

OFFICIAL REPORT OF PROCEEDINGS**Sitting of 21st May 1969**

MR PRESIDENT in the Chair

PRESENT

HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)
SIR DAVID (CLIVE CROSBIE) TRENCH, GCMG, MC
THE HONOURABLE THE COLONIAL SECRETARY
SIR HUGH (SELBY) NORMAN-WALKER, KCMG, OBE
THE HONOURABLE THE ATTORNEY GENERAL
MR DENYS TUDOR EMIL ROBERTS, OBE, QC
THE HONOURABLE THE SECRETARY FOR HOME AFFAIRS
MR DAVID RONALD HOLMES, CBE, MC, ED
THE HONOURABLE THE FINANCIAL SECRETARY
SIR JOHN (JAMES) COWPERTHWAITTE, KBE, CMG
THE HONOURABLE WILLIAM DAVID GREGG, CBE
DIRECTOR OF EDUCATION
THE HONOURABLE DAVID RICHARD WATSON ALEXANDER, MBE
DIRECTOR OF URBAN SERVICES
THE HONOURABLE GEORGE TIPPETT ROWE
DIRECTOR OF SOCIAL WELFARE
THE HONOURABLE JAMES JEAVONS ROBSON
DIRECTOR OF PUBLIC WORKS
THE HONOURABLE DONALD COLLIN CUMYN LUDDINGTON
DISTRICT COMMISSIONER, NEW TERRITORIES
THE HONOURABLE DAVID HAROLD JORDAN, MBE
DIRECTOR OF COMMERCE AND INDUSTRY
THE HONOURABLE ARTHUR PATRICK RICHARDSON
COMMISSIONER OF LABOUR
THE HONOURABLE FUNG HON-CHU, OBE
THE HONOURABLE TSE YU-CHUEN, OBE
THE HONOURABLE WOO PAK-CHUEN, OBE
THE HONOURABLE SZETO WAI, OBE
THE HONOURABLE WILFRED WONG SIEN-BING, OBE
THE HONOURABLE ELLEN LI SHU-PUI, OBE
THE HONOURABLE WILSON WANG TZE-SAM
THE HONOURABLE HERBERT JOHN CHARLES BROWNE
DR THE HONOURABLE CHUNG SZE-YUEN, OBE
THE HONOURABLE MICHAEL ALEXANDER ROBERT HERRIES, OBE, MC
THE HONOURABLE LEE QUO-WEI
THE HONOURABLE ANN TSE-KAI
THE HONOURABLE OSWALD VICTOR CHEUNG, QC

ABSENT

DR THE HONOURABLE TENG PIN-HUI, CMG, OBE
DIRECTOR OF MEDICAL AND HEALTH SERVICES

IN ATTENDANCE

THE DEPUTY CLERK OF COUNCILS
MR DONALD BARTON

PAPERS

The following papers were laid pursuant to Standing Order No 14(2): —

<i>Subject</i>	<i>LN No</i>
Subsidiary Legislation: —	
The Chinese University of Hong Kong Ordinance.	
Statutes of the Chinese University of Hong Kong (Amendment) Statutes 1969	62
Prisons Ordinance.	
Prisons Order 1969	63
Merchant Shipping Ordinance.	
Merchant Shipping (Fire Appliances) Regulations 1969	64
Prisons Ordinance.	
Prison (Amendment) Rules 1969	65
Supreme Court Ordinance.	
The Rules of the Supreme Court (Amendment) Rules 1969	66
Interpretation and General Clauses Ordinance.	
Specification of Public Offices	67
Sessional Papers 1969: —	
No 13—Annual Reports by the Government Printer for the years 1965-67.	
No 14—Annual Report by the Director of Immigration for the year 1967-68.	

QUESTIONS**Industrial sites**

1. DR S. Y. CHUNG asked the following question: —

In view of the rapidly rising demand for industrial land as reflected by the extremely high prices in recent sales will Government (1) make more industrial sites available for auction, say at a rate of not less than 100,000 square feet a month and (2) publish a 6-month forward schedule of land auctions so as to facilitate planning by potential developers?

MR J. J. ROBSON: — Sir, I welcome the opportunity provided by the honourable Member to provide a brief statement concerning the availability of Crown land for industrial development.

In the last eight months 10 industrial lots totalling 110,000 sq ft, have been sold by auction in the Urban Areas and 5 lots totalling 190,000 sq ft have been sold by public tender. These sales have taken place in response to specific applications although it has been rare for the applicant to become the purchaser.

In addition, in the New Territories, lots totalling some 300,000 sq ft in Kwai Chung and Tsuen Wan have been acquired by industrialists within the last 5 months through exchange agreements. Negotiations in respect of a further area of approximately 1½ million sq ft of land at Kwai Chung are proceeding.

My honourable Friend may also have noted the Government announcement in the press this morning concerning industrial land at Castle Peak. Engineering works at Castle Peak are proceeding rapidly and over one million sq ft of industrial land will become available for development there over the next few years. The notice states that this land will be available on an exchange basis, initially at \$10 to \$12 per sq ft, payable by instalments over 20 years at 5% in the same way as Kwun Tong, and building covenants for completion within 36 months will be set at the low figure of \$10 per sq ft. I think honourable Members will agree that these terms are most attractive.

