

OFFICIAL REPORT OF PROCEEDINGS**Meeting of 19th June 1963****PRESENT:**HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)

SIR ROBERT BROWN BLACK, GCMG, OBE

HIS EXCELLENCY LIEUTENANT-GENERAL RICHARD WALTER CRADDOCK, KBE, CB,
DSO

COMMANDER BRITISH FORCES

THE HONOURABLE EDMUND BRINSLEY TEESDALE, MC

COLONIAL SECRETARY

THE HONOURABLE MAURICE HEENAN, QC

ATTORNEY GENERAL

THE HONOURABLE JOHN CRICHTON McDOUALL

SECRETARY FOR CHINESE AFFAIRS

THE HONOURABLE JOHN JAMES COWPERTHWAITTE, OBE

FINANCIAL SECRETARY

DR THE HONOURABLE DAVID JAMES MASTERTON MacKENZIE, CMG, OBE

DIRECTOR OF MEDICAL AND HEALTH SERVICES

THE HONOURABLE PETER DONOHUE

DIRECTOR OF EDUCATION

THE HONOURABLE ALEC MICHAEL JOHN WRIGHT,

DIRECTOR OF PUBLIC WORKS

THE HONOURABLE GEOFFREY MARSH TINGLE

DIRECTOR OF URBAN SERVICES

THE HONOURABLE DHUN JEHANGIR RUTTONJEE, OBE

THE HONOURABLE FUNG PING-FAN, OBE

THE HONOURABLE RICHIARD CHARLES LEE, CBE

THE HONOURABLE KWAN CHO-YIU, OBE

THE HONOURABLE WILLIAM CHARLES GODDARD KNOWLES

THE HONOURABLE SIDNEY SAMUEL GORDON

THE HONOURABLE LI FOOK-SHU, OBE

THE HONOURABLE FUNG HON-CHU

MR GORDON ERIC MATHER (*Deputy Clerk of Councils*)

MINUTES

The minutes of the meeting of the Council held on 5th June 1963, were confirmed.

PAPERS

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

<i>Subject</i>	<i>LN No</i>
Public Health and Urban Services Ordinance, 1960.	
Food Business (New Territories) Regulations, 1963	63
Public Health and Urban Services Ordinance, 1960.	
Milk (New Territories) Regulations, 1963	64
Public Health and Urban Services Ordinance, 1960.	
Frozen Confections (New Territories) Regulations, 1963	65
Registration of Persons Ordinance, 1960.	
Registration of Persons (Re-Registration) (No 22) Order, 1963	66
Public Health and Urban Services Ordinance, 1960.	
Hawker (New Territories) Regulations, 1963	68
Public Health and Urban Services Ordinance, 1960.	
Public Market (New Territories) Regulations, 1963	69
Public Health and Urban Services Ordinance, 1960.	
Private Markets (New Territories) Regulations, 1963	70
Registration of Persons Ordinance, 1960.	
Registration of Persons (Re-Registration) (No 23) Order, 1963	71

BANKING BILL, 1963

THE FINANCIAL SECRETARY moved the First reading of a Bill intituled "An Ordinance to repeal and replace the Banking Ordinance, Chapter 155, and to make better provision for the licensing and control of banks, banking business and matters connected therewith".

He said: Sir, Honourable members are, I think, aware of the events which gave rise to this Bill—a run in 1961 on a bank with very large deposits and negligible liquid assets led to the appointment last year of Mr H. J. TOMKINS of the Bank of England to advise on new legislation.

The need to impose a degree of control on the growing banking system, and more particularly on banks dealing with personal savings, was under consideration in 1940 but nothing was done before the outbreak

of war. The Banking Ordinance of 1948 now in force did little more than provide for the licensing of banks, as its purpose was not so much control of banking as control of the growth of small exchange shops which were then assisting speculation against the Chinese currency. The Ordinance is of little practical use for the protection either of depositors or of the general financial security of the Colony.

Our banking system has expanded very rapidly in recent years. It has become a more vital and integral part of the economy of the Colony than in earlier days when its main function was exchange banking; and a special feature has been the growth of the banking habit among the general public as evidenced by the rapid rise in savings deposits. This is a sign of economic maturity and plays a substantial part in our economic growth but it brings problems and dangers. The whole banking system on which our economy now depends so largely has become more vulnerable to any loss of confidence in banks on the part of the general public; and protection of the savings of the individual, who relies on the fiduciary status implied by the title "bank", has become a matter of greater public concern.

