

OFFICIAL REPORT OF PROCEEDINGS.**Meeting of 14th August, 1957.****PRESENT:**HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)

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

HIS EXCELLENCY THE COMMANDER BRITISH FORCES

LIEUTENANT-GENERAL SIR EDRIC MONTAGUE BASTYAN, K.B.E., C.B.

THE HONOURABLE THE COLONIAL SECRETARY

MR. CLAUDE BRAMALL BURGESS, O.B.E. (*Acting*).

THE HONOURABLE THE ATTORNEY GENERAL

MR. ARTHUR RIDEHALGH, Q.C.

THE HONOURABLE THE SECRETARY FOR CHINESE AFFAIRS

MR. JOHN CRICHTON McDOUALL.

THE HONOURABLE THE FINANCIAL SECRETARY

MR. JOHN JAMES COWPERTHWAITTE (*Acting*).

THE HONOURABLE DAVID CLIVE CROSBIE TRENCH, M.C.

(Commissioner of Labour).

THE HONOURABLE EDMUND BRINSLEY TEESDALE, M.C.

(Director of Urban Services).

THE HONOURABLE ALLAN INGLIS

(Director of Public Works).

DR. THE HONOURABLE GEORGE GRAHAM-CUMMING

(Acting Director of Medical and Health Services).

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

THE HONOURABLE CHARLES EDWARD MICHAEL TERRY, O.B.E.

THE HONOURABLE LO MAN WAI, C.B.E.

THE HONOURABLE NGAN SHING-KWAN, O.B.E.

THE HONOURABLE DHUN JEHANGIR RUTTONJEE, O.B.E.

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.

MR. MAURICE DEREK SARGANT (*Deputy Clerk of Councils*).

MINUTES.

The Minutes of the meeting of the Council held on 31st July, 1957, 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>
Vehicle and Road Traffic Ordinance.	
Vehicle and Road Traffic (Lighting and Guarding of Road Works) Regulations, 1957	A. 62.
Emergency Regulations Ordinance.	
Emergency (Detention Orders) (Amendment) Regulations, 1957	A. 63.

**THE HONGKONG AND SHANGHAI BANKING
CORPORATION (AMENDMENT) BILL, 1957.**

THE FINANCIAL SECRETARY moved the First reading of a Bill intituled "An Ordinance to amend The Hongkong and Shanghai Banking Corporation Ordinance, Chapter 70."

He said: The Ordinance which this Bill seeks to amend regulates the constitution of the Hongkong and Shanghai Banking Corporation. For reasons which are largely historical it imposes on the Bank certain liabilities and limitations which do not apply to other Hong Kong banks incorporated in the ordinary way under the Companies Ordinance or to the Hong Kong branches of banks incorporated abroad. These liabilities and limitations are for the most part relics of the old Colonial Regulations of 1840, which governed the setting up and operation of banks in the Colonies, whether constituted by charter or by local enactment, and were based on practice in the United Kingdom before the principal of limited liability was extended to joint stock banks by the United Kingdom Companies Act of 1862 and in the Colonies by local Companies Ordinances. Although the Hongkong and Shanghai Bank was formed shortly

after this in 1866, it was apparently considered that conditions in the Colonies were still too uncertain and that the old safe-guards against possible banking disasters should be retained. The Chartered Bank has recently been granted an amendment designed to remove anachronisms of this kind from its Charter, where they had also survived, and the Hongkong and Shanghai Bank has now requested similar amendments to its Ordinance.

There are two main special liabilities. In the first place shareholders are liable in respect of the Bank's notes as if the Bank were constituted without limited liability. The authorized note-issue of the Bank, which goes back before 1935 when Hong Kong went off the silver standard on to its present monetary system, is \$30 million, of which only two-thirds need be backed by bullion, securities, etc. lodged with the Crown Agents. The Bank could therefore and can still issue notes to a value of \$6½ million as a purely fiduciary issue with no other backing than the Bank's own resources. That was a large sum in earlier days but is no longer of much significance in relation to the Bank's present total issue of \$692 million, of which the excess over and above \$30 million must be fully covered by Certificates of Indebtedness from the Exchange Fund. The Bank, however, finds that this unlimited liability for notes militates against acceptance of its shares as investments by trustees for pension and other such schemes, and by insurance companies and similar institutions. The Bank has therefore requested removal of the liability and has offered instead to give up its fiduciary issue and cover its authorized issue of \$30 million in full by the deposit of bullion securities etc. with the Crown Agents. This would bring its note issue into line with those of the two other note-issuing banks. Sections 6, 7 and 8 of this Bill amend the appropriate sections of the Ordinance to this effect.

The second main liability is that every shareholder is liable to contribute towards the Bank's liabilities not only the unpaid portion of his shares but also a further sum of money not exceeding the nominal value of his shares. There is clearly no longer any justification for this double liability which applies to no other bank in Hong Kong. Section 7 of this Bill removes it.

Section 7 of the Ordinance contains another special limitation. The capital of the Bank may not exceed \$50 and within that limit the Governor's consent is required for any increase of capital.

This, too, is outmoded. Section 3 of the Bill amends the Ordinance so as to put the power of increasing the Bank's capital fully in the hands of shareholders. It will be noted that, in consequence of two recent resolutions of shareholders made with the Governor's consent, the amending section states the Bank's capital to be \$50 million as against the \$20 million at present in the Ordinance.

There are two other minor modifications of the Bank's constitution. They are fully explained in paragraph (a) and (c) of the Objects and Reasons and I need add nothing to what is said there.

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 amend The Hongkong and Shanghai Banking Corporation Ordinance (Chapter 70) to make new provision in relation to the following matters.