Turning to the Urban Areas I can assure the honourable Member that Government fully appreciates the need to make more land available to meet the increasing demand indicated by the high prices paid at recent auctions for industrial land. Earlier this month the Superintendent of Crown Lands informed the Federation of Hong Kong Industries that action is in hand for the issue of advance notice of land sales. It will however take some time to build up to the Superintendent of Crown Lands proposed monthly rate of 10 sites with a combined area of around 100,000 sq ft but an initial schedule of lots which will be available for sale in July, August and September without the need for specific applications will be issued in the next few weeks. Depending upon the response to this programme further schedules giving advance notice of sale will be published.

While every care will be taken to include only those sites which it is thought can be made available as planned, honourable Members will appreciate the difficulties which can arise over clearance of temporary or unauthorized occupants of Crown Land and deletion of some lots from the published programme may therefore be unavoidable.

I must conclude on a note of warning. On our present assessment there is roughly 2 million sq ft of industrial land which can be made

[MR ROBSON] **Questions**

available in the Urban Area over the next 2 years. This will not exhaust all possibilities but after that it will become progressively more difficult to find new Urban sites and industrialists will need to look more and more to the New Territories particularly Tsuen Wan and Castle Peak for industrial expansion.

DR S. Y. CHUNG: —Thank you, Sir.

Public Assistance Scheme

2. MR TSE YU-CHUEN asked the following question: —

Will Government indicate the progress of the Public Assistance Scheme and what is the earliest date of its implementation?

MR G. T. ROWE: —Sir, as your Excellency said in this Council on the 26th February improvements to Government's public assistance arrangements are not just a question of money; there are a number of problems to be solved concerning the eligibility levels, organization, control and administration of any expanded scheme*.

Broad proposals are already under examination and we have asked the Foreign and Commonwealth Office in London whether the services of an expert can be provided to assist us with some of the problems. The examination I have referred to has been directed towards two major aspects of the proposals which are intended to serve as a basis for the broadening of our social services. First, it is appreciated that a scheme of this nature may have far-reaching repercussions, and these require the best evaluation it is possible to give them. Second, as with all schemes of this nature, not only are adequate safeguards necessary but it is difficult to estimate with any accuracy the full financial implications, which depend both on the extent and scale of the benefits to be provided under the scheme and on the cost of the necessary staff and facilities which will be required to implement it.

It is therefore not as yet possible to forecast when an improved scheme might become fully operative. As I said in the Budget Debate it will almost certainly be necessary to move towards full implementation in stages[†], but it should be possible to make significant moves towards full implementation perhaps within three months after the various problems which face us have been resolved.

* Page 61.

† Page 174.

THE SAMARITAN FUND

THE ATTORNEY GENERAL moved the following resolution: —

WHEREAS it is considered advisable that the administration of the Samaritan Fund, established under Resolution of this Council dated the 24th May 1950* as amended by a further Resolution thereof dated the 20th April 1960†, be undertaken by the Director of Medical and Health Services and that the said Resolution be amended accordingly:

NOW THEREFORE be it resolved by this Council that the Schedule to the said Resolution be cancelled and replaced by the following new Schedule—

"SCHEDULE

1. The Fund shall be administered by the person (hereinafter called the Director) for the time being performing the duties of the office of Director of Medical and Health Services.

2. The Fund may be used at the discretion of the Director to provide monetary grants for the benefit of needy patients.

3. (1) The Fund shall consist of all moneys donated, subscribed or bequeathed thereto from time to time.

(2) All moneys accruing to the Fund shall be paid to the Accountant General who shall credit such moneys to an account entitled "Deposits — Samaritan Fund, Medical and Health Department".

4. (1) Subject to sub-paragraph (2), sums may be withdrawn from the Fund by submitting payment vouchers to the Accountant General.

(2) Every such voucher shall be—

(a) signed by the Senior Treasury Accountant, Medical and Health Department, or his duly authorized deputy; and

(b) countersigned by the Director, or his duly authorized deputy.

5. (1) The Director shall cause proper accounts to be kept of all transactions of the Fund and shall cause to be prepared for every period of twelve months ending on

* 1950 Hansard, page 166.

† 1960 Hansard, page 165.

[THE ATTORNEY GENERAL] **The Samaritan Fund**

the 31st day of March in each year a statement of the accounts of the Fund, which statement shall include an income and expenditure account and balance sheet and shall be signed by the Director.

(2) The accounts of the Fund and the signed statement of the accounts shall be audited by an auditor appointed by the Governor and the auditor shall certify the statement subject to such report, if any, as he may think fit.

(3) A copy of the signed and audited statement of accounts together with the auditor's report, if any, and a report by the Director on the administration of the Fund during the period covered by the audited accounts shall be laid upon the table of the Legislative Council simultaneously with the Annual Departmental Report of the Director of Medical and Health Services for the same period.

