

OFFICIAL REPORT OF PROCEEDINGS**Meeting of 26th April 1967****PRESENT**

HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)
SIR DAVID CLIVE CROSBIE TRENCH, KCMG, MC
THE HONOURABLE THE COLONIAL SECRETARY
MR MICHAEL DAVID IRVING CASS, CMG
THE HONOURABLE THE ATTORNEY GENERAL (*Acting*)
MR GRAHAM RUPERT SNEATH
THE HONOURABLE THE SECRETARY FOR CHINESE AFFAIRS (*Acting*)
MR PAUL TSUI KA-CHEUNG, MBE
THE HONOURABLE THE FINANCIAL SECRETARY
MR JOHN JAMES COWPERTHWAITTE, CMG, OBE
THE HONOURABLE ALEC MICHAEL JOHN WRIGHT, CMG
DIRECTOR OF PUBLIC WORKS
DR THE HONOURABLE TENG PIN-HUI, CMG, OBE
DIRECTOR OF MEDICAL AND HEALTH SERVICES
THE HONOURABLE WILLIAM DAVID GREGG
DIRECTOR OF EDUCATION
THE HONOURABLE ROBERT MARSHALL HETHERINGTON, DFC
COMMISSIONER OF LABOUR
THE HONOURABLE ALASTAIR TODD
DIRECTOR OF SOCIAL WELFARE
THE HONOURABLE TERENCE DARE SORBY
DIRECTOR OF COMMERCE AND INDUSTRY
THE HONOURABLE GEOFFREY MARSH TINGLE
DIRECTOR OF URBAN SERVICES
THE HONOURABLE KENNETH STRATHMORE KINGHORN
DISTRICT COMMISSIONER, NEW TERRITORIES
THE HONOURABLE KAN YUET-KEUNG, OBE
THE HONOURABLE TANG PING-YUAN
THE HONOURABLE TSE YU-CHUEN, OBE
THE HONOURABLE KENNETH ALBERT WATSON, OBE
THE HONOURABLE WOO PAK-CHUEN, OBE
THE HONOURABLE SZETO WAI
THE HONOURABLE WILFRED WONG SIEN-BING, OBE
THE HONOURABLE ELLEN LI SHU-PUI, OBE
THE HONOURABLE JAMES DICKSON LEACH, OBE
DR THE HONOURABLE CHUNG SZE-YUEN
THE HONOURABLE MICHAEL ALEXANDER ROBERT YOUNG-
HERRIES, MC
THE HONOURABLE ROGERIO HYDNMAN LOBO
THE HONOURABLE DANIEL LAM SEE-HIN

IN ATTENDANCE

THE DEPUTY CLERK OF COUNCILS
MR DONALD BARTON

MINUTES

The minutes of the meeting of the Council held on 12th April 1967 were confirmed.

OATHS

MR ROGERIO HYNDMAN LOBO and MR DANIEL LAM SEE-HIN took the Oath of Allegiance and assumed their seats as Members of the Council.

HIS EXCELLENCY THE GOVERNOR: —May I welcome our new Members to this Council and also welcome Dr. CHUNG back.

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>
Subsidiary Legislation: —	
Proclamation No 3 of 1967.	
Enemy Property Legislation Repeal Ordinance (Chapter 345) to come into operation on 1st May 1967	61
Proclamation No 4 of 1967.	
Trading with the Enemy Ordinance (Chapter 346) to come into operation on 1st May 1967	62
Importation (Coffee) Regulations.	
Importation (Coffee) Regulations (Amendment of First Schedule) Order 1967	63
Sessional Paper 1967:—	
No 14—Annual Reports by the Secretary for Chinese Affairs for the years 1964-66.	

STAMP (AMENDMENT) BILL 1967

THE FINANCIAL SECRETARY moved the First reading of:—“A Bill to amend the Stamp Ordinance.”

He said:—Sir, this Bill seeks to give legislative effect to the proposal I made when presenting the Budget that conveyances on sale of* land where the consideration is under \$20,000 should be free of 2% stamp duty, and that the duty should be halved from 2% to 1% where the consideration is \$20,000 or over, but under \$40,000.

*Pages 92-3.

Clause 4 (a) of the Bill introduces a new subhead (1) of Head 19 of the Schedule to the Stamp Ordinance to provide for the new rates of duty. There is one minor change from my earlier proposal. Although I spoke at the time of the Budget of making conveyances under \$20,000 free of duty, further consideration has suggested that such conveyances should continue to be stampable and should not be stamped completely free. This is because special arrangements will be necessary to administer the concessionary rates and care will have to be taken to prevent their abuse; and these arrangements will add to the costs of the Stamp Office. A flat rate of \$20 is therefore proposed for conveyances under \$20,000. This is the existing rate for conveyances which do not attract *ad valorem* duty and is very small in comparison with the duty which is being abolished.

