

*21st August, 1947.*

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**PRESENT: —**

HIS EXCELLENCY THE GOVERNOR (SIR ALEXANDER WILLIAM GEORGE HERDER GRANTHAM, K.C.M.G.)

HIS EXCELLENCY THE GENERAL OFFICER COMMANDING THE TROOPS (MAJOR-GENERAL G. W. E. J. ERSKINE, C.B., D.S.O.)

THE COLONIAL SECRETARY (HON. D. M. MACDOUGALL, C.M.G.)

THE ATTORNEY GENERAL (HON. J. B. GRIFFIN, K. C.)

THE SECRETARY FOR CHINESE AFFAIRS (HON. B. C. K. HAWKINS, O.B.E., *Acting*).

THE FINANCIAL SECRETARY (HON. C. G. S. FOLLOWS, C.M.G., *Acting*).

HON. T. MEGARRY.

HON. V. KENNIFF (Director of Public Works).

DR. HON. I. NEWTON (Director of Medical Services).

HON. D. F. LANDALE.

HON. CHAU TSUN-NIN, C.B.E.

HON. LO MAN-KAM, C. B. E.

HON. R. D. GILLESPIE.

DR. HON. CHAU SIK-NIN.

HON. M. M. WATSON.

MR. ALASTAIR TODD (Deputy Clerk of Councils).

**ABSENT: —**

HON. LEO D'ALMADA E CASTRO.

**MINUTES.**

The Minutes of the meeting of the Council held on 31st July, 1947, were confirmed.

**OATHS.**

The Secretary for Chinese Affairs (Hon. B. C. K. Hawkins, O.B.E., *Acting*) took the Oath of Allegiance and assumed his seat as a Member of the Council.

**PAPERS.**

THE COLONIAL SECRETARY, by command of H.E. the Governor, laid upon the table the following papers: —

Proclamation No. 2. —The Suppression of Robberies Ordinance, 1947, Ordinance No. 13 of 1947, to come into force on 16th April, 1947.

Sessional Papers, 1947: —

No. 3. —Statement on the Renewal of Pier Leases.

No. 4. —Government Statement on Housing, 21st August, 1947.

**QUESTIONS.**

HON. R. D. GILLESPIE asked: —

With reference to the recent correspondence in the Press on the subject of the export of Ceramic Clay to Japan, would Government care to state the position?

THE COLONIAL SECRETARY replied: —

Sir, the position is that the Hong Kong Clays and Kaolin Company is a private concern, and Government sees no reason to direct the sale of its produce, which is, of course, a matter for private negotiation. It is understood that this Company and the Hsing Hwa Ceramic Company referred to in the recent correspondence in the Press have so far failed to come to an agreement regarding the purchase of kaolin.

The Hsing Hwa Company applied to Government on the 22nd of last month for permission to obtain samples of clay from another source with a view to securing a lease of the new area if the samples proved satisfactory. Although there are certain difficulties in regard to the issue of long-term mining leases it will probably be possible to offer a short-term lease of the area in question by public tender in the near future. I would like to make it clear in regard to the correspondence in the Press to which the Honourable Member has referred that the shipment of kaolin from Hong Kong to Japan does not affect the matter in any way since the quantity contracted for in this respect is well below the potential production of the Hong Kong Clays and Kaolin Company's mine.

**MOTIONS.**

THE ATTORNEY GENERAL moved: —

That the rules made by the Board of Inland Revenue on the 24th day of June, 1947, under section 86 of the Inland Revenue Ordinance, Ordinance No. 20 of 1947, be approved.

He said: Sir, section 86 of the Inland Revenue Ordinance empowers the Board of Revenue to make rules generally for carrying out provisions of the Ordinance and for the ascertainment and determination of any class of income. The section provides however that such rules having been made by the Board shall be referred to the Governor and shall be subject to the approval of this Council. It is for that reason that I do move that the rules be approved by this Council.

THE COLONIAL SECRETARY seconded, and the motion was carried.

**STAMP (AMENDMENT) BILL, 1947.**

THE ATTORNEY GENERAL moved the First reading of a Bill intituled “An Ordinance to amend further the Stamp Ordinance, 1921.”

