

OFFICIAL REPORT OF PROCEEDINGS**Meeting of 4th May, 1955.**

PRESENT:HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)

SIR ALEXANDER WILLIAM GEORGE HERDER GRANTHAM, G.C.M.G.

HIS EXCELLENCY THE COMMANDER BRITISH FORCES

LIEUTENANT-GENERAL CECIL STANWAY SUGDEN, C.B., C.B.E.

THE HONOURABLE THE COLONIAL SECRETARY

MR. EDGEWORTH BERESFORD DAVID, C.M.G.

THE HONOURABLE THE ATTORNEY GENERAL

MR. ARTHUR RIDEHALGH, Q.C.

THE HONOURABLE THE SECRETARY FOR CHINESE AFFAIRS

MR. BRIAN CHARLES KEITH HAWKINS, C.M.G., O.B.E.

THE HONOURABLE THE FINANCIAL SECRETARY

MR. ARTHUR GRENFELL CLARKE, C.M.G.

THE HONOURABLE THEODORE LOUIS BOWRING, C.M.G., O.B.E.

(Director of Public Works).

THE HONOURABLE DOUGLAS JAMES SMYTH CROZIER

(Director of Education).

DR. THE HONOURABLE YEO KOK CHEANG

(Director of Medical and Health Services).

THE HONOURABLE HAROLD GILES RICHARDS, O.B.E.

(Director of Urban Services).

DR. THE HONOURABLE CHAU SIK NIN, C.B.E.

THE HONOURABLE CHARLES EDWARD MICHAEL TERRY.

THE HONOURABLE NGAN SHING-KWAN.

THE HONOURABLE DHUN JEANGIR RUTTONJEE.

THE HONOURABLE CEDRIC BLAKER, M.C., E.D.

THE HONOURABLE KWOK CHAN, O.B.E.

DR. THE HONOURABLE ALBERTO MARIA RODRIGUES, M.B.E., E.D.

THE HONOURABLE RICHARD CHARLES LEE, O.B.E.

MR. ROBERT WILLIAM PRIMROSE (*Deputy Clerk of Councils*).

MINUTES.

The Minutes of the meeting of the Council held on 13th April, 1955, were confirmed.

PAPERS.

THE COLONIAL SECRETARY, by Command of His Excellency the Governor, laid upon the table the following papers: —

<i>Subject.</i>	<i>G.N. No.</i>
Sessional Paper, 1955: —	
No. 9—Annual Report by the Director of Commerce and Industry for the year 1953-54.	
Places of Public Entertainment Ordinance (Chapter 172).	
Film Censorship (Amendment) (No. 2) Regulations, 1955	A. 45
Dogs and Cats Ordinance (Chapter 167).	
Dogs and Cats (Amendment) Regulations, 1955	A. 46
Ferries Ordinance (Chapter 104).	
Excluded Ferries (Ma On Shan and Ho Tung Lau) Regulations, 1955	A. 47
Unclaimed Balances Ordinance (Chapter 122).	
Order by the Governor under section 3	A. 48
Stamp Ordinance (Chapter 117).	
Stamp (Bank Authorization) (No. 2) Order, 1955	A. 49

URBAN COUNCIL BILL, 1955.

MR. H. G. RICHARDS moved the First reading of a Bill intituled "An Ordinance to make amended provision for an Urban Council."

He said: —Sir: The main purpose in drafting this Bill was to give effect to various suggestions which have been made for re-organizing the Urban Council Elections. The suggestions

were made by the presiding officer at the 1954 elections and by the Urban Council itself, which set up a select committee to re-examine the whole procedure of the elections and make recommendations for improving its efficiency. As honourable Members are aware, that re-examination, in consultation with officers of the Colonial Secretariat and the Legal Department, led to the conclusion that to achieve the desired effect it would be necessary to redraft most of the Urban Council Ordinance, and on the advice of the Legal Department it was decided to base the new provisions on the well tried system of the United Kingdom. The Bill now before this Council, therefore, so far as concerns those provisions related to elections, has been modelled largely on United Kingdom legislation, modified where necessary to meet the particular needs of Hong Kong; but those parts which deal with the constitution, duties, and proceedings of the Urban Council generally re-enact the corresponding provisions of the existing Ordinance, although the opportunity of this complete redraft has been taken to introduce a number of reforms. Except for a few clauses which have been redrafted since the Urban Council considered the report of the select committee, to give effect to the recommendations of the Urban Council, the Bill in its present form has received the unanimous support of that Council.

