

3rd September, 1952.

**PRESENT:**

HIS EXCELLENCY THE OFFICER ADMINISTERING  
THE GOVERNMENT

MR. ROBERT BROWN BLACK, O.B.E.

HIS EXCELLENCY THE COMMANDER BRITISH FORCES

LIEUTENANT-GENERAL SIR TERENCE AIREY, K.C.M.G., C.B., C.B.E.

THE HONOURABLE THE COLONIAL SECRETARY

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

THE HONOURABLE THE ATTORNEY GENERAL

MR. GEORGE EDWARD STRICKLAND, Q.C., *Acting*.

THE HONOURABLE THE SECRETARY FOR CHINESE AFFAIRS

MR. JOHN CRICHTON MCDOUALL, *Acting*.

THE HONOURABLE THE FINANCIAL SECRETARY

MR. ARTHUR GRENFELL CLARKE.

THE HONOURABLE THEODORE LOUIS BOWRING, O.B.E.

*(Director of Public Works).*

DR. THE HONOURABLE YEO KOK CHEANG

*(Director of Medical and Health Services)*

THE HONOURABLE DOUGLAS JAMES SMYTH CROZIER.

*(Director of Education).*

THE HONOURABLE KENNETH MYER ARTHUR BARNETT, E.D.

*(Chairman, Urban Council).*

THE HONOURABLE CHAU TSUN-NIN, C.B.E.

THE HONOURABLE LEO D'ALMADA E CASTRO, Q.C.

THE HONOURABLE MAURICE MURRAY WATSON.

THE HONOURABLE CHARLES EDWARD MICHAEL TERRY.

THE HONOURABLE NGAN SHING-KWAN

THE HONOURABLE HUBERT JOHN COLLAR, C.B.E.

THE HONOURABLE KWOK CHAN.

MR. RONALD THOMPSON *(Deputy Clerk of Councils)*

**ABSENT:**

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

**MINUTES.**

The Minutes of the Meeting of the Council held on 20th August, 1952, were confirmed.

**PAPERS.**

THE ACTING COLONIAL SECRETARY, by command of His excellency the Officer Administering the Government, laid upon the table the following papers:—

<i>Subject</i>	<i>G.N. No.</i>
Sessional Papers, 1952:—	
No. 10—Annual Report by the Director of Marine for the year 1951-52.	
No. 11—Annual Report by the Postmaster General for the year 1951-52.	
No. 12—Annual Report by the Director, Royal Observatory for the year 1951-52.	
No. 13—Annual Report by the Quartering Authority for the year 1951-52.	
No. 14—Annual Report by the Commissioner of Police for the year 1951-52.	
The Royal Hong Kong Defence Force Ordinance, 1951.	
The Force Headquarters (Amendment) Regulations, 1952 .....	A. 137
The Royal Hong Kong Defence Force Ordinance, 1951.	
Determination by the Governor .....	A. 138
The Defence (Finance) Regulations, 1940.	
The Possession of Gold (Goldsmiths) (Amendment) (No. 4) Order, 1952 .....	A. 139
The Quarantine and Prevention of Disease Ordinance, Chapter 141.	
Declaration under section 18 .....	A. 140
The Stamp Ordinance, Chapter 117,	
The Stamp (N.T.) (Exemption and Modification) Regulations, 1952 .....	A. 141

<i>Subject</i>	<i>G.N. No.</i>
The New Territories Ordinance, Chapter 97.	
The Land Office (N.T.) Fees (Amendment) Rules, 1952 .....	A. 142
The Public Order Ordinance, Chapter 245.	
The Military Installations Closed Areas (Amendment) Order, 1952 .....	A. 143
The Emergency (Defence Areas) Regulations, 1951.	
The Emergency (Defended Areas in Particular Localities) (Amendment) Declaration, 1952 .....	A. 144

## **THE WIDOWS AND ORPHANS PENSION ORDINANCE,**

### **CHAPTER 94.**

THE ATTORNEY GENERAL moved the following resolution:—

Resolved that, pursuant to the power conferred by section 3 of the Widows and Orphans Pension Ordinance, Chapter 94, the proposed regulations in the Schedule attached, be approved.