A recent editorial in the Financial Times began with the remark "Banking, in its nature, tends to be a conservative occupation". Most of our bankers are indeed conservative men, in the good sense; and I must pay a tribute here to the imagination and foresight with which they have nurtured the growth of our commerce and industry and of all the other elements in our economic and social development. But there are a number of bankers who have conducted and are still conducting their affairs in a manner completely foreign to the traditions of sound banking. The truth is that they are not really bankers, either by experience or in practice. They regard their banks as convenient channels for securing control of the public's funds for their own speculations in land, in shares and in similar ventures, without regard to banking principles. It is against this kind of abuse of banking and of the name "bank" that this Bill is aimed. Sound banks will hardly be affected by it as it embodies the principles they already follow.

The Bill is very largely a re-arrangement of the Bill drafted by Mr TOMKINS. As the Bill is fully commented on in Mr TOMKINS' report I will not go into its detailed provisions or their purpose. In general terms it is designed to provide a minimum paid up capital and published reserves, to ensure adequate liquidity, to prevent speculation with depositors' funds and, by a system of bank inspection, to ensure the maintenance of sound banking practices.

I should however mention the main changes which have been made to Mr TOMKINS' proposals.

In the first place, Mr TOMKINS proposed that the full provisions of the law should apply to all banks. This would have sounded the death-knell of some of the so-called native banks which are often unincorporated family concerns attracting few deposits from the public. The Bill now provides for the continuance of such banks already in existence, but not for the licensing of new ones, on a basis which exempts them from the provisions concerning minimum capital, minimum liquidity ratio and restrictions on certain types of advances and investments, on condition that they remain unincorporated, do not use the title "bank" and do not accept deposits in excess of two million dollars. This sum may be varied by the Governor in Council.

Secondly, a provision has been inserted in clause 12(5) giving the Governor in Council discretion to vary the minimum 25% liquidity ratio. This clause is precautionary and is designed to allow rapid action in the unlikely event of general and severe pressure on the banking system's liquidity ratio. It will never, I hope, be necessary to use it.

Thirdly, Mr TOMKINS proposed that there should be a limit on certain unsecured advances, for example, to directors or to private companies in which directors are interested, of 1% of paid up capital and published reserves or \$250,000 in any one case, whichever is the less. This could unduly restrict certain of the traditional, and unobjectionable, operations of certain banks. In clause 15(1)(d) the Bill raises the limit to 2% of paid up capital and published reserves in any one case without stipulating an absolute limit; but adds a further safeguard by imposing an aggregate limit of 5%.

Fourthly, there is the question of valuation of real estate and shares for the purpose of the limit of 25% of paid up capital and published reserves which may be invested in such assets. Mr TOMKINS recommended that these should be valued at original cost even if written down in the books of the bank. He did so, I understand, because he considered that it was of importance to discourage bank investments of this unorthodox kind, even if, by writing down, they were held in a bank's hidden reserves without impairment of the bank's paid up capital and published reserves. An alternative view is that, if original value is used, there will be no incentive to write down values and so create hidden reserves; rather, profits will be distributed for investment outside the bank's accounts. We have felt that, from a realistic point of view, it would be better not to discourage growth of hidden reserves even if they are held in the form of written down real estate. The situation will be watched for possible abuses. Clause 15(2)(b) accordingly stipulates written down value.

Lastly, the transitional arrangements have been made easier. In particular, clause 41 extends from one to two years the period given for the liquidation of transactions already entered into which are incompatible

with the restrictions now to be imposed on certain types of advances, loans and investment. On the other hand, as recommended by Mr TOMKINS, six months only is allowed for compliance with the liquidity ratio provision; and inspection can begin from the date of commencement of the Ordinance. It is proposed that that date should be 1st August this year.

The Bill has the concurrence of the Banking Advisory Committee.

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: —

This Bill seeks to enact the recommendations for the replacement of the Banking Ordinance, Chapter 155, which appeared in the Report on the Hong Kong Banking System by H. J. Tomkins. The provisions of this Bill follow closely those of the draft Bill attached to the Report with numerous changes as to form and re-arrangement of clauses.

