OFFICIAL REPORT OF PROCEEDINGS

Meeting of 16th September 1964

PRESENT:

HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)

SIR DAVID CLIVE CROSBIE, TRENCH, KCMG, MC

HIS EXCELLENCY LIEUTENANT-GENERAL SIR DENIS STUART SCOTT O'CONNOR, KBE, CB

COMMANDER BRITISH FORCES

THE HONOURABLE EDMUND BRINSLEY TEESDALE, CMG, MC

COLONIAL SECRETARY

THE HONOURABLE MAURICE HEENAN, QC

ATTORNEY GENERAL

THEHONOURABLE JOHN CRICHTON McDOUALL

SECRETARY FOR CHINESE AFFAIRS

THE HONOURABLE JOHN JAMES COWPERTHWAITE, CMG, OBE

FINANCIAL SECRETARY

THE HONOURABLE KENNETH STRATHMORE KINGHORN

DIRECTOR OF URBAN SERVICES

THE HONOURABLE WILLIAM DAVID GREGG

DIRECTOR OF EDUCATION

THE HONOURABLE JAMES JEAVONS ROBSON

ACTING DIRECTOR OF PUBLIC WORKS

THE HONOURABLE DAVID RONALD HOLMES, CBE, MC, ED

DIRECTOR OF COMMERCE AND INDUSTRY

THE HONOURABLE JAMES TINKER WAKEFIELD

DISTRICT COMMISSIONER, NEW TERRITORIES

THE HONOURABLE KENNETH WALLIS JOSEPH TOPLEY

COMMISSIONER OF LABOUR

THE HONOURABLE DHUN JEHANGIR RUTFONJEE, CBE

THE HONOURABLE FUNG PING-FAN, OBE

THE HONOURABLE RICHARD CHARLES LEE, CBE

THE HONOURABLE KWAN CHO-YIU, OBE

THE HONOURABLE FUNG HON-CHU

THEHONOURABLE TANG PING-YUAN

THE HONOURABLE TSE YU-CHUEN, OBE

TREHONOURABLE KENNETH ALBERT WATSON, OBE

THE HONOURABLE WOO PAK-CHUEN, OBE

THE HONOURABLE GEORGE RONALD ROSS

THE HONOURABLE JAMES DICKSON LEACH, OBE

THE HONOURABLE SZETO WAI

MR ANDREW McDONALD CHAPMAN (*Deputy Clerk of Councils*)

ABSENT:

DR THE HONOURABLE TENG PIN-HUI, OBE

DIRECTOR OF MEDICAL AND HEALTH SERVICES

THE HONOURABLE KAN YUET-KEUNG, OBE

MINUTES

The Minutes of the meeting of 2nd September 1964, were confirmed.

OATHS

MR K. W. J. TOPLEY took the Oath of Allegiance and assumed his seat as a Member of the Council.

PAPERS

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

Subject	*LN No*
Sessional Paper, 1964: —	
No 29—Annual Report by the Administrator of Japanese Property for the year 1963-64.	
No 30—Third Annual Report by the Social Work Training Fund Trustee for the period ending on 31st March, 1964.	
No 31—Annual Report of the Accountant General with the Accounts of the Colony for the year 1963-64.	
No 32—Annual Report by the Director of Information Services for the year 1963-64.	
No 33—Annual Report by the Community Relief Trust Fund Trustee for the year ending on 31st March, 1964.	
Review of Policies for Squatter Control, Resettlements, and Government Low-Cost Housing, 1964.	
Buildings Ordinance, 1955.	
Building (Administration) (Amendment) Regulations, 1964	136
Registration of Persons Ordinance, 1960.	
Registration of Persons (Re-registration) (No 31) Order, 1964	138

QUESTIONS

MR WOO PAK-CHUEN, pursuant to notice, asked the following questions: —

Sir, what steps has Government taken with regard to the accumulation of refuse in the streets thereby endangering the public health of the Colony?

MR K. S. KINGHORN replied as follows: —

Sir, the difficulties facing the Urban Services Department in clearing refuse from the streets have been aggravated by the two recent typhoons, but they arise from two main causes.

