amount in accordance with the notice given under paragraph (a).

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

(6) In this section, “specified rate” (指明利率) means the rate determined by the Chief Justice by order under section 50(1)(b) of the District Court Ordinance (Cap. 336).

6U. Conductors may bet for hedging purpose

(1) A football betting conductor may place a bet on a football match if—

- (a) the conductor has, in accordance with this Ordinance and the conditions of the conductor’s licence, accepted bets on the match;
- (b) the bet placed by the conductor is received by a person in a place outside Hong Kong in accordance with the law of that place; and
- (c) the bet is placed by the conductor for the only purpose of hedging against exposure to the risk of loss that the conductor may suffer from the conduct of betting on the match.

- (2) For the avoidance of doubt, it is declared that—
- (a) a football betting conductor that places a bet under subsection (1) does not commit any offence under section 8 of the Gambling Ordinance (Cap. 148); and
 - (b) the person who receives the bet does not commit any offence under section 7 of that Ordinance.

6V. Hedging policies

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

- (a) the factors that the conductor undertakes to consider; and
- (b) the procedure that the conductor undertakes to follow,

in placing a bet under section 6U.

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

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

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

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

(6) For the purpose of section 6L, if a football betting conductor claims that a bet was placed under section 6U, and—

- (a) the conductor does not have a hedging policy that is approved under this section; or
- (b) in relation to the placing of the bet, the Collector reasonably believes that the conductor has failed, in a material manner, to comply with the hedging policy that is approved under this section,

the bet shall not be taken as a hedging bet.

6W. Restrictions relating to football betting tickets

(1) A person shall not make, print, issue, sell or offer to sell a football betting ticket unless the person is—

- (a) a football betting conductor; or
- (b) so acting on behalf of a football betting conductor.

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine at level 5.

(3) In this section, “football betting ticket” (足球投注彩票) means a ticket that is used or to be used to—

- (a) record the placing of a bet with a football betting conductor; and
- (b) claim any dividend that is payable on the bet.

Division 4—Lotteries

6X. Authorization of lotteries

(1) Subject to subsection (2), the Secretary may, by issuing a licence to a company, authorize the company to conduct lotteries.

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

(3) The term for which the licence is issued shall be specified in the licence.

(4) Issuance of the licence to a company is subject to the conditions that the company—

- (a) shall not accept, or authorize any person to accept, bets from juveniles;
- (b) shall not accept bets in any premises to which juveniles are permitted to have access;
- (c) shall not entertain claims by juveniles for prizes;
- (d) shall not advertise the conduct of lotteries on television or radio between the hours of 4.30 p.m. and 10.30 p.m. on any day;
- (e) shall not, in conducting any advertising or promotional activity—
 - (i) target juveniles;
 - (ii) exaggerate the likelihood of winning; or
 - (iii) expressly or impliedly suggest that betting on lotteries is a source of income or a viable way to overcome financial difficulties;
- (f) shall not accept bets on credit, or accept credit cards as a means of payment for placing bets; and

- (g) shall conspicuously display and keep displayed notices that comply with subsection (6)—
 - (i) in any premises where the company accepts bets; and
 - (ii) on any web site through which the company accepts bets.
- (5) Issuance of the licence is also subject to such conditions as the Secretary may think fit to impose, including but not limited to conditions relating to—
 - (a) the types of lotteries that may be conducted;
 - (b) the manner in which lotteries may be drawn;
 - (c) the manner in which the results of lotteries may be announced; and
 - (d) the provision of information to the Secretary.
- (6) Any notice referred to in subsection (4)(g) shall—
 - (a) contain a warning of the seriousness of the problems caused by excessive gambling; and
 - (b) provide information on the services and facilities available in Hong Kong to problem gamblers and pathological gamblers.

6Y. Duty on and allocation of proceeds

- (1) A duty is charged at the rate of 25% on the proceeds of each lottery that is conducted by a lottery conductor.
- (2) The duty shall be payable by the lottery conductor.
- (3) The conductor—
 - (a) shall allocate 54% of the proceeds in prizes, whether in that lottery or any other lottery as the conductor may determine;
 - (b) shall pay 15% of the proceeds into the Lotteries Fund; and
 - (c) may retain 6% of the proceeds as commission.
- (4) The Legislative Council may, by resolution, amend the rate of duty and the percentages of allocation specified in subsections (1) and (3) respectively.
- (5) In this section—
 - “Lotteries Fund” (獎券基金) means the Lotteries Fund established by a resolution made and passed by the Legislative Council on 30 June 1965 (Cap. 2 sub. leg. D) and published in the Gazette;
 - “proceeds” (收益) means, in relation to a lottery, the total amount of bets that are placed on the lottery.