He said: Sir, the Bill now before Council aims at the more effective collection of stamp duties payable on stock exchange transactions, thus securing improvement in total revenue derived from such source. Under the present law, which is embodied under Heading No. 40 of the Schedule to the Stamp Ordinance, *ad valorem* duty of 20 cents per \$100 is chargeable on instruments of transfer and a nominal duty is chargeable on brokers' bought and sold notes. In practice, however, it is found that *ad valorem* duty yields only a small revenue because of the custom existing in the Colony of executing blank transfers and using such blank transfers to pass title through a series of buyers and sellers instead of executing fresh instruments of transfer at each such stage. However brokers' bought and sold notes are stamped when each sale takes place, and it is therefore considered, and Clause 3 of the Bill gives effect to such view, that improvement in revenue would result if the incidence of stamp duty were reversed so that henceforth *ad valorem* duty would be chargeable on brokers' bought and sold notes and nominal duty reserved for transfer deeds. Consequential on the proposal enshrined in Clause 3 of the Bill it is proposed by Clause 2 to amend sub-section 1 of section 26 of the Stamp Ordinance so as to render an obligation upon any principal executing delivery of bought and sold notes and not only as at the present time placing obligation to stamp bought and sold notes upon brokers.

THE COLONIAL SECRETARY seconded, and the Bill was read a First time.

### Objects and Reasons.

The "Objects and Reasons" for the Bill were stated as follows: —

1. The object of the Bill is to provide a more effective means of collecting the stamp duties payable on stock exchange transactions. Under the existing law, an *ad valorem* duty of 20 cents per \$100 is chargeable on instruments of transfer and a nominal duty, varying from \$1 to \$10, on brokers' bought and sold notes. In practice the *ad valorem* duty yields only a small amount of revenue owing to the custom which has grown up in the Colony of executing blank transfers and using these instruments to pass title through a series of buyers and sellers instead of executing a fresh instrument of transfer on the occasion of each sale. As a result stamp duty is collected only at the initial stage when the blank transfer is executed, and thereafter, all subsequent transfers in the series escape duty. Brokers' "bought notes" and "sold notes", on the other hand, are stamped when each sale in the series takes place as it is necessary for the broker, in his own interests, to ensure that a properly executed contract note comes into existence to record the terms of the sale but as the amount of duty payable on these bought and sold notes is only nominal the additional yield to the revenue under this head is comparatively small.

2. It is considered that if the duties on the two instruments is reversed so that *ad valorem* duty is chargeable on brokers notes and nominal duty on transfer deeds, there will be a considerable improvement in the total revenue derived from Stock Exchange transactions. Clause 3 of the Bill effects this change by repealing the existing taxing provisions in the principal Ordinance and replacing them by new provisions which impose an *ad valorem* duty of 10 cents per \$100 on bought and sold notes and a nominal duty of \$5 on transfers.

3. Because, in the exceptional case where no broker is involved, there is no provision in the existing law requiring the execution of contract notes, *ad valorem* duty would not be collected on such transactions following the amendment to the Schedule by Clause 3 of the Bill which frees transfers from *ad valorem* duty. To enable the collection of *ad valorem* duty on such transactions Clause 2 of the Bill provides for the execution of contract notes also in cases where no broker is involved by amendment of section 26 (1) of the Ordinance to extend the obligation of a principal to execute contract notes irrespective of whether or not he is a dealer in shares by way of business.

### EDUCATION AMENDMENT BILL, 1947.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Education Ordinance, 1913."

He said: Sir, at the present time the shortage of school accommodation in the Colony has resulted in pressure upon the attendance at such schools as now exist. The necessity for control and supervision

of schools has consequently increased and the need for control has been disclosed in particular in regard to the question of fees chargeable to pupils attending such schools. To meet the need for control it is proposed by Clause 3 of this Bill to repeal and replace section 10 of the principal Ordinance and by so doing giving greater power to the Governor in Council and to make regulations, for instance, to control the fees payable at schools.

Clause 4 of the Bill additionally provides for increase in the fines which may be imposed for contravention of the Education Ordinance or of any regulations made thereunder.

THE COLONIAL SECRETARY seconded, and the Bill was read a First time.