First, there has been, during the past six months, a steady decline in the number of workers available in the Cleansing Division of the Department. There are now 294 vacancies in an approved establishment of 3,120, i.e., the staff deficiency is approximately 10 per cent. Against this, the amount of refuse to be collected continues to increase at an average of 12 per cent a year. It is now 1,400 tons a day. The serious shortage of cleansing staff was made known to Government some time ago and the matter is, I understand, receiving close attention.

Second, there have been difficulties as regards the operational adequacy of vehicles, due partly to the high rate of increase of refuse but largely to a high rate of vehicle breakdowns. The latter has been particularly prevalent in Kowloon, where refuse collection vehicles have to cope with rough tracks over the Gin Drinkers Bay dump. A severe strain has, in consequence, been thrown upon the servicing and repair facilities provided by my honourable Friend, the Director of Public Works. This matter is also receiving attention and a proposal has been made to Government for the introduction of a system whereby refuse collection vehicles could be serviced and repaired at night as well as in the daytime. This would make available an increased number of vehicles during the day, when the bulk of refuse is collected.

Steps taken by the Urban Services Department to overcome the present labour difficulties are as follows. Vacancies in the cleansing service have been advertised in the local Press and through the Public Enquiry Service and the Labour Department's Employment Information Bureau. In addition, pamphlets telling of the vacancies have been distributed in resite areas. By inviting serving labourers to work overtime on their day off and reducing the effective leave reserve it is hoped that it will be possible to offset the effect of most of the present vacancies, but this is a short-term expedient and the initial response has not been encouraging. To overcome a labour shortage at Gin Drinkers Bay dump, which has had a direct effect on the speed of off-loading the barges and therefore on refuse collection generally on the island, approval was sought

for an increase in the special allowance paid to the dump labourers. An increase in the allowance from $15 to $45 a month has now been authorized with effect from 1st September. The Urban Services Department and the Urban Council have made a thorough and careful assessment of vehicle requirements for refuse collection for the next financial year and a request for the inclusion of 29 vehicles in the estimates was recently forwarded to Government. New vehicles approved for the current financial year are expected to start arriving early in December, that is, in approximately three months' time.

While the daily time-table for refuse collection may be upset by the present difficulties, the greater part of any day's collection is cleared during that day and any small quantities left at the end of the afternoon are cleared the same evening. In recent weeks some accumulations of discarded boxes and crates have been left for 24 hours or more at the collection points. These do not, however, constitute a health risk and they are now being removed with the use of hired lorries and staff from the special cleansing and street washing gangs who have been diverted temporarily from their normal duties.

MR WOO PAK-CHUEN further asked: —

(*a*) Is Government aware of the large number of illegal off-course bettings in Hong Kong?

(*b*) Is it impossible to supress them? and

If the answers to (*a*) and (*b*) are in the affirmative will Government take steps to legalize off-course bettings and put the same under proper control as in England?

THE COLONIAL SECRETARY replied as follows: —

Yes, Sir, Government is aware that considerable illegal off-course betting takes place, but as the law stands at present successful prosecutions are not easy to obtain.

The issues raised in the third paragraph of my honourable Friend's question are wide ones needing careful consideration, and Your Excellency has authorized me to say that a decision has already been taken to appoint a representative committee with wide terms of reference to advise both on policy and on the revision of the law. The Committee will be invited to advise, as a matter of priority, whether

off-course totalisator betting should be legalized. The full terms of reference of the Committee and its composition will be announced shortly.

MR SZETO WAI, pursuant to notice, asked the following questions: —

The use of bamboo scaffolding in building construction in the Colony has from past experience proved to be unsatisfactory and a source of danger in times of typhoons, resulting in injury and loss of life, damage to property and blockage of roads. In view of the intensive building activities going on at present involving the construction of many tall buildings, would Government consider limiting the height of such scaffolding or its use only to building sites not abutting roads with heavy pedestrian and vehicular traffic?

MR J. J. ROBSON replied as follows: —

Sir, if properly erected and secured, bamboo scaffolding is probably as good as, if not better, than other systems. When collapses occur they are usually due to the inadequate manner in which the scaffolding is secured to the building. In most of these cases, had this point been properly checked, the collapse could have been avoided but of course it is difficult to design and erect temporary structures to withstand typhoon winds.