The objects and reasons set out clearly the various parts of the Bill and their purposes, and the honourable Attorney General has prepared a table of comparison showing in detail the origin of the various changes which have been made. It may however be of value to honourable Members of this Council if I refer briefly to some of the more important provisions of the new Bill.

Parts II, III and IV of the Bill re-enact, in a new form based on the United Kingdom Local Government Act, the existing provisions of the Urban Council Ordinance, Chapter 101, in relation to the composition of the Council, the Members thereof and the qualifications of electors. Perhaps the only sub-clause in those parts which calls for comment is Clause 6(a). It has been suggested that the term "office of emolument" could be taken to disqualify for election a person who might be in receipt of a consultant's fee from Government, for instance, a doctor or other professional man called in by Government in consultation, or even employed almost continuously for professional fees. The honourable Attorney General has advised that, in the context, this

phrase implies a relationship of master and servant which, in his view, is absent in such cases, and that the sub-clause would not therefore disqualify them for election.

Part V is more or less a new part, in that instead of the existing procedure, whereby a register in three parts is maintained by the Registrar of the Supreme Court, a new consolidated register is created. This new register will be maintained by a registration officer whose duties are based on those of secretaries of local authorities in the United Kingdom, with appeal to the Registrar of the Supreme Court as revising officer, the equivalent position in the United Kingdom being the revising barrister appointed by the judiciary. The principal change, other than procedure, from the present system is that the register will relate back, so far as qualifications are concerned, to the previous 1st of July, and will be printed and offered for sale by the 1st of February each year, in order that any person concerned with an election if he wishes to do so can obtain a copy of the register before the election.

Part VI establishes the permanent position of the returning officer to conduct any election which may take place in any year, and outlines broadly his duties. Clause 29 makes provision for proceedings against persons who act as ordinary members of the Council while in fact disqualified from so doing, and sub-clauses 6 and 7 make new provision that any person instituting such proceedings shall give security for the costs, charges and expenses of his action. The details of election procedure, which are modelled on the United Kingdom procedure, will be provided by regulations to be made under Clause 30. Sub-clause 30 (1) will enable the Governor in Council to prescribe that candidates for election shall make deposits, which would be forfeited by any candidate not obtaining a specific percentage of the total vote cast.

Part VII establishes the procedure for questioning an election by means of an election petition to the Supreme Court. This procedure is modelled strictly on the United Kingdom procedure and replaces section 3(8) of the existing Ordinance, which places on the Governor in Council the burden of deciding any question which might arise as to the validity of any election. Clause 38 requires an election petitioner to give security for all costs, charges and expenses of the petition.

Part VIII re-enacts with slight amendment the corresponding provisions of the existing Ordinance. The more important amendments occur in clause 48, which provides that the regular meetings of the Urban Council shall in future be once a month instead of once every 14 days as at present; in clause 59, which enables the select committees of the Urban Council to include persons who are not members of the Council, provided that at least two-thirds of the members of every such committee shall be members of the Council; in clause 60, which enables a single member of the Council to convey the approval of a select committee to a recommendation of the Urban Services Department in such a matter, for example, as the grant of a licence, with the safeguard that in the event of disagreement with the departmental recommendation the matter shall be referred to the full select committee, or to the Council, for decision; and in clause 62, which provides for the protection, against personal liability, of members of the Council acting *bona fide* in the Council's business.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a First time.

Objects and Reasons.

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

The object of this Bill is to replace the Urban Council Ordinance (Cap. 101) with a comprehensive Ordinance, re-enacting the substantive provisions of the existing Ordinance with the addition thereto of detailed provisions for the preparation of the register of electors and the conduct of elections.