He said: —Sir, this Fund originated in 1939, when a number of grateful patients at the Queen Mary Hospital gave money for distribution among poor patients to the hospital Almoner, who called it the Samaritan Fund.

In 1950, this Council resolved, in view of the growth in donations to the fund, that it should be given a simple form of constitution, the effect of which was to put it under the control of the Principal Almoner of the Medical Department. In 1960, this constitution was varied so as to require audited accounts to be laid on the table of this Council annually.

The object of today's resolution is to provide that the Fund shall in future be administered by the Director of Medical and Health Services, instead of the Principal Almoner, a post which no longer exists. The opportunity has been taken to replace the Schedule to the Resolution, which contains the Constitution of the Fund, rather than to amend it again, though no other changes of substance are made to it.

The Fund is used for such purposes as bus fares of patients coming to hospital for treatment, travelling expenses of relatives visiting patients, and the provision of toilet requisites and other small extras for poor patients.

In the past year, the income of the fund was not far short of \$50,000, of which 30,000 was given by the Jockey Club and 10,000 by the Li Po Chun Charitable Trust Fund, with substantial donations

from the Lutheran World Federation, Mr Ho Sai-lai, the Sing Tao Newspaper and the Hang Seng Bank and I would like to take this opportunity to thank them all for their generosity, which is much appreciated by the many patients who have benefitted from it.

Question put and agreed to.

INLAND REVENUE (AMENDMENT) BILL 1969

BANKING (AMENDMENT) BILL 1969

Bills read the first time and ordered to be set down for second reading pursuant to Standing Order No 41(3).

INLAND REVENUE (AMENDMENT) BILL 1969

THE FINANCIAL SECRETARY moved the second reading of: —"A bill to amend the Inland Revenue Ordinance."

He said: —Sir, the purpose of this bill is to give effect to most of the recommendations in Part I of the Report of the Inland Revenue Ordinance Review Committee, although there are also one or two clauses which derive from Part II.

The amendments can be divided into three separate categories. The first of these concerns the strengthening of the Commissioner of Inland Revenue's powers to prevent tax evasion and also power to impose certain new penalties.

I have referred on a number of occasions recently in this Council to the evidence of substantial evasion of tax and to the need to strengthen the Commissioner's powers to deal with the problem if we are to be able to maintain our present tax system. The actual words of the Review Committee's Report on this subject were as follows: —

"We agree with the official view that Government has a moral obligation to honest taxpayers in the community to ensure that they should not be called upon to bear an unfair burden of tax because of the evasion perpetrated by others deriving income or profits which are chargeable to tax in the Colony. The taxing authority should be adequately empowered to pursue evasion by employment of all reasonable measures. The alternative for Government would be to raise the rates to counterbalance the loss of tax by evasion and this is clearly unacceptable."

The main additional power proposed in the bill is one which is sought with considerable reluctance because it goes against the strong feeling among some Hong Kong residents against an inquisitorial tax system which seeks information on more than the bare elements which

[THE FINANCIAL SECRETARY] **Inland Revenue (Amendment) Bill — second reading**

go towards assessment of taxable income. But, I fear the very maintenance of our system is dependent on our being able to keep evasion within bounds and we must, I believe, accept a limited extension of the power to enquire if we are not to be forced one day into something wider, perhaps even a full income tax. The power I refer to is one in common use in other countries, that is the power to require a taxpayer who is believed to be evading tax to furnish statements of assets and liabilities at specific dates. His increase in net wealth, when considered with his expenditure and receipts of capital between these dates, provides a basis for estimating his true income and therefore the extent of his evasion. The Department has in fact used this method in recent years to uncover some of those "horrifying cases" I have mentioned before but this has been on a non-statutory basis and compliance has been voluntary. It is necessary, we believe, to provide statutory powers.

Because of the unpopular nature of this power, the bill hedges it round with substantial safeguards. Firstly, it may be exercised only by the Commissioner personally. Secondly, disclosure is required only of Hong Kong assets and liabilities, although, to close the possible loopholes thereby opened, information will also be required on remittances overseas as well as on expenditure. Thirdly, a taxpayer required to provide this information may object to the Commissioner's notice requiring these disclosures, whereupon the Commissioner must refer the matter to the Inland Revenue Board of Review which may dismiss the objection or cancel or amend the Commissioner's notice. The Board of Review is an existing appellate body, with permanent, but unofficial, chairman and deputy chairman (who are both members of the legal profession) assisted by a panel of about 40 businessmen and professional men. Its proceedings are covered by the secrecy provisions of the Ordinance. Finally, in order that there may be legislative reconsideration of the effects, beneficial or adverse, of the introduction of this new power, it is provided that it will expire at the end of three years unless its operation is extended by resolution of this Council. This proposal is put forward, as I have said, with reluctance but I would urge honourable Members to accept it as a lesser evil.