The only practical alternative to bamboo scaffolding is metal tubing of one type or another. However, to be safe, such scaffolding must also be properly secured to the building. If this is not done it will collapse and when this occurs, the time and labour required to remove it is infinitely greater than with bamboo scaffolding. The disadvantages of metal scaffolding vis-a-vis bamboo was well illustrated in 1958 when scaffolding was erected to the full height of two buildings which were opposite each other on Nathan Road. Both buildings were around 150 ft. high and one scaffolding was metal and the other bamboo. High winds arose and the metal scaffolding collapsed entirely blocking one half of the road. The bamboo scaffolding remained in position. It took several days of continuous work, including the use of acetylene torches to clear the metal scaffolding.

In other words, the safety of any scaffolding depends upon the care with which it is erected. Bearing this in mind, as well as the important role which bamboo scaffolding plays in the Colony's building industry and the limited local experience in the use of other forms of scaffolding, I am unable to support my honourable Friend's suggestion for limiting the height to which bamboo scaffolding should be used.

MR SZETO WAI: —The present Building Regulations only require hoardings and covered walkways to be erected at construction sites abutting public roads with little additional means of protection to pedestrians and vehicles from debris falling from great heights which can be a source of danger. Would Government consider introducing stricter measures requiring the provision of protective screens such as wire-netting and canvas for all new building works in progress? This additional measure, apart from effectively abating danger and dust nuisance, will improve the appearance and cleanliness of the streets.

MR J. J. ROBSON, replied as follows: —

Sir, Planning Regulation No. 60 of the Buildings Ordinance, 1955 requires the erection, during the carrying out of building works, of such hoardings, covered walkways, and gantries—"as may be necessary for the safety and convenience of passers-by in the street, occupiers of adjoining premises, or any workmen employed on the work". It is therefore the duty of building contractors to ensure that building works are carried out in such a manner as to eliminate the dangers referred to in the passage I have just quoted and, in my opinion, it would be undesirable to define too closely how this should be done. The building industry must depend upon the skills of its workmen, efficient site management and control by the Architect, to achieve practical safety precautions and not upon a detailed operating manual.

I am aware that in other countries use is made of wire-netting and canvas to screen buildings during construction. My honourable Friend's suggestion therefore may well be worthy of further consideration in Hong Kong, although there is a risk these materials could become dangerous during a typhoon and add to the debris in the streets. I have, accordingly, arranged to pass my honourable

Friend's suggestions to the Building Contractors Association and the Society of Builders for the consideration of their members and I am sure that Authorized Architects of the Colony will also give them serious consideration.

MR SZETO WAI: — The manner in which large neon signs and other signboards are erected over some of the Colony's thoroughfares, projecting a considerable distance over the roadways, is not only a discredit to the streets themselves but causes undesirable distraction to motorists and constitutes obstructions to fire-fighting. In view of their inherent danger to public safety, especially in times of typhoons, would Government exercise firmer control over the installation of these signboards?

MR K. S. KINGHORN replied as follows: —

Sir, work has been proceeding in the Urban Council for some considerable time on the replacement of the Advertisements By-laws, but powers already exist under the Public Health and Urban Services Ordinance for the Council to take action when the Building Authority or the Director of Fire Services certifies that an advertisement sign is dangerous or a fire hazard. Under the existing by-laws, the Urban Council also has powers to take action when it is considered that any advertisement disfigures the natural beauty of any scenery or affects injuriously the amenities of any locality.

There are specific provisions in the by-laws relating to neon signs; amongst other things these require persons to notify the Director of Fire Services when they propose to erect neon signs and confer upon the Director of Fire Services power to require the removal of any sign which he thinks represents a source of serious risk of fire. The circumstances envisaged in the question are therefore already covered, except possibly distraction to motorists.

The Fire Services and Public Works Departments and the Police Force will be consulted with a view to seeing whether any appropriate action can be taken at this time in respect of dangerous signs, but it would be of assistance if specific instances of advertisements with the disadvantages described in the question could be brought to the notice of the Urban Council or the Director of Fire Services or the Building Authority.

REVIEW OF POLICIES FOR SQUATTER CONTROL, RESETTLEMENT AND GOVERNMENT LOW-COST HOUSING, 1964

THE COLONIAL SECRETARY moved the following resolution: —

> Resolved that the White Paper entitled "Review of Policies for Squatter Control, Resettlement and Government Low-Cost Housing, 1964" be accepted as a general guide to future policy.