6Z. Restrictions relating to lottery tickets

(1) A person shall not make, print, issue, sell or offer to sell a lottery ticket unless the person is—

- (a) a lottery conductor; or
- (b) so acting on behalf of a lottery conductor.

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine at level 5.

(3) In this section, “lottery ticket” (獎券活動彩票) means a ticket that is used or to be used to—

- (a) record the placing of a bet with a lottery conductor; and
- (b) claim any prize that is payable on the bet.

Division 5—Provisions relating to licences issued under Part 3**6ZA. Interpretation of Division 5**

In this Division—

“Appeal Board” (上訴委員會) means the Appeal Board established under section 6ZH;

“holder” (持有人) means, in relation to a licence, the company to which the licence is issued;

“licence” (牌照) means a licence issued under section 6I or 6X.

6ZB. Approval of constitution

(1) The constitution of a licensed company shall not be amended without the prior approval of the Secretary.

(2) Despite anything provided for in the constitution of a licensed company, any amendment of the constitution in contravention of subsection (1) shall be of no effect.

(3) In this section—

“constitution” (章程) means, in relation to a company, the memorandum and articles of association of the company, or other instrument constituting or defining the constitution of the company;

“licensed company” (持牌公司) means a company that holds a licence.

6ZC. Codes of practice on compliance with licence conditions

(1) For the purpose of giving guidance on how the conditions of licences may be complied with, the Secretary may from time to time issue codes of practice.

- (2) The Secretary may from time to time revise the codes.
- (3) In any proceedings, including appeals under section 6ZG, if it is relevant to decide whether the holder of a licence has failed to comply with a condition of the licence—
 - (a) the holder is not taken to have failed to comply with the condition only because of the failure to comply with a code that relates to the condition; and
 - (b) a failure to comply with a code that relates to the condition shall be admissible in evidence.

6ZD. Variation of licence conditions

- (1) The Secretary may, by notice in writing given to the holder of a licence, vary the conditions of the licence by—
 - (a) changing the terms of any condition that is imposed by the Secretary; or
 - (b) imposing new conditions subject to which the licence is to continue in force.
- (2) The variation shall not take effect before the expiry of the period referred to in section 6ZG(2), being the period within which the holder of the licence may appeal against the decision of the Secretary to make the variation.
- (3) The notice shall specify—
 - (a) the reasons for varying the conditions of the licence; and
 - (b) the date on which the variation is to take effect.
- (4) Before varying the conditions of a licence, the Secretary shall—
 - (a) give the holder of the licence a reasonable opportunity to make representations; and
 - (b) consider the representations, if any.

6ZE. Financial penalties

- (1) The Secretary may, by notice in writing given to the holder of a licence, impose a financial penalty on the holder if the holder has failed to comply with a condition of the licence.
- (2) The holder shall not be required to pay the penalty before the expiry of the period referred to in section 6ZG(2), being the period within which the holder may appeal against the decision of the Secretary to impose the penalty.
- (3) A financial penalty that is imposed on the holder of a licence shall not exceed—
 - (a) \$500,000 for the first occasion on which a financial penalty is imposed on the holder;

- (b) \$1,000,000 for the second occasion on which a financial penalty is imposed on the holder; or
 - (c) \$5,000,000 for the third or any subsequent occasion on which a financial penalty is imposed on the holder.
- (4) The notice shall specify—
 - (a) the reasons for imposing the penalty;
 - (b) the amount of the penalty imposed; and
 - (c) the manner in which and the date on or before which the penalty shall be paid.
- (5) Before imposing a financial penalty on the holder of a licence, the Secretary shall—
 - (a) give the holder a reasonable opportunity to make representations; and
 - (b) consider the representations, if any.
- (6) The Secretary shall not impose a financial penalty under this section 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.
- (7) A financial penalty shall be paid to the Government and the Government may recover any unpaid penalty as a civil debt.
- (8) If the holder of a licence has duly paid a financial penalty, the Secretary shall not revoke the licence only because of the failure that gave rise to the penalty.
- (9) For the purpose of this Part, if the Appeal Board has varied a financial penalty, the obligation to pay the penalty shall be discharged by paying the amount as varied.

6ZF. Revocation of licences

- (1) The Secretary may, by notice in writing given to the holder of a licence, revoke the licence if the holder has—
 - (a) contravened this Ordinance;
 - (b) failed to comply with a condition of the licence;
 - (c) failed to pay a financial penalty;
 - (d) gone into liquidation; or
 - (e) entered into a composition or arrangement with its creditors.
- (2) The Secretary may also, by notice in writing given to the holder of a licence, revoke the licence if the Secretary is no longer satisfied that the holder, or any of the directors, principal officers or controllers of the holder, is a fit and proper person for the purpose of section 6I or 6X, as the case may be.