2. The Bill consists of nine parts as follows: —

Part I Preliminary.

Part II Constitution.

Part III General Provisions as to Ordinary Members of the Council.

Part IV Franchise.

Part V Registration.

Part VI Elections.

Part VII Election Petitions.

Part VIII Meetings Proceedings and Duties of the Council.

Part IX Commencement, Repeal and Transitional Provisions.

3. *Part II. Constitution.* This repeats in more detailed form the provisions in the present Ordinance relating to the composition of the Urban Council.

4. *Part III. General Provisions as to Ordinary Members of the Council.* This part deals with the qualification of members, their acceptance of office and includes detailed provisions as to their resignation and replacement.

5. *Part IV. Franchise.* This part sets out in three sections the existing provisions of the present Ordinance as to the qualification and disqualification of voters at Urban Council elections.

6. *Part V. Registration.* This part provides for the appointment of a registration officer to carry out the duties formerly carried out by the Registrar of the Supreme Court. In addition it provides for the appointment of a revising officer to hear appeals from any decision of the registration officer. It also sets out the duties of the registration officer and provides for the making of regulations to govern the preparation of the register of electors.

7. *Part VI. Elections.* This part provides for the appointment of the returning officer to conduct any elections which may be required under the provisions of the Bill and sets out the duties of the returning officer. It also sets out the general requirements for Urban Council elections and empowers the Governor in Council to make regulations prescribing the procedure to be followed at elections.

8. *Part VII. Election Petitions.* This part establishes the procedure whereby an election may be questioned in the Supreme Court by petition and empowers the Chief Justice to make rules of procedure as to election petitions.

9. *Part VIII. Meetings Proceedings and Duties of the Council.* This part re-enacts the corresponding provisions of the existing Ordinance with the addition thereto of clauses relating to procedure at meetings of the Urban Council. In addition clause 60 extends the power of delegation previously contained in section 14 of the existing Ordinance.

10. *Part IX. Commencement, Repeal and Transitional Provisions.* This part provides that the Ordinance shall come into force on 1st June, 1955, but that in any election held before 15th February, 1956, *i.e.* the date when the first register prepared in accordance with Part V will come into force, the existing register prepared under the present Ordinance will be used.

11. A Table of Comparison annexed to these Objects and Reasons, specifies both the local and United Kingdom legislation on which this Bill is based and also seeks to indicate briefly where and why the Bill differs from such precedent legislation.

COMPANIES (AMENDMENT) BILL, 1955.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Companies Ordinance, Chapter 32. "

He said: —Sir: Apart from a number of minor amendments, this Bill provides for a variation of the composition of the Authorized Auditors Board; the payment into general revenue of dividends on investments held for an account known as the Companies Liquidation Account; and an increase of the fees payable to the Registrar of Companies under the Ninth Schedule of the principal Ordinance.

The various provisions of this Bill are explained in the statement of objects and reasons, and I think that the only one to which I need make special reference is that relating to the Companies Liquidation Account. This account is a general one kept by the Official Receiver into which all moneys received by him in connexion with the winding up of companies are paid. From time to time, moneys in that account are paid over by the Official Receiver to the Accountant General for investment, and it is the dividends on these investments which in future will go

to general revenue. As explained in paragraph 5 of the statement of objects and reasons we are following the law in the United Kingdom where such dividends are paid to the Board of Trade to defray miscellaneous administrative expenses.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a First time.

Objects and Reasons.

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

The principal objects of this Bill are to increase the fees payable to the Registrar of Companies under the Ninth Schedule of the Companies Ordinance, to vary the composition of the Authorized Auditors Board, and to provide for the annual transfer of the income of the Companies Liquidation Account to general revenue. The opportunity has been taken also to effect a number of miscellaneous minor amendments to the Ordinance.

2. Since the audited accounts of companies are submitted to, and dealt with by, the Inland Revenue Department, the Commissioner of Inland Revenue is made a member of the Authorized Auditors Board established by section 131A, and as the number of members is thereby raised to ten, the quorum is now increased from five to six members. The Board is empowered to appoint a secretary whose remuneration is also provided for. These changes to section 131A are effected by Clause 5.