He said: Sir, when a mountaineer is making a steep and arduous ascent, he is more inclined to look upwards at the difficulties of the way ahead than to stop and look back at all the obstacles and dangers he has already surmounted and which now lie behind him. So in Hong Kong, after a decade of strenuous effort, we are still looking upwards towards our own goal of solving the seemingly continuous squatter problem, and we may tend, like the mountaineer, to forget or to discount the striking and conspicuous progress we have already made.

The statistics speak for themselves; by the 31st July this year 575,000 people resettled in 294 multi-storey blocks in 17 estates; 81,000 people resettled in 14 cottage areas; 26,500 people living in 42 Government low-cost housing blocks; and average building rate of 2½ multi-storey resettlement blocks completed every month; a total capital expenditure so far on all this work of about $400 million; 93 further resettlement blocks and 14 further low-cost housing blocks providing space for a further 330,000 people, now under construction; a Resettlement Department whose recurrent expenditure on the management of resettlement estates has risen from virtually nil in 1954 to $12 million in 1964, with the percentage of resettlement rents that cannot be collected running at a present rate of .002% of an annual rent roll of some $25 million. The world at large may not be aware of these exact figures, but wherever Hong Kong is mentioned it evokes some reference to our achievements in resettlement housing. We who live here on the other hand have, perhaps, less time for self-congratulation because we are far more conscious than the world outside of the enormous task in this field which, despite our past achievements, still remains to be tackled. Even so, it is, I believe, timely for us too, before we prepare ourselves for further, even more strenuous, efforts, to take pride once again in reminding ourselves of the very striking results which we have already achieved and of the fact that this has been done, to all intents and purposes, at our own expense and by our own unaided efforts.

I turn now, Sir, to the subject matter of the White Paper which has been placed before Council today. This paper is designed to serve as a general guide for future action on Squatter Control, Resettlement and Government low-cost housing. It proposes programmes for building

over the next six years and, looking yet further ahead to 1974, figures at which we ought to aim in resettlement and low-cost housing and which, if we adopt them as targets now, will serve to guide us in the preliminary planning for such building. It is essential to have these target figures if we are to ensure that formed sites and other essential services are available in time to meet the building programmes. In the past we have not succeeded, for a number of reasons, in resettling the 100,000 persons a year which was our annual target after 1959, although we are catching up now. The Working Party, to which I shall be referring later, suggested that this figure be raised to 130,000 a year and the Urban Council advocated that it be set yet higher at 150,000. We have decided to go for the more ambitious figure, in the expectation that, provided we plan far enough ahead and start planning now, and provided, of course, we can make the money available, we shall succeed in achieving it. It is intended that these programmes and targets should be reviewed annually by Your Excellency with the Executive Council, and each review should project our work forward by another year.

I have dealt first with future plans for building because of the exceptionally heavy financial and other commitments which they imply. The combined 6 year building programmes for resettlement and Government low-cost housing alone involve the construction of homes for the re-accommodation of 1,070,000 adults at an estimated cost of $963 million, or about 2/3rds of the total estimated expenditure or revenue during the current financial year. The combined planning targets, although not representing an immediate financial commitment, do constitute a possible outlay of over $2,000 million, or 50% more than the total estimated expenditure or revenue for the current financial year. Recurrent costs also show a corresponding marked increase, rising from about $12 million in 1964 to an estimated $36 million by 1970 and $60 million by 1974.

These are truly formidable quantities of expenditure by any standard and I feel that it is appropriate that they should be kept in the forefront of our minds during the discussion of all aspects of this White Paper. As I need hardly remind my honourable Friends, expenditure on this scale also implies that we shall be able to recruit and train, where necessary, the many additional staff needed both to build and to run the new estates now proposed; and that we must find larger areas of land on which to establish the new towns with their public and other essential facilities of which these estates must form an integral part.