### **Objects and Reasons.**

The "Objects and Reasons" for the Bill were stated as follows: —

At the present time, shortage of school accommodation has resulted in pressure upon attendance at schools now in operation which has caused serious over-crowding in such schools. In these circumstances the necessity for control and supervision of schools has been increased, and, in particular, the need has been shown for control of the amount of school fees and other charges required to be paid for pupils at such schools.

The primary object of this Bill is, therefore, (by Clause 3) to repeal and replace section 10 in such manner as to enhance the power of the Governor in Council to make regulations.

Clause 2 of the Bill makes an amendment to section 9 (2) of the principal Ordinance which is incidental to the repeal and replacement to be effected by Clause 3.

Clause 4 of the Bill is designed to amend section 20 of the principal Ordinance by providing for increase in the maximum penalties which may be imposed upon summary conviction for an offence against the Ordinance.

### **COMPANIES (RE-CONSTRUCTION OF RECORDS) BILL, 1947.**

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to relieve companies (other than Chine companies) against their inability or failure since the 8th of December, 1941, to comply with the Companies Ordinance, 1932, to provide for the making of necessary returns by such companies, to provide a means whereby companies can remedy the loss of registers, records and documents and for other connected matters."

He said: Sir, this Bill affords yet another example of legislation which has been rendered necessary by enemy attack and enemy occupation of this Colony. The consequence of such attack and occupation been that all records kept by the Registrar of Companies

suffered loss or destruction except the register of charges. In addition to such loss of public documents the companies registered before the 25th December, 1941, themselves lost their documents in many cases, including copies of memoranda or articles of association, and, more importantly still, have lost their register of members and shareholders. The problems resulting from such situation were considered by a committee composed of persons versed in company business and company law, and it is upon the foundation of such committee's deliberations and of their recommendations that this Bill has been drawn. Accompanying the Bill as presented to Council there are Objects and Reasons of a very comprehensive character. In view of that fact it appears to me perhaps to be unnecessary that I should detain Council by prolonged examination or discussion of the various provisions of the Bill. It would perhaps suffice if I were to invite special attention to Clause 14 of the Bill which deals with the difficult question of the issue of new share certificates where original share certificates are lost.

THE COLONIAL SECRETARY seconded, and the Bill was read a First time.

### **Objects and Reasons.**

The "Objects and Reasons" for the Bill were stated as follows: —

1. During the Japanese occupation of the Colony, the files kept by the Registrar of Companies in Hong Kong under the Companies Ordinance, 1932, the principal Ordinance, in respect of individual companies were lost or destroyed. In consequence, information in the form of memoranda and articles of association, annual returns, etc., contained in the files is no longer available either to the Registrar or to the public. The Register of Charges required to be kept under section 82 of the principal Ordinance is however intact.

2. Apart from the loss suffered by the public records, many companies have lost all copies of their memorandum and articles of association and some companies have lost the register of members which determines who are the persons entitled to shares in the company and to the rights of shareholders. Further, as a consequence of the position created by the invasion of the Colony, and subsequent internment or imprisonment of many and the necessity of others to flee the Colony, share certificates have also been lost.

3. The Japanese carried out an enquiry as to whether or not companies in Hong Kong were inimical to Japan and after this enquiry permitted approximately 250 companies of the 1,027 originally registered to register and continue trading under a Japanese Registry of Companies established in May, 1944. The assets of companies considered inimical were, in a somewhat haphazard manner, seized, utilised or farmed out to syndicates. Even those companies who were eventually permitted to register were hampered in their operation and compliance with the law by reason of a veto on meetings which

effectually prevented the holding of any general meeting of companies. Imprisonment, internment, death or absence also affected the directorate of companies.

4. The difficulties created by the loss of share certificates and by the prohibition of meetings are believed to affect China companies as well as companies registered with the Registrar of Companies in this Colony but fortunately the records of the registrar at Shanghai were preserved. Many China companies have since availed themselves of the provisions of Proclamation No. 27 (Emergency Registration of China Companies) and registered in Hong Kong. Since the liberation, companies have recommenced or continued their business and endeavoured to return to normal and to comply, so far as is possible, with the law. Legislation is, however, necessary to enable companies to operate without breach of the law. It is also expedient to enact legislation which will gradually bring companies back to compliance with normal legal requirements without, at the same time, unduly hampering the continuance of business.