3. Clause 6 increases from seven to fourteen days the period within which Gazette Notification must be given of a resolution for a voluntary winding up under section 214. This change is in accordance with the United Kingdom law on the subject.

4. Clause 8 empowers the Registrar to adopt a modified procedure for giving notice of his intention to strike the name of a company off the register under section 276. This modified procedure is necessary in the case of companies concerning which no information is available as to their registered offices, directors, officers and shareholders on account of the destruction of the Companies Registry files during the Japanese occupation.

5. Clause 9 requires dividends on investments held for the Companies Liquidation Account to be paid into that account, and for the balance to be paid each year into general revenue. In the United Kingdom such balance is paid to the Board of Trade to be used for miscellaneous expenses incurred in the administration of Company and Bankruptcy law. Before amendment the income on these investments merely accumulated in the Companies Liquidation Account.

6. Clause 10 increases the fees payable to the Registrar under the Ninth Schedule. At present the fees payable for the registration of a company are very small compared with the amounts payable in the United Kingdom, where in addition to a registration fee there is a further duty of 10/-percent on the company's nominal share capital. Since existing companies, which have already paid the maximum fee of \$500, have paid nothing in respect of that portion of their nominal share capital which exceeds \$3,060,000, provisions have been included in this clause requiring such a company to pay \$2 per \$1,000 on the issue of any part of its nominal share capital in excess of \$3,000,000, or in the alternative, if it increases its nominal share capital, to pay \$2 per \$1,000 on the unissued part of such excess portion. The clause also raises the present standard fee payable on the registration of documents by local companies from \$3 to \$5, and introduces new fees for licences, consents, etc. granted under sections 17, 20(2), 21, 22(1) and 93(2).

TELECOMMUNICATIONS (AMENDMENT) BILL, 1955.

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Telecommunication Ordinance, Chapter 106."

He said: —Sir: This Bill is the outcome of the deliberations of an Interdepartmental Committee appointed by Your Excellency to review the telecommunication legislation with a view to improving procedure and to removing inconsistencies and anomalies. The various provisions of this Bill are explained in the statement of objects and reasons and I need only invite attention to Clauses 21 and 22 of the Bill. In Clause 21 there is provision especially relating to offences committed by corporations. As a corporation cannot be sent to prison, it has been thought desirable to make it

liable to a maximum fine of twice the amount prescribed for the particular offence. Further, where a corporation is convicted, the directors and officers will also be guilty unless they prove that the offence was committed without their knowledge or that they exercised due diligence to prevent it.

Another provision empowers the Governor in Council to confer an exclusive right to maintain a public service. Such rights have been given in the past, and as it is at least doubtful whether this was lawful, Clause 22 validates the grant of these rights.

Finally, Sir, the Governor in Council is empowered to give exemptions from the operation of the Ordinance by formal order. This is thought to be preferable to the existing provision for the grant of what are called "letters of exemption".

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a First time.

Objects and Reasons.

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

The object of this Bill is to give effect to recommendations made by a Committee appointed to scrutinize the Telecommunication Ordinance and regulations made thereunder. Except as set out below amendments to the principal Ordinance contained in this Bill seek to clarify certain provisions which may give rise to doubt, to rectify inaccuracies, and to rearrange the text in a more logical pattern, without effecting any substantial alteration.

2. The substantial amendments to the principal Ordinance as recommended by the Committee are as follows—

- (a) Clause 13 *inter alia* substitutes "Governor in Council" for "Governor" in section 28, which deals with the power to grant radiocommunication licences and the delegation of such power. The Governor in Council determines the form and conditions of such licences under the existing section 29(2) and, it is considered, should also be the authority for the grant thereof.