These new proposals have not been drawn up without very considerable heart-searching, investigation and discussion. They derive in the first place from the general anxiety expressed over the past two years as to whether we were effectively keeping pace with the growth of a population swollen by immigration and natural increase, or taking due account of the effects of the demolition and redevelopment of older

tenement properties and the consequent displacement of the large numbers of families which they housed. Squatter control, in particular, has run into increasing difficulties and criticism in trying to contain the growing number of illegal but persistent squatters on Crown land on both sides of the harbour. For these reasons on 1st June 1963, Your Excellency's predecessor appointed a Working Party with comprehensive terms of reference to review the whole situation. My honourable Friends have already received copies of the report of this Working Party. It is being released to the press today and a number of copies placed on public sale. The White Paper, which is in both English and Chinese, includes excerpts from the Report and a full summary of the Working Party's recommendations.

I should like to take this opportunity, Sir, of placing on public record Government's appreciation of the hard work which the Working Party devoted to fulfilling their difficult task. In particular I should like to single out the contribution of my honourable Friend, the Secretary for Chinese Affairs, as Chairman of the Working Party, and of the four representatives of the unofficial members of the Urban Council. I would also like to express here the Government's thanks for the Urban Council's own constructive comments on the Working Party's recommendations, which are also being published today.

Hong Kong is indebted to the Working Party for its Report, and although it has been necessary to subject its recommendations to very close and intensive scrutiny, it will be clear from the White Paper that it has been possible to endorse the great majority of its recommendations and that, as I shall hope to show later in my remarks, any modifications that are now put forward are based upon weighty and substantial grounds.

I have already stressed the magnitude of the building programmes which the White Paper envisages. Construction of resettlement and low-cost housing on this scale can only be justified if we do all we can to ensure that further indiscriminate squatting is strictly controlled and that people who genuinely have no place to live can be given sites for erecting huts in areas which are not required for early development or which are insufficiently attractive to draw other families from existing accommodation elsewhere.

The Resettlement Department has already put in hand an extensive re-organization of its Squatter Control division, with the basic aim of ensuring that patrols will be able to visit and inspect every week all the temporary structures already tolerated in their patrol areas. For families whom the Commissioner for Resettlement accepts as genuinely homeless, sites are to be provided in what we suggest should be called Licensed Areas and admission will be conditional on the payment of a small monthly licence fee. Water and other minimum essential services

will be supplied wherever possible and these areas will be under the control of the Resettlement Department. This system of Licensed Areas has been devised to replace the present informal arrangements whereby the Commissioner administers a number of so-called "resite" areas without proper statutory authority.

The Working Party itself envisaged somewhat similar arrangements in the form of "permitted areas" but, as explained in the White Paper, Government has found itself unable to agree with the concept that these areas should be based initially upon existing clusters of "tolerated structures", which are too haphazardly arranged for proper administration and control, are generally in areas required for early development, have insufficient space for the allocation of a large number of additional hut sites, and may prove too attractive to families who are not genuinely homeless.

There is no basic difference of objective here, only of the means of achieving it. Government accepts the Working Party's assessment that the pressures which drive people to squat are such that it is no solution simply to resist them without providing some legitimate and controlled outlet. But, in Government's view, the Working Party's solution went too far towards offering to all who cared to avail themselves of it the right to squat on certain areas of Crown land. This could be dangerous both in principle and in practice. This may not have been the Working Party's intention, but their proposal appeared to offer free access into certain areas to all, without discrimination, who wished to go, and subject only to some control over the size and location of their huts. Whether such control could be enforced if access were open to all is a matter for conjecture. In law it would seem to establish squatters' rights for those who took advantage of it and might preclude their eventual clearance and resettlement. The more immediate risk is that the areas into which intending squatters would be permitted to move might soon become the densely packed conglomeration of huts which gave rise to the disastrous fires of the 1950s. If, on the other hand, this situation were to be prevented by strict control of the size and positioning of the huts built by the new entrants, the Commissioner for Resettlement advises that the present areas containing tolerated squatter structures are generally not large enough to admit the great numbers likely to take advantage of this offer of free squatting—not, that is, without incurring the fire and health hazards which it has been the aim of squatter control policy for so many years to prevent and eliminate. It has therefore seemed advisable to Government to seek new areas, separate and clearly distinguished from those in which clusters of illegal huts have grown up over the years, and establish them as places where those who are genuinely homeless may be permitted, under licence and under control, to put up their huts. One appreciates the Working Party's concern for the fact that the large

population in existing tolerated structures had no legal occupation rights, but we believes that the hardship arising from this situation is more theoretical than real, particularly in view of the substantial number of tolerated structures due for clearance in the next few years. For all these reasons we prefer the new concept of Licensed Areas. They will absorb a portion of existing "resite" areas and their establishment will be accompanied by a strict containment of existing tolerated structures by the re-organized squatter patrols to which I have just referred.