He said: Sir, by Ordinance No. 4 of 1948 assented to on 29th January in that year, section 3 of the Widows' and Orphans' Pensions Ordinance which denned the word "officer" for purpose of contribution, etc. was repealed because it was obsolete in relation to the revision of salaries and conditions of service, and it was replaced by the present section 3 which gives power for Regulations to be made prescribing the persons to whom the term "officer" in the Ordinance should apply, with retrospective effect to a date not earlier than 1st January, 1947. The regulations before Council to-day are the regulations envisaged and they are intended to regulate the meaning of "officer" for the purposes of the Ordinance.

The basis on which these Regulations have been drafted is that generally speaking all male officers serving on pensionable terms or on probation on salaries of \$200 per month and upwards (that is, officers in Classes I, II and III as denned by General Orders) should be included within the scope of the Ordinance; in addition the Governor and his staff are included if they were contributors under the Ordinance before or in the case of the staff also if they hold pensionable post entitling them to contribute. Provision is made by regulations 2 and 3 for officers serving on agreement for 3 years or more to exercise an option, which is to be irrevocable, for membership of the scheme.

The provision for an option by officers serving on agreement is unusual but the conclusion has been reached that only by this means is it possible to meet the cases both of the officer on agreement who expects to serve for one or two tours only and is unlikely to wish to enter the scheme, and of the officer who hopes to continue in service on agreement for a considerable period, and wishes to join the scheme. The Colonial Office has been consulted and sees no objection to this suggestion, provided that the option is irrevocable.

Certain officers serving on permanent terms in Class III posts in the Police and Prisons Departments and officers serving on probation for a period of less than three years have not been contributing to the scheme owing either to previous special provisions, since repealed, which earlier applied to them, or to uncertainty as to the application of the present Ordinance in the absence of Regulations defining the word "officer" under section 3. It is not considered that these officers should now be required to contribute retrospectively to 30th January, 1948; but since their not having contributed from that date is due to delay in settling the basis for contribution, it appears reasonable that they should be enabled to contribute retrospectively to that date if they so wish. Provision is made accordingly in the proviso to regulation 4.

THE ACTING COLONIAL SECRETARY, seconded, and the Motion was carried.

### **COMPANIES (AMENDMENT) BILL, 1952.**

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Companies Ordinance Chapter 32." He said: Sir, I would like to make a few observations in amplification of the Objects and Reasons. As paragraph 4 of the Objects and Reasons states, the primary object of this Bill is to vest in a statutory body the powers and jurisdiction over authorized auditors now exercised by the Governor in Council.

This body will be a Board consisting of the Registrar of Companies as Chairman, the Accountant General, a Legal Adviser and six other members appointed by the Governor. It will be noted that five of these are to be authorized auditors, that is to say, that there will be a majority on the new Board of the profession itself.

There has been some discussion with the Society of Chinese Accountants and Auditors, the Association of Chartered Accountants in Hong Kong, the Society of Incorporated Accountants and Auditors and also the Association of Certified and Corporate Accountants, as to the composition of the Board. All these Societies were in favour of what I might perhaps not inappropriately term an unofficial majority on the Board.

Not all, however, were in agreement with the suggestion that the Board should be composed in the precise manner now provided for by the Bill. One Society pressed Government to state in the Bill that of the five authorized auditors one at least should be a member of the particular Society in question. Another Society suggested that in making appointments Government should consider not only the members of each Society practising in the Colony but also the experience of such persons and base its appointments accordingly. At the same time, Government should not overlook the fact that some Societies were, as regards the number of members, very much in a minority position. This seems not unreasonable and although I do not propose to bind Government by any undertaking it will, I think, be found to be the basis upon which Government will act in making these appointments.

Moreover I think I can also state that in practice three of these authorized auditors will be auditors whose names appear in Part I of the list who are, that is to say, authorized to audit accounts in English; and two will be auditors selected from those who are in Part II of the list and who are authorized to audit accounts in Chinese.

I invite attention also, Sir, to the fact that the Bill makes provision in section 131 (B) for reference in the first instance to a Penal Cases Committee. This is a new departure in Hong Kong but is based upon similar provision made for medical practitioners in the United Kingdom. The advantage of a Penal Cases Committee is that it enables the question as to whether there is a *prima facie* case to be determined by such Committee, thus enabling the other members of the Board who actually hear the case to bring an impartial mind to bear thereon.