Another power proposed with some reluctance is the right to enter premises and take possession of books and documents. This is, of course, a quite normal power in the case of excise taxes but does not exist in our Inland Revenue Ordinance, although here too rapid action is often necessary if evidence of evasion is not to be destroyed or concealed. The power is not to be exercisable unless an officer of the Department not below the rank of chief assessor has satisfied a magistrate that there are reasonable grounds for believing that certain offences have been committed and has obtained a warrant from him.

In the field of penalties the main innovation proposed is the grant of power to the Commissioner to charge "additional tax" in the case of certain offences, in lieu of prosecuting. This proposal, which is made in Part II, not Part I, of the Report of the Review Committee and is found in other tax systems, is contained in new sections 82A and 82B, in clause 38 of the bill. The clauses would give the Commissioner or Deputy Commissioner personally power to impose a penalty, called "additional tax" for certain offences, *ie* where a taxpayer without reasonable excuse has acted in breach of section 80(2) of the Ordinance by omitting an amount from a return, understating his income, making an incorrect statement in connexion with a claim for an allowance or deduction, or giving incorrect information in relation to any matter affecting this or any other person's liability to tax. The Commissioner already has power to compound any of these offences against payment of a penalty but not to enforce a composition. Additional tax may not exceed the tax undercharged by reason of the breach and there is an appeal to the Board of Review, which will be in a position to rule both on the validity of the assessment of the tax undercharged and on the amount of the additional tax imposed by the Commissioner. As this is an alternative to prosecution, a taxpayer may not be prosecuted for an offence in respect of which additional tax has been imposed. Some defaulting taxpayers may prefer this procedure to the more public one of prosecution, which may also bring a higher penalty.

These are the principal provisions dealing with evasion and penalties. The next category of amendment relates to Property Tax as it affects Personal Assessment. The amendments are in clauses 24 and 26 of the bill. The first of these, which derives from a recommendation in Part II of the report proposes to change the basis on which income from rented property is brought into account in Personal Assessment, making it easier for small property owners to complete their returns and obtain earlier refunds of tax; and, secondly, to make provisions enabling Property Tax payers to obtain refunds by set-off of Property Tax in Personal Assessment for periods of unoccupancy or for use of a rateable part of a building for residential purposes which do not qualify for direct refund under Part II of the Ordinance. These provisions should be of substantial benefit to small property owners.

The third category of amendment is a group of miscellaneous provisions which have the effect of either extending relief to the taxpayer, or correcting technical deficiencies in the law, or tightening up certain provisions or clarifying others. They are explained in the objects and reasons attached to the bill and I think I need only refer today to two of these neither of which derives from a recommendation in the Report.

Clause 9 extends the present exemption from Hong Kong tax granted to United Kingdom—based permanent employees of the United

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Kingdom Government working in Hong Kong, to cover temporary employees also. The United Kingdom Government has, for its part, agreed to exempt from United Kingdom tax the salaries and allowances of Hong Kong Government officers posted to or studying in Britain.

Clause 13 introduces provisions to remedy a weakness in Profits Tax. At present profits arising after cessation of a business cannot be brought to charge. The loss of revenue through this loophole can be substantial and gives rise to exemption of such profits from tax, sometimes fortuitously and sometimes, I fear, intentionally.

I should add that two recommendations in Part I of the Report are not covered by this bill. Paragraph 83 of the Report recommended the provision of a right of objection by a person who has suffered the deduction at source of tax on interest paid to him. Part II of the Report contains further and more detailed recommendations covering connected aspects of Interest Tax and it is thought better to deal with them together in a later bill. Secondly, it is not proposed to proceed with the recommendations in paragraph 101 of the Report that the allowance for a child should be subject to the proviso that the separate income of the child does not exceed \$2,000. This is because the tax involved is inconsiderable.

I should also like to give notice now of a further provision which I would propose to introduce at the Committee stage. It arises from recent developments in connexion with a cross-harbour tunnel which make it likely that one will be built. Under section 40(1) of the Ordinance the phrase "industrial building or structure" means, for purposes of depreciation allowances, any building or structure for the purposes, *inter alia*, of a transport, dock, water, gas or electricity undertaking or a public telephone or public telegraph service. It seems reasonable to interpret this as including a road tunnel but it is desirable to put this beyond doubt by specific mention of tunnels. I shall also be seeking to correct a minor drafting error in Clause 26 of the bill dealing with relief for Property Tax on Personal Assessment.

I must apologize to honourable Members for the length of my presentation of this bill. Although it deals with only Part I of the Review Committee's report, it deals with the proposals to combat evasion which are of the most immediate importance. Part II of the Report has made, among numerous others, certain more radical proposals to change, not the nature, but the mechanics of the system. This part of the Report has been sent recently to a number of commercial and professional bodies for their comments and we await these before we proceed to further legislation. Because of the extent of the changes proposed, we think that, if we do proceed, it should be by way of a

new Ordinance, rather than by amendment of the old. But this takes me beyond to-day's business.

Question proposed.

Motion made (pursuant to Standing Order No 30). That the debate on the second reading of the bill be adjourned—THE COLONIAL SECRETARY.