Provision has also been made in the new subhead for a measure of relief to meet cases where the consideration marginally exceeds the \$20,000 or \$40,000 level.

Clause 2 introduces an additional safeguard against attempts to defraud the revenue and imposes an obligation on those who execute an instrument of conveyance on sale, and who wish to take advantage of the reduced rates of duty, to certify that the transaction effected by the conveyance does not form part of a larger transaction or of a series of transactions on which duty will be payable at a higher rate.

The concession is not extended to voluntary dispositions *inter vivos*. There is one point I should mention, however. There are a few cases where, because the consideration stated is well below the market value of the property, a conveyance on sale is treated as a voluntary disposition. At present the rates are the same but this will not be so in future for transactions below \$40,000. In such cases, therefore, the proposed concession will not be effective and the 2% *ad valorem* rate will continue to apply. But such cases are comparatively few in number and it should not be difficult for the principals in such transactions to arrange affairs so that the concessionary rate applies.

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: —

Under the Stamp Ordinance (hereinafter referred to as the Ordinance) a conveyance on sale is subject to stamp duty on

the amount or value of the consideration at the rate of \$2 for every \$100 or part thereof. The principal objects of this Bill are—

- (a) to reduce the stamp duty on certain conveyances on sale of land (which expression includes buildings);
- (b) to provide for the imposition of a fixed duty of \$20 in the case of conveyances on sale of land, where the sale price does not exceed \$20,000;
- (c) subject to the qualifications mentioned in sub-paragraph (d) to provide for the imposition of a duty of \$1 for every \$100 or part thereof, where the sale price exceeds \$20,000 but does not exceed \$40,000;
- (d) to provide for the granting of a measure of relief from the higher rates of duty where the sale price only marginally exceeds \$20,000 or \$40,000.

Subhead (1) of the proposed new head 19 of the Schedule contained in clause 4(a) provides accordingly.

2. Subhead (2) of the proposed new head 19 of the Schedule seeks to re-enact the existing head 19 with the necessary consequential amendments. The rates of duty therein specified will continue to be applicable to conveyances on sale of land, other than those already mentioned.

3. Clauses 3 and 4(b) contain amendments which are consequential upon the amendments mentioned in paragraph 1.

4. Section 12 of the existing Ordinance contains provisions against splitting a transaction for the purpose of obtaining a lower rate of duty. The proposed section 12A contained in clause 2 of the Bill imposes an obligation on those who execute an instrument of conveyance on sale and who wish to obtain the reduced rates of duty to certify that the transaction effected by the conveyance does not form part of a larger transaction or of a series of transactions on which duty will be payable at a higher rate. The object of the provisions of the proposed new section 12A is to add an additional safeguard against attempts to defraud the revenue. A certificate given with intent to defraud the revenue will be an offence under section 10 of the Ordinance.

DEFENCE (FINANCE) REGULATIONS (VALIDATION OF CONTRACTS) BILL 1967

THE FINANCIAL SECRETARY moved the First reading of:—"A Bill to provide for the validity of certain contracts."

He said:—Sir, the Defence (Finance) Regulations, which imposed exchange controls, were first made in 1940 but, until Hong Kong joined the sterling area in August 1941, applied only to British nationals.

They were extended in August 1941 to all residents of Hong Kong but had not come fully into force by the time of the Japanese occupation in December that year.

After the liberation of the Colony in 1945 they were still not brought effectively into force and a free market in foreign exchange was allowed to establish itself in the Colony; this was strictly without legal sanction under the terms of the Regulations. Although they were thus to all intents and purposes largely inoperative, the Regulations were continued from year to year by Resolution of this Council and are still in force to-day. The reasons for their continuation were partly to ensure that there were powers in reserve to control any exchange transaction in Hong Kong which might be harmful to the sterling area, of which it was and is a member; and partly because of strong objections of principle in the International Monetary Fund at that time to recognition of floating or multiple exchange rates.

In 1949 certain measures were taken outside the Regulations to ensure the compatibility of the free exchange market in Hong Kong, itself a member of the sterling area, with the effectiveness of the exchange controls in force in the rest of the sterling area. These measures included certain physical import and export controls (for example, on gold and diamonds) and the setting up of controlled Hong Kong No. 1 and No. 2 sterling accounts in other sterling area countries under their legislation, these accounts being debitable only against general or specific authorities from the Hong Kong Exchange Control or from the Control in the country in which the accounts are maintained. To-day exchange control in Hong Kong, to the extent that it is exercised, depends almost wholly on these measures and on certain connected arrangements with the authorized exchange banks, and not at all on the Defence (Finance) Regulations.