It would be wrong to suppose that these new measures will not present serious problems of their own, not least because of the need to find enough sites in areas unsuited for early development and the capital outlay involved in making such sites habitable. But we believe that there is no other workable alternative which does not involve a similar expenditure of money and does not give rise to other serious legal and practical difficulties. We are determined, if the White Paper is acceptable to this Council, to take all possible steps to ensure that these new measures succeed.

Apart from drawing attention to the need to provide for people who are homeless but have no early entitlement for resettlement, the Working Party performed a very useful service in seeking to arrange in priority the various groups of people who they felt now deserve to be given early resettlement. As explained in the White Paper, Government has felt it necessary to make some variations in this list, but it is the intention that the priorities assigned to the six categories listed in the White Paper should be followed as closely as possible, subject only to giving the Commissioner for Resettlement a limited discretion to vary priorities to meet his operational needs in unforeseeable circumstances. I might also mention here that the priority list has also been adapted to include, with the support of the Urban Council, a new category covering the tenants of overcrowded resettlement rooms, full information about which was not available to the Working Party itself.

I now want to refer to two particular categories included in the Working Party's original priority list, namely the tenants of dangerous buildings which have been closed and the former tenants of excluded premises.

Government is at one with the Working Party in believing that resettlement accommodation should, if possible, be made available to those who suddenly lose their homes when the buildings of which they are tenants become dangerous and are closed by Court Order. The Working Party advised that such people be resettled, if they wish, provided in due course they surrender to Government such compensation as they may later receive under the Ordinance. These suggestions merit support; those who are suddenly deprived of a home deserve

special consideration; equally, since the law provides that in most cases they will receive compensation for their disturbance, Government agrees that they can and should make some immediate contribution to the cost of their rehousing. But the Working Party proposed a method which though appearing to be simple and straightforward, is likely, in Government's view, to prove complicated and not entirely equitable. It must be appreciated that in many instances landlords and tenants come to verbal agreement as to compensation and where they do, compensation will not be determined and recorded by a Tribunal. This is likely to become increasingly the practice, not only with dangerous buildings but also with those excluded under the Landlord and Tenant Ordinance. As to dangerous buildings, administrative arrangements now in hand will, I hope, result in speedier agreement between landlord and tenant and speedier payment of at least part of the compensation due to the latter. Government's proposal, therefore, is that those who opt for resettlement should first make a down payment fixed by, and related to, the size of the family and the cost of the new accommodation provided, but not to the amount of the compensation received; for this in many cases will be difficult if not impossible to determine. Sums paid by tenants resettled from dangerous buildings will be regarded, however, not as a capital sum but as an advance of rent, and will be refunded over a period of years by deductions from the rent they will be paying for their resettlement rooms. In a sense, therefore, the method advocated in the White Paper is more generous than that proposed by the Working Party, and we believe it will also be more equitable and more simple to operate.

The advantage of this scheme, is that it is not tied to the negotiations between landlords and tenants over compensation. Government has no wish to become involved in these negotiations on its own behalf, since the results could be time-wasting and unsatisfactory. Instead we have assessed what we believe to be a reasonable contribution which these families should make in order to become eligible for resettlement. It may be argued that these families are already in difficulties because of the sudden loss of their homes and cannot easily afford to make a further payment, not at least until compensation has been paid in full by their former landlords. Undoubtedly it would be much simpler for all the families concerned if no payment were necessary, but here again I must draw attention to the huge capital outlay involved in the proposed new resettlement programme and the plain fact that Government would be failing in its responsibility to the taxpayer if it did not temper humanity with a proper concern for reducing subsidies wherever possible. As the White Paper explains, families immediately unable to afford the advance of rent can go to licensed areas and they will still have a year in which to assemble the necessary funds. The advance of rent also takes into account the fact that families will have other commitments, such as the cost of building a new hut, when they are

housed temporarily in a Transit Centre awaiting resettlement or in a Licensed Area. I trust that my honourable Friends will agree that this advance of rent scheme is reasonable and is the maximum concession that we can or should make for this new priority category.