Question put and agreed to.

Explanatory Memorandum

The principal purpose of this Bill is to implement the recommendations in Part I of the Report of the Inland Revenue Ordinance Review Committee. A small number of related amendments from Part II of the Report have also been included as have a few other minor amendments. The Bill contains therefore a number of miscellaneous amendments the more important of which are referred to below.

2. Clause 3 amends the interpretation section in the Ordinance. The new definition of "owner" contains no change in policy but combines two existing definitions in sections 5(5) and 7A. The new definition of "wife living apart from her husband", which is relevant to eligibility for personal assessment under section 41, includes a wife who is a permanent resident but whose husband is neither a permanent nor a temporary resident.

3. Clause 4, read with the substituted definition of "Commissioner" in clause 3, authorizes the Commissioner to delegate powers and duties which are not expressly vested in him personally. Clauses 6 and 7 effect minor amendments (not mentioned in the Report) designed to harmonize definitions and procedure regarding property tax with that of the Rating and Valuation Department.

4. Clause 8 adds a new section 7B, which introduces a time limit for claiming refunds of property tax and provides that such a claim shall be regarded as an objection to an assessment. The Commissioner would be empowered to extend the time for claiming in cases of absence from the Colony, sickness or other reasonable cause.

5. Clause 9 exempts from salaries tax income arising from a scholarship or bursary and the emoluments of certain temporary civil servants of the United Kingdom Government who are serving in Hong Kong. This latter provision implements an agreement with the United Kingdom Government under which reciprocal

Inland Revenue (Amendment) Bill—second reading*[Explanatory Memorandum]*

treatment will be given to Hong Kong Government servants on duty in the United Kingdom.

6. Clause 10 amends section 9 so as to permit certain deductions to be made from income before computing the percentage thereof which shall be deemed to be the rental value of a residence provided by an employer.

7. The effect of clause 13 is to introduce a new section 15D whereby sums received or paid after the cessation of a trade, profession or business shall be brought into account for the year of assessment in which the cessation occurred.

8. Clause 14 extends the deduction allowed by section 16(1)(g) to include expenditure on the registration of patents and expenditure incurred on trade marks and patents outside the Colony.

9. Clause 15 removes a possible doubt as to the effectiveness of the present law in relation to the taxation of the profits or surplus of mutual insurance corporations.

10. Clause 16 adds a new section 26A, under which interest accruing on Tax Reserve Certificates will not attract corporation tax or business profits tax. Such interest is already exempt from interest tax.

11. At present there is no authority for interest tax not to be deducted although the payment of interest is to an exempt person. Clause 17 adds a new section 29A enabling the Commissioner to direct the payment of interest without deduction in such cases.

12. Clause 19 provides a formula for arriving at a notional figure for "cost of the asset" for the purpose of computing annual allowances under section 37(2) on plant and machinery which has been in use prior to its first use in producing profits chargeable to tax. This provision has no application to initial allowances. Clause 21 makes a consequential provision.

13. Clause 22 introduces a new definition of "capital expenditure" in order to exclude from this expenditure, on which allowances under Part VI are computed, moneys reimbursed by way of grant or subsidy in connexion with the acquisition of any asset qualifying for allowances.

14. At present it is provided by section 41 that an unmarried minor cannot apply for personal assessment under Part VII. Clause 23 removes this restriction so far as persons who have attained the age of 18 are concerned.

15. Clause 24 which implements the recommendations at paragraph 346 of Part II of the Report, replaces the present basis for assessment of income from rented property on personal assessment by the net assessable value used for the purpose of computing property tax. Where property is not let throughout the year, provision is made for apportioning the annual value with reference to both the portions of the rateable unit let during the year as well as the period of letting.

16. Clause 25 makes two alterations in respect of the allowances available on personal assessment. The first enables the allowance in respect of a child to be apportioned where two persons (e.g. separated parents) are entitled to claim an allowance in respect of his maintenance. The second removes the word "annual", which at present qualifies the amounts of life insurance premiums and contributions to Widows and Orphans Pensions Schemes which qualify for relief. The clause also introduces a limit on the amount of allowable life insurance premiums of seven *per cent* of the capital sum payable on death.

17. Clause 26 contains an amendment in regard to the set off of property tax in consequence of the amendment contained in clause 24. It introduces additional relief enabling repayment through personal assessment in cases where this was not available under Part II of the Ordinance either because the rateable part of a building was not occupied solely by the owner exclusively for residential purposes (section 5(3)) or because the periods of unoccupancy did not consist of entire calendar months (section 7) and thus did not qualify for refund under Part II.