- (b) Clause 14 *inter alia* removes from section 29 the reference to a letter of exemption. It is considered that a more appropriate method of exempting persons from the provisions of the Ordinance would be to include a general power of exemption by order. Clause 21 introduces a new section 40 giving this power to the Governor in Council.
- (c) Clause 18 repeals section 33 which makes special provision for the grant of experimental licences by the Governor. It is considered that such licences do not warrant a special provision of this nature, and that they should be issued by the Postmaster General under the Radiocommunication Regulations.
- (d) Clause 19 repeals and replaces section 34, dealing with the prohibition of the radiation of magnetic waves. The new section 34 which is on the lines of regulation 22 of the Emergency (Principal) Regulations, 1949, is designed to give further protection against interference with radiocommunication.
- (e) Clause 20 deletes section 35(1) containing general penalty provisions which are considered to be undesirable. Where necessary specific penalty provisions have been inserted in the text, and clause 16 includes in section 31 a provision that regulations made under that section may provide penalties not exceeding a fine of three thousand dollars and imprisonment for twelve months. It is intended that the necessary penalty regulation will be inserted in the Radiocommunication Regulations.
- (f) Clause 21 introduces a new section 38 which deals with the liability of corporate bodies and their directors and officers. The maximum penalty for an offence committed by a corporate body is declared to be twice the prescribed fine.
- (g) Clause 21 also introduce a new section 39 which provides for the grant of exclusive rights by licence. Such a provision is considered to be necessary for the grant of exclusive licences, and clause 22 contains a substantive provision validating such licences granted in the past.
- (h) The penalties prescribed by sections 5(3), 22 and 24 of the principal Ordinance are considered to be insufficient and are increased by clauses 5, 10 and 11 respectively.

TELEPHONE (AMENDMENT) BILL, 1955.

THE FINANCIAL SECRETARY moved the Second reading of a Bill intituled "An Ordinance to amend the Telephone Ordinance, 1951."

THE COLONIAL SECRETARY seconded.

The question was put and agreed to

The Bill was read a Second time.

Council then went into Committee to consider the Bill clause by clause.

Clauses 1 to 9 were agreed to.

Council then resumed.

THE FINANCIAL SECRETARY reported that the Telephone (Amendment) Bill, 1955 had passed through Committee without amendment and moved the Third reading.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a Third time and passed.

HONG KONG BAPTIST CHURCH BILL, 1955.

MR. KWOK CHAN moved the First reading of a Bill intituled "An Ordinance to provide for the incorporation of the Trustees of the Hong Kong Baptist Church."

He said: —This Bill follows the usual and customary form of an incorporation bill and its purpose is clearly set out in the "Objects and Reasons."

MR. DHUN J. RUTTONJEE seconded.

The question was put and agreed to.

The Bill was read a First time.

Objects and Reasons.

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

1. The Hong Kong Baptist Church was formed by Chinese members who have erected a church and elected trustees and who desire to incorporate the trustees as a corporation to ensure perpetual succession.
2. Clause 1 of the Bill comprises the short title of the Ordinance.
3. Clause 2 defines certain phrases.
4. Clause 3 incorporates the trustees.
5. Clause 4 defines the powers of the corporation.
6. Clause 5 provides for the succession to property.
7. Clause 6 provides for the number of trustees.
8. Clause 7 provides for the vacation of office by trustees.
9. Clause 8 provides for the appointment and tenure of office of trustees.
10. Clause 9 provides for filling casual vacancies among the trustees.
11. Clause 10 provides for notification of changes of trustees.
12. Clause 11 provides for appointment of chairman, vice chairman and secretary among the trustees.
13. Clause 12 provides for the execution of deeds.
14. Clause 13 provides for the appointment of a clergyman or preacher.
15. Clause 14 provides for the custody of deeds and documents.
16. Clause 15 empowers a committee to draw up regulations.
17. Clause 16 requires such regulations to be approved before becoming binding.

18. Clause 17 contains provisions saving the rights of the Crown.

ADJOURNMENT.

H. E. THE GOVERNOR: —That concludes the business, Gentlemen. When is it your pleasure we shall meet again?

THE ATTORNEY GENERAL: —May I suggest this day three weeks.

H. E. THE GOVERNOR: —Council will adjourn to this day three weeks.