I would like to say a word about the legal adviser. The Registrar General who is Chairman will, of course, have legal qualification but he will not be on the Penal Cases Committee and it is thought advisable that there should be a legal adviser on such Committee and also that in certain cases he should present

the case before the Board. The experiment of having a legal adviser on boards of this character has been tried with success in the case of the Medical Board. In that case the legal adviser is a member of one of our most distinguished firms of solicitors in the Colony and no charge is made for the services rendered. It is hoped that a similar arrangement can be made in the case of the Board constituted by this Bill.

Further provision to which I invite the attention of Council is that relating to appeal. See the new section 131 (F) introduced by clause 3 of the Bill from which it will be noted that appeal lies to the Full Court. This again is an innovation in Hong Kong so far as regards boards of this character but it has been tried with success in other Colonies, notably Nigeria.

I would not be doing justice to the importance of this Bill if I did not say that in making the innovation to which I have referred, Government has not only had regard to the wishes of the professional bodies concerned, but hopes that if the experiment proves successful it will provide a precedent for similar cases and lead to corresponding amendments in other provisions of law.

THE ACTING COLONIAL SECRETARY seconded, and 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 make various amendments to the Companies Ordinance (Cap. 32) (the principal Ordinance).

2. Section 131 of the principal Ordinance stipulates that every company shall appoint an auditor at the annual general meeting. Such auditor is responsible for the performance of various duties imposed by the Ordinance—for example, examination of books of account, reporting on accounts-examined by him and on balance sheets.

3. Subsection (3) of section 131 permits the employment only of such auditors as are authorized for this purpose by the Governor in Council. A list of these auditors must be published annually, the list being in two parts, the first part containing the names of auditors who may audit accounts kept in English and the second part the names of those who may audit accounts kept in Chinese. The Governor in Council may remove from the list the names of auditors who have ceased to practise in the Colony and any auditor whom he finds unfit or unsuitable to continue to be authorized.

4. The primary object of this Bill is to vest the responsibility for deciding who is fit to be an authorized auditor in a Board consisting of the Registrar of Companies (Chairman) the Accountant General, a Legal Adviser and six other members to be appointed by the Governor of whom five shall be authorized auditors. The new sections 131A—131G introduced by clause 3 of the Bill are modelled upon sections 20-27 of Chapter 130 of the Laws of Nigeria which deals with Medical Practitioners and Dentists, save that provision is made for a Penal Cases Committee to which is entrusted the duty of considering whether a *prima facie* case exists for holding an inquiry. The main object of having a Penal Cases Committee is to facilitate observance of the rules of natural justice, in that the Board holding the inquiry will bring a fresh and impartial mind thereto and will not have seen any documents other than those produced at the inquiry.

5. Clause 2 of this Bill repeals and replaces subsection (3) of-section 131 of the principal Ordinance. Paragraph (a) places the responsibility for maintenance of the list of authorized auditors upon the Registrar of Companies. The list is to be kept as heretofore in two parts (paragraph (b)) and is to be published annually in the *Gazette* (paragraph (c)) and the present provisions as to appointment by companies of appropriate authorized auditors are also retained (paragraph (d)). The new list will contain all the names upon the present list (paragraph (e)) but further entries can only be made if the applicant satisfies the Board of his professional qualifications, experience and competency, and as to his character and reputation see subsection (1) of the proposed new section 131B. Erasure of names from the authorized list is provided for in subsection (3). This permits the Board to direct the erasure of the name of any authorized auditor who the Board is satisfied has been convicted of an offence punishable with imprisonment or has been censured by any judicial or other competent authority in relation to his professional conduct or has been guilty of professional misconduct.

6. Provision has been made for a number of connected matters by sections introduced by clause 3 of the Bill. Thus section 131C gives power to the Board to hear evidence on oath and compel the attendance of witnesses while section 131D gives the Board power to make rules regulating the procedure of inquiries and provides for legal representation of a complainant and the auditor against whom an allegation has been made. Section

131E provides for service upon the auditor of the directions or orders of the Board and section 131 F for appeals therefrom to the Full Court. Section 131G provides for restoration to the list in the discretion of the Board of the name of an auditor whose name had been ordered to be permanently removed.

7. A proposed new section 131H makes it an offence for a person falsely to pretend to be an authorized auditor: this provision is included for the protection of the profession and the public against persons whose names having been erased from the list have continued to hold themselves out as authorized auditors.