18. Clause 28 adds three new sections to the Ordinance to assist in the investigation of tax evasion. The new section 51A would enable the Commissioner, if he is of the opinion that a person has made an incorrect return or supplied false information having the effect of understating his income or profits chargeable to tax and has done so without reasonable excuse and not through an innocent oversight or omission, to require a statement from the person concerned of his assets, liabilities, expenditure and receipts in the Colony. This power may not be delegated by the Commissioner and can only be exercised by him personally. Any person who has been served with such a requirement may object to the Commissioner who will refer the objection to the Board of Review. Section 51B would empower a magistrate to issue a search warrant, upon the application of an officer not below the rank of chief assessor, if the magistrate is satisfied that a return has not been furnished when required or that an offence against section 80(2) or 82(1) has been committed. The third section 51C,

Inland Revenue (Amendment) Bill—second reading*[Explanatory Memorandum]*

would require persons carrying on a trade, profession or business to keep sufficient records in Chinese or English and to retain them for seven years.

19. Clause 29 would provide that an employer, who is required by section 52(6) to give notice of the expected departure from the Colony of a person, should not make any payment to that person or for his benefit for a month from the date of the notice—except with the consent of the Commissioner or on the direction of the person to the Commissioner.

20. Clause 30 refers to tax payable by the estate of a deceased person. The clause provides that no assessment shall be made later than one year from such date of death, or one year from the date of filing any affidavit required under the Estate Duty Ordinance, whichever is the later. Section 54 of the principal Ordinance would also be amended so that the question of recovery from the executor would fall to be determined under the general law.

21. Clause 32 would relieve the assessor from his duty to raise a property tax assessment in circumstances which he is of the opinion that the tax would be refundable if the individual taxpayer were to elect personal assessment.

22. Clause 36 replaces section 76(1) to include as a situation enabling the Commissioner to take certain measures to secure the payment of tax owing by any person, the situation where the Commissioner is of the opinion that the person is likely to leave the Colony without paying the tax he owes.

23. Clause 37 provides sanctions against contraventions of the new sections 51A and 51C.

24. Clause 38 adds two new sections which would enable the Commissioner or deputy commissioner personally to impose additional tax where the taxpayer without reasonable excuse has acted in breach of section 80(2) by omitting an amount from or understating an amount in a return, or making an incorrect statement in connexion with a claim for a deduction or an allowance, or giving incorrect information in relation to any matter affecting his liability. Additional tax may be imposed up to an amount not exceeding the amount of tax undercharged in consequence of the incorrect return, statement or information.

Before making an assessment to additional tax, notice will be given to the taxpayer and he will have the right to make written representations which the Commissioner or deputy commissioner must take into account.

There will be a right of appeal against such assessments to the Board of Review which will have power to reduce, remit or increase the additional tax.

25. Clause 39 inserts a provision, which now appears in several Ordinances, preserving the control over prosecutions of the Attorney General.

26. Clause 40 extends to charitable trusts the exemption provided in section 88 for charitable institutions.

27. Clause 41 would delete the Third Schedule because provision for the definition "the Commonwealth" is contained in the Interpretation and General Clauses Ordinance and is therefore unnecessary in this Ordinance.

BANKING (AMENDMENT) BILL 1969

THE FINANCIAL SECRETARY moved the second reading of: —"A bill to amend the Banking Ordinance."

He said: —Sir, first, clause 2(*b*) seeks to amend section 23 of the Ordinance by providing that irrevocable documentary letters of credit are credit facilities for the purposes of that section, that is, for the application of a limit to the credit facilities made available to a single customer. It has been held by the Courts that they are not credit facilities but it is clearly desirable to include them in the category of transactions to which the limit applies.

Second, the present provisions of section 23 dealing with restrictions on the amount of credit facilities that may be made available to one person cover facilities made available to companies which the person is able to "control or influence". Clause 2(*c*) of the bill proposes a new sub-section (*b*) to section 23 which makes it clear that, for the purposes of the section, a person shall not be deemed to be able to "influence" a company by reason only that he is a director of it. A strict interpretation of the present wording has been found to be too restrictive for our commercial structure, where one director may be common to numerous companies and little power to influence them personally.

Third, section 24 of the Ordinance imposes limits on unsecured loans to directors, their relatives and any firm, partnership or private company in which they are interested. Clause 3(*b*) is designed to amend this by including sole proprietorships. Their omission was clearly an oversight.

Fourth, clause 4 seeks to amend Part VIII of the Ordinance so that in future all offences under the Banking Ordinance will be ordinarily

[THE FINANCIAL SECRETARY] **Banking (Amendment) Bill—second reading**

triable by indictment, thus reflecting the possible seriousness of the offences.

All the proposals have been considered by and have the support of the Banking Advisory Committee.

Question proposed.

Motion made (pursuant to Standing Order No 30). That the debate on the second reading of the bill be adjourned—THE COLONIAL SECRETARY.

Question put and agreed to.

Explanatory Memorandum

Clause 2 of the Bill amends section 23 of the Banking Ordinance in two respects. First it removes any doubt that "credit facilities" as used in the section includes irrevocable documentary letters of credit to the extent to which they are not covered by marginal cash deposits. Secondly, a new subsection is added to make it clear that for the purposes of the section a loan etc., granted to a business owned by one person shall be deemed to be granted to that person, and a person shall not be deemed to be able to influence a group of companies by reason only that he is a director of any other company in the group.