5. In commencement of the re-construction of his records the Registrar of Companies as early as the 12th of February, 1946, issued a notice calling upon companies to state whether they were in possession of copies of certain documents and asking for certain particulars. The notice was intended to call attention to the deficiencies in the registry. Compliance with such notice was not compulsory. It is considered that in the majority of cases sufficient time has now elapsed to enable companies to recover vital documents to warrant provision under which they will, with certain exceptions, be in default if they do not furnish them. Clause 4 of the Bill accordingly calls upon companies to furnish certain particulars and copies of the documents therein mentioned within three months from the commencement of the Ordinance. As it is expected that in some cases this will be impossible, the Registrar is given power to extend the time for compliance and provision is made by sub-clause (2) of such Clause for exemption where the Registrar is satisfied that the company cannot reasonably be expected to supply the particulars or document within three months or extended time.

6. In order not to burden companies unduly only the minimum documents and particulars are requested by Clause 4. It may well be, however, that application will be made at the registry to inspect other documents which have been lost, e.g. previous balance sheets. In such cases there is no reason why, if the company is able to supply the document, it should not do so. Power is accordingly given to the Registrar by Clause 5 to call for such additional documents. However, apart from such type of case companies should clearly be encouraged to file copies of previous records where this is possible. Provision is, therefore, made by Clause 6 for the filing of such documents, whether or not required by the Registrar.

7. Provision for the replacement of a memorandum and articles of association which have been lost is made by Clauses 9 and 11 respectively. Clause 9 gives the Registrar power to approve a new memorandum where no objection is lodged. If a substantial objection is lodged application must be made to the court. The Registrar is given power to direct that an objection is without substance.

8. Provision for re-construction of the register of members is made by Clause 12. So far four cases of the loss of the register of members have been reported to the Registrar. Clearly a company cannot function without a register of members as in such case a general meeting cannot properly be convened. Accordingly provision is made for revocation of the leave to re-construct where it appears that the register will be so defective or inaccurate as to make it undesirable that the company should carry on business. This has the same effect as an order for winding-up by the court. If, on the other hand, the register is successfully re-constructed then it may, with leave of the court, or of the Registrar, if there are no conflicting claims, be substituted for the old register.

9. The object of Clause 13 is to make provision for validating general meeting convened by '*de facto* directors' and thus to make provision for cases where companies have been unable to replace directors who have died or retired. '*De facto* directors' are defined by sub-clause (5) of this clause.

10. Difficulty resulting from the loss of share certificates is aggravated by a local practice of transfers in blank and the failure of transferees to register transfers. Registration is normally dependent on production of the share certificates and as companies become estopped in law from denying that a person to whom a share certificate has been granted is the registered proprietor, they refuse to grant a new certificate except on an indemnity guaranteed by a bank. This is, it is understood, practically impossible to obtain in present circumstances and unless the problem is cured by legislation there is a danger that a number of persons will be permanently deprived of their rights. Clause 14 of the Bill seeks to provide a solution by enabling new certificates to be issued if no conflicting claims are received by persons claiming under the certificates which are alleged to be lost and by precluding persons who do not come forward within three months after advertisement from claiming against the company or against a *bona fide* purchaser for value without notice from the person to whom a new certificate is granted. Unless this latter provision is made such shares would tend, for a long time in the future, to be sold at a discount. Because nearly two years have elapsed since the liberation of the Colony, whoever might be in possession of the old certificate has had ample time to apply to be registered as the proprietor of the shares. The clause, however, preserves his against the person to whom a new certificate is granted.