- (3) The notice shall specify—
 - (a) the reasons for revoking the licence; and
 - (b) the date on which the revocation is to take effect.
- (4) Before revoking a licence, the Secretary shall—
 - (a) give the holder of the licence a reasonable opportunity to make representations; and
 - (b) consider the representations, if any.
- (5) The Secretary shall not revoke a licence under this section unless, in all the circumstances of the case, the revocation is proportionate and reasonable in relation to the reason that gave rise to the revocation.

6ZG. Appeals against financial penalties, variation of licence conditions and revocation of licences

- (1) If the holder of a licence is not satisfied with a decision of the Secretary to—
 - (a) vary the conditions of the licence;
 - (b) impose a financial penalty on the holder; or
 - (c) revoke the licence,

the holder may appeal against the decision to the Appeal Board.

- (2) The appeal shall be made by giving a notice of appeal in writing to the Chairperson of the Board. The appeal may only be made within 30 days after the day on which notice of the decision is given to the holder.

- (3) If an appeal is made against a decision other than a decision to revoke a licence, the effect of the decision is suspended until the appeal is determined by the Board.

- (4) If an appeal is made against a decision to revoke a licence, the effect of the decision is not suspended by the making of the appeal.

6ZH. Establishment and composition of Appeal Board

- (1) For the purpose of determining appeals under section 6ZG, there is established an Appeal Board.

- (2) Subject to subsection (3), the Chief Executive shall appoint—

- (a) a person, who is qualified for appointment as a District Judge under section 5 of the District Court Ordinance (Cap. 336), as the Chairperson of the Board; and

- (b) not less than 4 other persons as members of the Board.

- (3) No public officer shall be appointed under subsection (2).

- (4) As soon as practicable after a person is appointed under this section, or has ceased to be so appointed, the Secretary shall publish a notice of that fact in the Gazette.

(5) A person who is appointed under this section may resign at any time by notice in writing given to the Chief Executive.

6ZI. Determination of appeals

(1) The jurisdiction of the Appeal Board in determining an appeal shall be exercised by—

- (a) the Chairperson of the Board; and
- (b) not less than 2 members of the Board as the Chairperson may designate for the appeal.

(2) Questions before the Board shall be determined by the majority of the persons hearing the appeal, and in the event of an equality of votes the Chairperson shall have a casting vote.

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

(4) Subject to this Part, the Chairperson may decide on any matter of practice or procedure relating to the hearing of appeals.

(5) In determining an appeal, the Board may—

- (a) receive evidence on oath;
- (b) admit or take into account any statement, document, information or matter whether or not it would be admissible as evidence in a court of law; and
- (c) by notice in writing, summon any person to appear before it to produce any document or to give evidence.

(6) If a notice is given under subsection (5)(c) to a person, and the person fails to, without reasonable excuse—

- (a) comply with the notice; or
- (b) answer truthfully and completely a question put to him by the Board,

the person commits an offence and is liable to a fine at level 3.

(7) The Board shall determine the appeal by reversing, varying or confirming the decision that is appealed against. The determination is final.

6ZJ. Giving notices under this Division

A notice that is required to be given under this Division to the holder of a licence may be given by sending the notice to the address of the holder by registered post.

PART 4

MISCELLANEOUS

6ZK. Keeping of records

- (1) A person who conducts an authorized betting activity shall—
 - (a) keep sufficient records, in the English or Chinese language, of all receipts, payments and other transactions relating to the activity, in such a manner that enables the duty charged under this Ordinance in relation to the activity to be readily ascertained; and
 - (b) keep those records for a period of not less than 7 years after the completion of the transactions to which they relate.
- (2) In this section, “records” (紀錄) includes—
 - (a) books of account (whether kept in a legible form, or in a non-legible form by means of a computer or otherwise) that record receipts and payments; and
 - (b) vouchers, bank statements, invoices, receipts, and such other documents as are necessary to verify the entries in the books of account.
- (3) A person who, without reasonable excuse, contravenes this section commits an offence and is liable to a fine at level 6.

6ZL. Production of records for inspection

- (1) On being so requested by the Collector, a person who keeps a record under section 6ZK shall—
 - (a) produce the record for inspection by the Collector at such place and time as the Collector may reasonably direct;
 - (b) provide to the Collector a copy or an extract of the record in such form as the Collector may reasonably direct.
- (2) A person who, without reasonable excuse, contravenes this section commits an offence and is liable to a fine at level 3.