2. Clause 3 amends section 24 to include unsecured irrevocable documentary letters of credit in the term "credit facilities" and also by adding a new subsection (7). The effect of this new subsection is to deem a "facility" granted to a firm, partnership or private company which a director of a bank or a relative of such a director is able to control or granted to a business of which such a director or relative is the sole proprietor, to be granted to the director or relative himself for the purposes of the limitation on advances etc., prescribed by subsection (2) of section 24.

3. Clause 4 seeks to amend Part VIII of the Ordinance so that in future offences against the Banking Ordinance will be ordinarily triable on indictment.

4. Clause 5 contains a transitional provision allowing time for compliance with the amendment to section 24 introduced by clause 3. A bank would be obliged to report transactions incompatible with the section (as amended) within two months and liquidate them within six months or such longer period as the Commissioner may specify in any particular case.

BUELDINGS (AMENDMENT) BILL 1969**Resumption of debate on second reading (23rd April 1969)**

Question again proposed.

MR SZETO WAI: —Sir, the bill before Council will go a long way to improve public safety and reduce hazards as one of the amendments proposed will empower the Building Authority to prevent buildings being used both for domestic purposes and the manufacture or storage of dangerous goods. This is, I feel, particularly necessary in our high-rise and high-density developments.

Clause 5 is also to be welcomed in that it provides that a temporary occupation permit may be issued in respect of the whole of a building in addition to only a part of a building as is now provided in the principal Ordinance. The amendment will regularize a practice which has been in existence for some years, and which in the case of large housing developments has both social and economic benefits. However, as regards some of the other clauses in the bill, I have certain observations.

Although clause 4 enables the Building Authority to prescribe conditions under which piling, site formation or foundation works may be carried out for the protection not only of adjoining buildings, as it is now provided in the principal Ordinance, but also of adjoining streets, I feel similar conditions should be prescribed to safeguard adjoining unbuilt on, or vacant property, both private or public.

Clause 6 provides the notice of expiry of a Closure Order which, in addition to being posted on the building in question by the Owner, be served on all former occupiers who have notified him of their addresses. Provision is further made for the Owner to certify to the Building Authority that he has complied with these requirements.

It will appear, from the above, that a building owner will be exonerated from any liability to an occupier under this clause, if such occupier has failed to notify him of his new address. As there will invariably be some occupiers of "closed" buildings who do not appreciate the significance of informing the Building Owner of their temporary addresses while the Closure Order remains in force, I feel that these people should be advised, in the initial notice of intention to close the building, to submit their new addresses to the Building Owner as soon as these are known.

Clause 8 provides for the repeal and replacement of section 34 of the principal Ordinance to enable the Building Authority to dispose of materials resulting from demolition or repair works carried out under section 24 or 26 without the necessity of prior notice to the building

[MR SZETO] **Buildings (Amendment) Bill—resumption of debate on second reading (23.4.69)**

owner concerned. While I fully support the provisions of this clause in the case where the Owner is in default under section 24 of the principal Ordinance by allowing the building works to be carried out in contravention of the provisions of the Buildings Ordinance, or in the case of dangerous buildings where the Owner cannot be found or fails to comply with the requirements of an order served upon him by the Building Authority under section 26 subsection (3) of the principal Ordinance, I feel that in the case of section 26 subsection (4) of the principal Ordinance where the Building Authority is empowered to carry out emergency works without prior notice to the Building Owner, the latter should, without prejudice to the speed and manner in which such works are carried out, be given an opportunity to recover such materials from the works as he may wish to salvage. The Building Authority should not, of course, be held responsible for either the safe custody or condition of the said materials.

Sir, I hope my honourable Friend The Director of Public Works will give consideration to the observations I have made.

MR J. J. ROBSON: —Sir, clause 4 of the bill, under consideration by Council, specifically mentions streets as there have been a number of instances when piling, excavation or foundation works have caused damage or collapse to adjacent streets. Thus, with the proposed amendment to section 17, subsection (1) of the principal Ordinance, when such works are carried out, the Building Authority will have powers to prescribe conditions which he considers must be met in order to reduce the danger of damage to adjacent buildings or streets. Under section 2 of the principal Ordinance "building" includes—"the whole, or any part, of any domestic or public building, arch, bridge, chimney, cookhouse, cowshed, dock, factory, garage, hangar, hoarding, latrine, matshed, office, out-house, pier, shelter, shop, stable, stairs, wall, warehouse, wharf, or workshop and such other structures as the Building Authority may by notice in the *Gazette* declare to be a building". "Street" is defined as—"the whole or any part of any square, court or alley, highway, lane, road, road-bridge, footpath, or passage whether a thoroughfare or not". Thus these two definitions taken together are wide sweeping, but even so I doubt if they include virgin land or land where an old building has been demolished. I agree, therefore, with the honourable Member that this point should be covered and I think this can be achieved by a very simple amendment, *ie* the addition at clause 4 of the amending Ordinance of the words "or land".