Former tenants of excluded property pose difficulties of a rather different kind. A majority of the Working Party thought that they should become eligible for resettlement by waiving in Government's favour 85% of their statutory compensation. We have considered this suggestion very carefully, but have concluded that there are too many practical difficulties to permit doing more for these people than allowing them entry to Licensed Areas if they are unable to find any other accommodation. To offer resettlement to all tenants of excluded premises extends the scope of the commitment very substantially indeed, and, as the Working Party itself observed, this group cannot merit a higher claim to resettlement than the victims of natural disaster or those suddenly evicted from dangerous buildings; nor must it be forgotten that one of the principal aims of the resettlement programme must continue to be the clearance of squatters from land required shortly for permanent development. Even the accelerated programme of resettlement building is unlikely for some time to be able to cope with large numbers of tenants from excluded premises; and if offers of resettlement were made to all of them, the difficulty of identifying and determining precisely who were the legitimate tenants at the time an application for an exclusion order was first lodged are very great indeed. For the time being, therefore, we judge it wiser not to extend the offer of resettlement further than to the tenants of dangerous buildings, until experience has been gained of the working of these particular proposals.

The framework, then, for our resettlement policies will consist of Resettlement Estates and Cottage Areas as before; Transit Centres to house families in the priority groups eligible for resettlement but for whom no resettlement space is immediately available; and Licensed Areas for other genuinely homeless people. These latter two categories require statutory provision and the amendments to the Resettlement Ordinance and Regulations are under urgent consideration. Under these proposals, resite areas will be absorbed into either Transit Centres or Licensed Areas; all tolerated squatting will be strictly contained; and strenuous efforts will be made to prevent new squatting. I would also emphasise here that apart from the need to amend the Resettlement Ordinance, the Commissioner for Resettlement still has certain administrative arrangements to make before the new policy, if accepted by this Council, can be brought into effect. I must therefore warn people who think they are affected by these proposals to await further public announcements before approaching the Resettlement Department with requests or queries which cannot be immediately answered.

I turn now to the last part of the White Paper which deals with certain other questions of a wider nature.

The Working Party at the beginning of its report referred to the magnitude of the housing question generally, pointing out that the squatter and his immediate problems form only a part, however important and pressing, of this wider and all-embracing problem. This is true enough. But the Working Party went further and suggested that, excepting only the over-riding need for employment, housing should be accorded a priority above all other needs, including the needs of education and medical care. No one would dispute the gravity and urgency of our housing problem, but is it wise, I wonder, and does it serve a practical purpose, to attempt thus strictly to determine the priorities when so much has still to be done in so many directions? Is there not in fact a risk that if we do this we may only tend to obscure the continuous necessity to apportion available resources amongst a number of almost equally essential public needs? As to housing, this White Paper proposes a course of action of such proportions, and involving such heavy expenditure of public funds over the next few years, that it is its own best evidence of our earnestness and determination to tackle one of the most daunting tasks confronting the Colony.

Nevertheless the Working Party was right, I suggest, in drawing attention to aspects of the housing problem which are not so conspicuous as the squatter and his resettlement. We need to see the problem in wider terms, and with wider knowledge than we possess at present. Government is therefore drawing up terms of reference for a representative advisory Housing Board which can survey and advise on the overall housing situation. As the White Paper mentions we feel that further work is necessary before the Board can serve a fully useful purpose, but we are making preparations against the time when the Board can be brought into being.

Another matter touched on by the Working Party was the planning of slum clearance, and I am able to report that Your Excellency has appointed my honourable Friend, the Director of Public Works, to head a strong interdepartmental Working Party with wide terms of reference to investigate the problems involved. The Director of Public Work's Committee is being requested, in particular, to give us proposals for a suitable pilot scheme from which we may be able to gain important experience of this form of re-housing, and to bring under special study the possibility of associating private owners in joint re-development with Government.

Finally I would like to touch on one further point made by the Working Party. The Working Party advised a review of the arrangements under which the Commissioner for Resettlement, the Urban Council and the District Commissioner exercise various functions and

powers relating to the screening, clearance or resettlement of squatters and of the administration of estates. We have undertaken this review, but do not find that it calls for major changes. The present division of functions reflects the correct responsibilities both in fact and in law of the various authorities, and given goodwill amongst them and a proper degree of consultation there is no reason why misunderstanding, friction or delay should result.