11. Under section 122 of the principal Ordinance a profit and loss account or an income and expenditure account, in the case of companies not trading for profit, has to be presented by directors to the company in general meeting within 18 months from incorporation and thereafter in each calendar year. A balance sheet has also to be made out in each calendar year together with a report dealing with the company's affairs and with proposed dividend and reserve. Owing to the Japanese occupation many companies were unable to comply with this section and it would clearly be a hardship to require compliance now from companies which did not carry on any business during the occupation years. Moreover, in the case of many companies, who carried on business, accounts have been presented for the whole occupation period as being the most practical way of facing difficulties caused by two currency changes, the absence of general meetings and the absence of auditors. Auditors state that in many cases there was no regular stock-taking and that vouchers have been lost and that balance sheets for every calendar year would not present an accurate picture. Moreover, companies have, in general meeting, passed accounts prepared as one account since the last account prior to the 25th of December, 1941. It would be unrealistic to ignore this position. It seems necessary therefore to relieve directors from liability for default under section 122 aforesaid. Provision is made accordingly by Clause 16 (1). It is also considered desirable to permit companies to pass their accounts in the manner stated. In some cases, because of the payment of dividend or other reasons, it may be necessary to present accounts in the normal manner or to cover the period by two or more accounts, it has seemed therefore best to permit alternative methods of accounting. Clause 16 (2) so provides. It is possible however that some shareholders or creditors may feel aggrieved by a change in the form of accounting. If such grievance has a solid foundation in that some right to dividend, payment off of borrowed capital, carrying to reserve or other right is affected by the alternative method of accounting, clearly they should not be compelled to accept accounts in the alternative form. On the other hand the mere fact of the statutory provision or of some similar provision in the articles of association should not, it is considered, of itself nullify the act of the company in general meeting in passing accounts in an alternative form. Cases may nevertheless arise where it is difficult to decide whether any substantive right exists until accounts in the normal form have been taken. Clause 16 (4) accordingly provides that in the case of a substantive right nothing in Clause 16 is to be deemed to negative the right to accounts in the normal manner. Moreover, if it appears necessary to take such accounts in order to determine whether there is such a substantive right a judge in chambers is empowered by Clause 16 (5) to make an appropriate order if he considers it just and equitable to do so.

12. Under section 107 of the principal Ordinance companies having a share capital are under an obligation to make an annual return of a number of matters affecting shares of which one of the most important is a return of shareholders and of the exact number

of shares held by each of them. The importance of the annual return, apart from its being a check that certain provisions of the law are being observed, is that it furnishes an up to date picture of capital, i.e. how much of it has been actually paid up and to whom the creditor may look for any portion that has not been paid up. As the returns up to 1941 have been lost there would be little to be gained in endeavour to compel companies to furnish returns for the occupation years and provision is accordingly made by Clause 17 exempting them from this liability where they have furnished a return as at the date of the first general meeting since the 15th of August, 1945. Furthermore annual returns by companies reconstructing their register would necessarily be defective. In place, therefore, of furnishing such returns they are required by Clause 18 to furnish such information on the same lines as the Registrar considers they reasonably can.

13. It is possible that after a substitution of a memorandum or articles of association or other document affecting an alteration in either of them, the original may be found. Clause 15 provides in effect that in such case the substituted document will prevail unless the original is adopted by special resolution. Such procedure is considered to be suitable since persons may well have altered their position in consequence of the substituted document.

14. Clauses 20 to 22 of the Bill make provision for liquidations which were pending on the 25th of December, 1941. While it is impossible to foresee the problems which may arise in respect of such liquidations, it is considered expedient that the liquidator should file a statutory declaration of the position and that the court should have power to direct that any step taken in the liquidation should be repeated. It is also considered that, apart from any additional extension of time which may be granted by the court, the period from the 25th of December, 1941, to three months after the commencement of the Ordinance to be enacted by this Bill should be ignored in computing the time prescribed by the Ordinance or by the Companies (Winding-Up) Rules, 1936, for the doing of any act.

15. Under section 319 of the principal Ordinance, companies incorporated outside the Colony which establish a place of business within the Colony are required to furnish certain documents and particulars to the Registrar of Companies. Clause 24 provides for such documents and particulars being furnished afresh. As none of the documents were originals and the particulars are easily furnished there is no hardship in this provision which is required to supply a deficiency in the Registrar's records.

16. Clause 29, providing for the enforcement of the duty of companies to make returns, is modelled on section 292 of the principal Ordinance.

#### **ADJOURNMENT.**

H.E. THE GOVERNOR. —That concludes the business, Gentlemen, when would you like to adjourn to?

THE ATTORNEY GENERAL. —I suggest adjourning to two weeks hence.

H.E. THE GOVERNOR. —The Council will adjourn until this day fortnight.