It has been recognized for some time that the technical illegality of free market transactions in foreign currencies might lead to legal argument directed towards voiding contracts involving such transactions. It has also been realised more recently that certain transactions involving sterling (and not covered by general or specific permissions granted to authorized exchange banks) are also technically illegal under the Regulations. Furthermore, it has been suggested, with some force, that permissions under the Regulations given by the Financial Secretary and the Exchange Controller may not be valid because there has been no formal delegation by the Governor of his power under the Regulations since 1941.

There is understood to be a growing concern in the legal profession and in banking circles about the possible implications of the present situation and there has been a growing tendency for formal permission to be sought for transactions technically requiring it under the Regulation;

were this to become prevalent, an impossible administrative situation would result.

The purpose of the present Bill is therefore to provide that transactions requiring permission under the Regulations are not illegal, in a civil sense, and thereby void merely because permission has not in fact been granted. This validation applies equally to past and to future contracts. There can presumably be no objection to retrospectivity in this case as no-one could reasonably argue that he entered into a contract relying on the possibility of repudiating it as illegal if it suited him to do so.

No doubt it will be asked why we are not also proposing to rescind the Regulations themselves forthwith so as to cure the technical offences at present being committed against the Regulations. As honourable Members are aware, the Chancellor of the Exchequer, in his recent budget speech, referred to consultation's with this Government with a view to tighter administration over the sterling accounts of Hong Kong residents, designed to protect sterling against abuses by United Kingdom residents of our free market while in no way interfering with legitimate commercial transactions in sterling by Hong Kong residents or with the normal and proper use of the free market. It is felt that, while these consultations are not concluded, the Regulations should not themselves be revoked but should continue to remain in reserve pending their replacement by legislation, probably permanent legislation, designed to reflect present exchange control policy and practice. In the meantime, however, in order to make exchange transactions lawful, and also to reinforce the validating Bill, Your Excellency has issued a general licence granting to Hong Kong residents all permissions required under the Regulations. This general licence will be published in Friday's *Gazette*.

I must however stress that all the presently effective exchange control machinery remains fully in force; that is, certain import and export controls, control of No. 1 and No. 2 Hong Kong Sterling Accounts and instructions to the authorized exchange banks. The measures we are taking and proposing to take are designed simply to make present practice legal, both civilly and criminally, and are not intended either to extend or to reduce the scope of the exchange controls which are effectively in force.

I must apologize for bringing this Bill before Council at such short notice and without prior publication but the Secretary of State's concurrence was received only towards the end of last week and it seems to us and I think everyone interested will agree very desirable to provide a solution to the present difficult situation as quickly as possible.

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: —

Pending legislation to bring the law into line with existing exchange control policy and practice, it is necessary to ensure that commercial transactions, whether made before or after this Bill comes into operation, are not disturbed solely because they were made or performed without permission in accordance with the Defence (Finance) Regulations.

MATRIMONIAL CAUSES (AMENDMENT) BILL 1967

THE ATTORNEY GENERAL moved the Second reading of:—“A Bill to amend the Matrimonial Causes Ordinance 1967.”

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 Matrimonial Causes (Amendment) Bill 1967 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.

BANKING (AMENDMENT) BILL 1967

THE FINANCIAL SECRETARY moved the Second reading of:—“A Bill to amend the Banking Ordinance.”

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.

Clause 1.

THE FINANCIAL SECRETARY:—Sir, I rise to move that two new subclauses be added to clause 1 as set forth in the paper before honourable Members.

Proposed Amendment

Clause

1. Add the following new subclauses—

“(3) The definitions of “money at call” and “Money at short notice” inserted in section 2 of the principal Ordinance by section 2 of this Ordinance shall not have effect until the 1st day of November 1967.

(4) Paragraph (a) of subsection (6) of the new section 20 inserted in the principal Ordinance by section 24 of this Ordinance shall not come into operation until the 1st day of November 1967, and until that day the expression “assets within the Colony” shall, for the purposes of paragraph (b) of subsection (1) and paragraph (b) of subsection (2) of the said new section 20, have the meaning that it has for the purposes of paragraph (b) of subsection (1) of section 8 of the principal Ordinance”.

Clause 1, as amended, was agreed to.

Clauses 2 to 64 were agreed to.

Council then resumed.

THE FINANCIAL SECRETARY reported that the Banking (Amendment) Bill 1967 had passed through Committee with certain amendments 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

THE COLONIAL SECRETARY moved the adjournment.

THE ATTORNEY GENERAL seconded.

The question was put and agreed to.

NEXT MEETING

HIS EXCELLENCY THE GOVERNOR:—Council is accordingly adjourned. The next meeting will be held on 10th May.