In respect of the amendment to section 27 of the principal Ordinance, described under clause 6 of the amending Ordinance, while

appreciating the honourable Members fears that some occupiers may not appreciate the significance of informing the building owner or Building Authority of their temporary address when a closure notice is enforced, I doubt that this will occur in practice. My reason for saying this is that administrative arrangements exist whereby the Secretary for Home Affairs, the Director of Social Welfare and the Resettlement Department are kept fully informed of the Building Authority's actions, and when the notice of intention to close a building is served upon the registered owner and the notice posted upon the building, all three of these departments take an immediate interest in the welfare of the occupiers. The notice of intention to close the building must also include the new subsections 8, 10 and 11 of section 27, and from the bill in front of honourable Members it will be observed that these sub-sections inform occupiers that the owner of the building or the Building Authority has to send them a copy of the notice of expiry of closure order providing they notify him of their addresses. This, together with the fact that the Secretary for Home Affairs, the Director of Social Welfare and the Resettlement Department will protect the interests of the occupiers and keep them fully informed of their rights under the Ordinance, will in practice ensure that both the owner of the building and the Building Authority know of the addresses of the previous occupiers of the building. I therefore suggest that no amendment to clause 6 is necessary.

In respect of clause 8 of the amending Ordinance, while this may appear to give dictatorial powers to the Building Authority, it must be borne in mind that he can only arbitrarily dispose of any materials resulting from work carried out by him under sections 24 or 26 of the principal Ordinance. Section 24 deals with building works carried out in contravention of the Buildings Ordinance and the Building Authority may only demolish these works if an order to the owner of the building has not been complied with. Section 26 deals with dangerous buildings and again the Building Authority will only carry out the work if it has not been possible to get the owners to do the work, or else an emergency arises when there is no time for the Building Authority to go through the process of finding and asking the owner to carry out the work. Experience has shown that emergency works do not produce materials of any particular value and, in order to clear the vicinity, the debris must be carted out of the way as quickly as possible. Under these circumstances it is virtually impossible to keep track of the disposal of the debris and if it had to be stored so that the owner could have the opportunity of picking it over with a view to salvaging portions of it, the cost involved would rise rapidly and this cost is a charge on the building owner. No claim has ever been made in respect of materials resulting from emergency works and I, therefore, feel that no amendment is required to clause 8 of the amending Ordinance.

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To sum up, therefore, I suggest that clauses 6 and 8 of the bill before Council should go forward as drafted but that clause 4 should be amended as proposed by the honourable Member. Perhaps he could consider this amendment, and to put it forward when the bill is discussed in the Committee stage.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order No 34(1).

BANK NOTES ISSUE (AMENDMENT) BILL 1969

Committee stage

Council went into committee to consider the bill clause by clause.

Clauses 1 and 2 were agreed to.

RESETTLEMENT (AMENDMENT) BILL 1969

Committee stage

Clauses 1 to 7 were agreed to.

Council then resumed.

Third reading

THE FINANCIAL SECRETARY reported that the Bank Notes Issue (Amendment) Bill 1969 had passed through committee without amendment and moved the third reading of the bill.

Question put and agreed to.

Bill read the third time and passed.

THE ATTORNEY GENERAL reported that the Resettlement (Amendment) Bill 1969 had passed through committee without amendment and moved the third reading of the bill.

Question put and agreed to.

Bill read the third time and passed.

**PORTUGUESE COMMUNITY SCHOOLS INCORPORATION
(AMENDMENT) BILL 1969**

Bill read the first time and ordered to be set down for second reading pursuant to Standing Order No 41(3).

**PORTUGUESE COMMUNITY SCHOOLS INCORPORATION
(AMENDMENT) BILL 1969**

MR P. C. WOO moved the second reading of: —"A bill to amend the Portuguese Community Schools Incorporation Ordinance."

He said: —Sir, by reason of changed circumstances it is necessary to amend certain sections of the Ordinance.

Clause 2 of the bill seeks amendments to section 5 of the Ordinance to reduce the number of members of the Board of Governors.

Clause 3 contains consequential amendments to section 8 and the amendments proposed in clause 4 are to amend section 11 in order to reduce the quorums required for meetings of the Board of Governors and those of the management committee.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order No 43(1).

Explanatory Memorandum

Because of changed circumstances, it has become necessary to amend the Portuguese Community Schools Incorporation Ordinance (Cap. 1071).

The purpose of the amendments contained in clause 2 is to reduce the number of members of the Board of Governors by deleting paragraphs (b) and (c) from subsection (1) of section 5, by virtue of which the occupants of certain offices become members of the Board.

Clause 3 makes consequential amendments to section 8.

The amendments effected by clause 4 reduce the quorums required for meetings of the Board of Governors and those of the management committee.

ADJOURNMENT

Motion made, and question proposed. That this Council do now adjourn—
THE COLONIAL SECRETARY.

3.03 p.m.

Question put and agreed to.

NEXT SITTING

HIS EXCELLENCY THE PRESIDENT: —Council will accordingly adjourn. The next sitting will be held on 4th June.

Adjourned accordingly at four minutes past Three o'clock.