2. There are some differences between this Bill and the draft Bill attached to the Report which are as follows—

- (a) provision is made by paragraph (9) of clause 6 for existing partnerships, commonly known as "native banks", to continue banking business subject to limitations on the use of the word "bank" and subject to a prohibition on acceptance of deposits in excess of two million dollars and to the regulatory provisions in the rest of the Bill. The requirements regarding capital, minimum specified liquid assets, real estate and loans have been relaxed for this category of banks, who will pay a licence fee lower than that for normal banks;
- (b) in clause 12, provision is made for the Governor in Council to vary the requirements for minimum specified liquid assets for such period as Council may consider necessary in exceptional circumstances;
- (c) the limit on unsecured advances specified in the draft Bill, clause 15 of this Bill, has been raised to two *per cent* of paid up capital and public reserves for any one advance, etc. and to five *per cent* in total at any one time. This is intended to mitigate the discriminatory effect of this provision on major local banks;

- (d) liberty is given by sub-paragraph (b) of paragraph (2) of clause 15 to banks to value their holdings of shares and real estate at current book value instead of restricting them to cost price. This alteration of the provision of the draft Bill would enable banks to have hidden reserves of shares and property, which would in fact provide further backing for deposits. If this were not permitted, it is likely that profits would be distributed;
- (e) compradores have been excluded from the prohibition in clause 28 on payments of commission, since their remuneration is derived partly from commission;
- (f) by section 41 a period of two years from the commencement be allowed for liquidation of transactions incompatible with the provisions of clause 15 which had been entered into before the commencement;
- (g) in Part VII various contraventions of the provisions of the Bill are made offences by the directors and managers of the offending bank, instead of offences by the bank itself. A defence is provided by clause 24 for directors and managers who have exercised all due diligence to prevent the commission of the offence concerned. This alteration is considered necessary to protect the interest of depositors particularly where the offence is concerned with the failure of the bank to maintain the necessary assets.

DISTRICT COURT (AMENDMENT) BILL, 1963

THE ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to amend the District Court Ordinance, 1953".

He said: Sir, since moving the first reading, a judgment of the Court of Appeal has reversed the judgment of the District Court which occasioned both the committee stage amendment to the Rent Increase's (Domestic Premises) Control Bill and the introduction of this Bill. It could, therefore, be said that this Bill is no longer required. I have carefully considered this aspect of the matter and have decided that this Bill should go forward. As I stated when the amendment to the Rent Increases (Domestic Premises) Control Bill was under consideration, it is most unusual to legislate as a result of a decision given by an inferior court before that decision has been tested in a superior court. But having decided to legislate, I would not wish there to be any suggestion that that amendment and this Bill were introduced into this Chamber with the intention of affecting in any way the outcome of court proceedings then being carried on. At the same time, in moving the second reading of this Bill, I do not wish to be taken as suggesting that the judgment of the Court of Appeal in any way fails to establish

the law so far as the issues before that court were concerned. In short, Sir, having embarked on this legislation which, as the preamble shows, is intended to remove all doubts, my advice is that this legislation should be enacted without regard to what may have been going on in the courts during its passage through this Chamber.

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 4 were agreed to.

ATTORNEY GENERAL: Sir, I rise to move that the Preamble be amended as set forth in the paper before honourable Members.

Proposed Amendment:

Preamble In the first paragraph, after the word "whether", insert the following—

"the whole of".

The Preamble, as amended, was agreed to.

Council then resumed.

THE ATTORNEY GENERAL reported that the District Court (Amendment) Bill, 1963, had passed through Committee with one 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 into law.

PRISONS (AMENDMENT) BILL, 1963

THE ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to amend the Prisons Ordinance, 1954".

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 Prisons (Amendment) Bill, 1963, 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 into law.

ADJOURNMENT

HIS EXCELLENCY THE GOVERNOR: Well, gentlemen, that concludes the business for today. When is it your pleasure that we should meet again?

THE ATTORNEY GENERAL: May I suggest, Sir, this day two weeks?

HIS EXCELLENCY THE GOVERNOR: Council stands adjourned until this day two weeks.