8. Section 250 of the principal Ordinance provides that upon the winding up of a company, certain debts shall be paid in priority to others. Included amongst the preferential creditors are clerks and servants of and labourers and workmen employed by the Company, who are granted preferential treatment in respect of wages and salary earned. The law however limits the amounts of the wages and salary which rank for preferential treatment to sums earned over a period of four months, not exceeding three hundred dollars in the case of a clerk or servant of the company and one hundred dollars in the case of a labourer or workman. It is considered that these sums which were introduced by the Companies (Amendment) Ordinance, 1933, no longer correspond with the earnings of employees over a four months' period. Clause 4 of the Bill therefore amends section 250 of the principal Ordinance by substituting the sum of three thousand dollars in both cases which is nearly equivalent to the sum of £200 sterling allowed in the United Kingdom.

## **SECRETARY OF STATE FOR AIR (VESTING OF LANDS)**

### **BILL, 1952.**

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to provide for vesting all lands and interests in land and the benefit and burden of contracts and covenants concerning land or such interests therein in successive holders of the office of Secretary of State for Air on behalf of the Crown and for other related matters." He said: Sir, I have little to add to the Objects and Reasons except to say that following recent acquisition of property in Hong Kong by the Royal Air Force, it was discovered that the assignment would have to be made to the Secretary of State for Air by his personal name and that there was no provision of law whereby such property would automatically become vested in his successor.



Representations were accordingly made to this Government by the Air Ministry through the Secretary of State for the enactment of a Bill in the form before Council and it is considered reasonable to meet this request.

THE ACTING COLONIAL SECRETARY seconded, and the Bill was read a First time.

*Objects and Reasons.*

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

By Chapter 193 and Chapter 203 provision is made respectively for the vesting of Admiralty property and War Department property in the Admiralty Commissioners and the Secretary of State for War respectively and in their successors in office from time to time. The present bill makes similar provisions with regard to the Secretary of State for Air in respect of property acquired or to be acquired by the Air Ministry.

**SOCIETIES (AMENDMENT) (NO. 2) BILL, 1952.**

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance to amend the Societies Ordinance, Chapter 151." He said: Sir, this is a short amending Bill which is considered necessary to amend two defects in the drafting which occurred in the amending Ordinance enacted earlier this year.

THE ACTING COLONIAL SECRETARY seconded, and the Bill was read a First time.

*Objects and Reasons.*

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

1. Section 4 of the Societies (Amendment) Ordinance, 1952, amended the Societies Ordinance (Chapter 151) to constitute "the paying money or giving any aid to or for the purposes of an unlawful society" an offence under the principal Ordinance. In error the word "money" was accidentally omitted and the purpose of clause 2 of the Bill is to repair this omission.

2. Section 6 of the amending Ordinance added to section 14 of the principal Ordinance a new subsection based upon section 7(2) of the Societies Ordinance, 1920. This new subsection is

considered to be open to criticism in that it raises a presumption merely upon reasonable cause for suspicion that the place where a person was found was being used by or for the purposes of an unlawful society and also because the presumption was not limited to membership of the particular society suspected of using the premises. The subsection has therefore been re-drafted to provide that only upon proof that a place was being used by or for the purposes of an unlawful society shall it be presumed that a person found therein was a member of such society.

### **GIRL GUIDES ASSOCIATION (HONG KONG BRANCH)**

#### **(AMENDMENT) BILL, 1952.**

HON. C. E. M. TERRY moved the First reading of a Bill intituled "An Ordinance to amend the Girl Guides Association (Hong Kong Branch) Ordinance, Chapter 283." He said: Sir, the purpose of this Bill, is clearly set out in the Objects and Reasons and I do not think they call for any elaboration.

HON. KWOK CHAN seconded, and the Bill was read a First time.

#### *Objects and Reasons.*

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

A new constitution has been adopted by the Hong Kong Branch of the Girl Guides Association. This provides *inter alia* for the appointment of a deputy colony commissioner. The Bill therefore adds the deputy colony commissioner to the officials incorporated by the principal Ordinance.

### **ADJOURNMENT.**

H.E. THE OFFICER ADMINISTERING THE GOVERNMENT:—That concludes the business for to-day, Gentlemen. When is it your pleasure that we should meet again?

THE ATTORNEY GENERAL:—In two weeks' time, Sir.

H.E THE OFFICER ADMINISTERING THE GOVERNMENT:—Council will adjourn to this day fortnight.