- (a) The Hongkong and Shanghai Bank Regulations empower the Bank to establish subsidiary corporations, *inter alia*. Section 5 of the principal Ordinance provides that the business of the Bank and every subsidiary corporation shall be carried on "under the management of the directors", that is to say, the directors of the principal corporation.

The business of such subsidiary corporations must, under their respective constitutions, be managed by their own directors who may not necessarily be directors of the principal corporation. The deletion from section 5 of the words "under the management of the directors", which appear to have been overlooked at the time the above regulations were amended to empower the Bank to establish subsidiary corporations, will remove this anomaly without affecting the management of the principal corporation which is fully provided for by regulation 108 of the above regulations. See clause 2.

- (b) Section 7 of the principal Ordinance provides that the capital of the Bank is \$20,000,000 which may be increased, in the manner provided by that section, to a maximum of \$50,000,000. The capital has been increased from time to time and is now \$50,000,000 divided into 400,000 shares of \$125 each. It is desired, therefore, to amend section 7 to accord with the *de facto* amount and division of the capital of the Bank.

It is considered, having regard to the amount of the reserves and assets of the Bank, that the restriction of its capital to a maximum of \$50,000,000 is no longer necessary. There is, in the case of banking companies formed in the United Kingdom under the Companies Act, 1948, or in Hong Kong under the Companies Ordinance, Chapter 32, no statutory restriction on the increase of capital. It is desired, therefore, to remove this restriction and to provide that the capital may from time to time be increased by ordinary resolution.

The provision in section 7 requiring the prior consent of the Governor to an increase in capital is peculiar to the Bank. It is considered that there should no longer be any differentiation in this respect between the Bank and any other bank in the Colony.

Clause 3 provides for these matters.

- (c) In any re-organization of capital it is very often convenient to convert shares into stock. Under the Companies Act, 1948, and the Companies Ordinance, a company may convert shares into stock and re-convert stock into shares if the articles of the company so provide. Clause 4 seeks to add a new paragraph to section 8 of the principal Ordinance empowering the Bank to convert shares into stock and to re-convert stock into shares.
- (d) Section 10 of the principal Ordinance empowers the Bank to issue, in Hong Kong and elsewhere, notes payable to bearer on demand. At the present time, the Bank issues such notes only in Hong Kong and does not propose to issue such notes elsewhere. It is desired, therefore, to provide that the Bank may issue such notes only in Hong Kong.

The authority of the note-issuing banks in the Colony to issue notes payable to bearer on demand is now derived from a resolution of the Legislative Council under section 5 of the Bank Notes Issue Ordinance, Chapter 65. It is desired to revise section 10 accordingly.

Clause 5 makes the necessary provisions by the repeal and replacement of section 10.

- (e) Section 11 of the principal Ordinance provides that the Bank's authorized note issue shall not exceed \$30,000,000, which is covered, to the extent of \$23,333,333, by the deposit of securities. Subsection (3) provides that the authorized note issue may be exceeded if the excess issue is covered by payments to the Exchange Fund against the issue of certificates of indebtedness. There is, therefore, a fiduciary note issue, amounting to \$6,666,666, which does not have to be secured. The Bank intends to dispense with the fiduciary note issue and to cover the whole of the authorized note issue by the deposit of securities. The excess note issue will be covered, as at present, by payments to the Exchange Fund.

The securities so deposited will be held exclusively for the redemption of the Bank's notes as are any payments by the Bank, under subsection (3), to the Exchange Fund (see section 4 of the Exchange Fund Ordinance, Chapter 66), but without prejudice, in either case, to the rights of the holders of the notes as creditors of the Bank in the event of a winding up.

Clause 6 makes the necessary provisions.

- (f) Section 12 of the principal Ordinance provides that the liability of the shareholders in respect of the notes of the Bank shall be unlimited and that the shareholders shall be liable to contribute towards the liabilities of the Bank not only any sum unpaid on their shares, but also an additional sum equal to the nominal value of their shares.

As the whole of the Bank's note issue will be covered by the deposit of securities and by payments to the Exchange Fund, it is considered that it is no longer necessary that the shareholders should be liable without limit in respect of the Bank's notes.

The liability of the shareholders to contribute to the liabilities of the Bank, in addition to any amount unpaid on their shares, an amount equal to the nominal value of their shares, was imposed as a condition on the incorporation of the Bank in 1866. It is of note in this respect that the formation of banking companies with limited liability was first permitted in England only in 1858. Under the Companies Act, 1948, and the Companies Ordinance, banking companies may be formed with limited liability, except in respect of their notes, and it is considered that this contingent liability of the shareholders is no longer necessary.

Clause 7 makes the necessary provision by repealing section 12 and replacing it by a section limiting the liability of the shareholders to contribute to the liabilities of the Bank to the amount, if any, unpaid on their shares.

- (g) Clause 8 seeks to make an amendment to section 16 of the principal Ordinance consequent upon the repeal of section 12.

RADIATION BILL, 1957.

THE ATTORNEY GENERAL: —The next item on the Order of Business which stands in my name is the Second and Third readings of the Radiation Bill. Sir, I beg to move that this item be postponed until the next meeting of this Council, the reason being that I have received comments from the Hong Kong General Chamber of Commerce which will require consideration. I should add that the comments do not go to the substance of the Bill but are directed at the drafting.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

MENTAL HOSPITALS (AMENDMENT) BILL, 1957.

THE ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance further to amend the Mental Hospitals Ordinance, Chapter 136."

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 and 2 were agreed to.

Council then resumed.

THE ATTORNEY GENERAL reported that the Mental Hospitals (Amendment) Bill, 1957 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.

ADJOURNMENT.

H. E. THE GOVERNOR: —That concludes the business for today, gentlemen. When is it your pleasure that we should meet again?

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

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