6ZM. Provision of certain information to Collector

- (1) If the Collector reasonably believes that any person has information that affects the amount of a duty that may be collected under this Ordinance, the Collector may, by notice in writing given to the person, require the person to provide the information to the Collector, in such form and before such date as may reasonably be specified in the notice.

(2) A person who, without reasonable excuse, contravenes a requirement under subsection (1) commits an offence and is liable to a fine at level 3.

6ZN. Duty recoverable as civil debt

The Government may recover any duty payable under this Ordinance as a civil debt.”.

15. Section substituted

Section 7 is repealed and the following substituted—

“7. Regulations and forms

(1) The Chief Executive in Council may make regulations—

- (a) requiring persons who conduct authorized betting activities to provide to the Collector such information about the activities as the regulations may specify;
- (b) providing for the manner and period in which duties charged under this Ordinance shall be paid; and
- (c) providing for any matter that is necessary or expedient for—
 - (i) securing the payment of duties charged under this Ordinance; or
 - (ii) carrying out or giving effect to this Ordinance.

(2) A regulation made under this section may provide that a contravention of any regulation is an offence punishable by a fine at level 3.

(3) The Collector may specify forms for the purpose of this Ordinance.”.

16. Penalties

Section 8 is repealed.

17. Section added

The following is added—

“9. Evasion of duty

(1) A person who evades, or assists another person to evade, a duty that is payable under this Ordinance commits an offence and is liable—

- (a) on summary conviction, to a fine at level 3, an additional fine and imprisonment for 6 months; or
 - (b) on indictment, to a fine at level 5, an additional fine and imprisonment for 3 years.
- (2) In this section, “additional fine” (附加罰款) means a fine of treble the amount of the duty that, because of the offence, has not been paid or underpaid.”.

Betting Duty Regulations

18. Interpretation

Regulation 2 of the Betting Duty Regulations (Cap. 108 sub. leg. A) is amended—

- (a) by repealing the definitions of “Board” and “Collector”;
- (b) by repealing the definition of “lottery” and substituting—
““lottery” (獎券活動) means a lottery conducted by a lottery conductor under section 6X of the Ordinance;”.

19. Collection of betting duty in respect of cash-sweeps and betting on horse or pony races

Regulation 3 is amended—

- (a) in paragraph (1)—
 - (i) by adding “betting on horse or pony races” before “in Hong Kong”;
 - (ii) by adding “, in the specified form,” after “statement”;
- (b) by repealing paragraph (6);
- (c) by repealing paragraph (7) and substituting—
“(7) A person who, without reasonable excuse, contravenes this regulation commits an offence and is liable to a fine at level 3.”.

20. Regulation added

The following is added—

“3A. Submission of returns in respect of betting on football matches

(1) A football betting conductor shall, within 3 months after the end of each charging period, submit to the Collector a return, in the specified form, setting out 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.

(2) The return shall be accompanied by—

(a) a financial statement showing the net stake receipts of the conductor in that charging period, which is audited by a qualified person; and

(b) an audit report prepared by the qualified person.

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

(a) the conductor has kept records in accordance with the Ordinance;

(b) the financial statement has been prepared in accordance with those records; and

(c) the net stake receipts shown in the statement has been calculated in accordance with the Ordinance.

(4) A football betting conductor that, without reasonable excuse, contravenes this regulation commits an offence and is liable to a fine at level 3.

(5) In this regulation, “qualified person” (合資格人士) means a person who is qualified for appointment as auditor of a company under the Professional Accountants Ordinance (Cap. 50) and is not disqualified under section 140 of the Companies Ordinance (Cap. 32).”.

21. Collection of duty in respect of lotteries

Regulation 4 is amended—

(a) in paragraph (1)—

(i) by repealing “The Secretary of the Board” and substituting “A lottery conductor”;

(ii) by adding “, in the specified form,” after “statement”;

(b) in paragraph (2)—

(i) by repealing “Board” and substituting “conductor”;

(ii) by repealing “6” and substituting “6Y”;

(c) by repealing paragraph (3);

(d) by adding—

“(4) A lottery conductor that, without reasonable excuse, contravenes this regulation commits an offence and is liable to a fine at level 3.”.

22. Duty to a debt to the Government

Regulation 5 is repealed.

23. Collector may specify form of statements

Regulation 6 is repealed.

PART 2

TRANSITIONAL PROVISIONS

24. Rights and liabilities of Hong Kong Lotteries Board

(1) Any right or liability that was vested, immediately before the commencement of this Ordinance, in the then existing Hong Kong Lotteries Board shall on that commencement be vested in the Hong Kong Jockey Club.

(2) In this section, “Hong Kong Lotteries Board” (香港獎券管理局) means the board that was established under the repealed section 4A of the Betting Duty Ordinance (Cap. 108).