It would be rash of anyone to prophesy when we shall finally solve the squatter problem; what I do believe is that, allowing for the unforeseen developments to which Hong Kong is so often exposed, we have now plotted a course of action which takes account of the changed circumstances since large-scale resettlement first began and which should enable us to continue, with greater confidence and more effectively, the journey towards the goal which we have set ourselves. With these remarks, Sir, I commend this White Paper for the acceptance by Council, and beg to move the resolution.

THE ATTORNEY GENERAL seconded.

HIS EXCELLENCY THE GOVERNOR: —The resolution is open for debate.

THE COLONIAL SECRETARY: —Sir, I move that the debate on the resolution before honourable Members be adjourned until the next meeting of the Council.

THE ATTORNEY GENERAL seconded.

The question was put and agreed to.

DUTIABLE COMMODITIES ORDINANCE, 1963

MR D. R. HOLMES moved the following resolution: —

> Resolved, in exercise of the powers conferred by section 4(1) of the Dutiable Commodities Ordinance, 1963, as follows—
>
> That the duty payable on 5,876.5 gallons of rum amounting to $381,972.50 issued to Gurkha troops in Hong Kong during the period 16th October, 1963 to 31st March, 1964 is remitted.

He said: The concession to which this resolution refers is not new and indeed concessions of this nature have been extended to Gurkha troops stationed in Hong Kong for the last 14 years. This is, however, the first occasion on which a resolution of this nature has been submitted to this Council. The reason for this is that the legal position was changed last year with the enactment of the Dutiable

Commodities Ordinance, 1963, which came into force on the 16th October of that year. Until the enactment of that Ordinance, there was no specific legislative provision for the remission or waiver of these duties; consequently effect was given to this concession by orders made from time to time by Your Excellency the Governor in Council under powers conferred on Your Excellency under Section 40(*b*) of the Interpretation Ordinance Chapter 1. Now, however, since specific provisions have been brought into force, in Section 4(1) of the Dutiable Commodities Ordinance, 1963, it is not longer proper that such remission or waiver should be authorized except by the use of these specific provisions. Council is therefore first asked to give its sanction to the remission of duty in respect of consumption which took place since the 16th October last year until the end of the 1963-1964 financial year. If this resolution should commend itself to Council there is a second resolution immediately following this which seeks to bring the arrangement now proposed up to date and to make some provision for the future.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

DUTIABLE COMMODITIES ORDINANCE, 1963

MR D. R. HOLMES moved the following resolution: —

> Resolved, in exercise of the powers conferred by section 4(1) of the Dutiable Commodities Ordinance, 1963, as follows—
>
> > That the duty payable on rum issued to Gurkha troops in Hong Kong during the period 1st April, 1964 to the date of this Resolution is remitted and thereafter is waived until this Resolution is varied or revoked.

He said: Sir, This resolution follows upon the previous resolution to which Council has just signified its assent. It seeks to authorize first the remission of duty on rum issued to the Gurkha units of the garrison, first of all from the beginning of the present financial year up to the present time, and, secondly, to authorize the waiver from such duty for an indefinite period in the future until such time as this Council might see fit to review the matter.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

BANKING BILL, 1964

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

He said: Sir, the original 1963 version of this Bill was given its first reading on 19th June 1963. That Bill gave rise to numerous comments and criticisms, a few on matters of substance and a number on matters of detail and drafting. It also became apparent that the concurrence of the Exchange Banks with one important provision was based on a misunderstanding on their part as to its effect. It was necessary to revise the Bill to take account of these points; and, as it would have been a very cumbersome procedure to deal with all the amendments at the Committee stage, it was decided to withdraw the Bill in its original form and substitute the new Bill which is before Council today. The opportunity was also taken of re-casting it in more logical order and making a number of other minor improvements. I am grateful to all those whose suggestions and criticisms contributed to this improved version.

I will not repeat today the exposition I gave last year of the origins and purposes of this Bill but will speak only in explanation of the proposed changes. There are four main changes to which I should draw special attention: —

Firstly, clause 12(3)(*a*) and (4)(*c*) of the original bill meant in effect that a bank must retain 100% liquid cover against any net debit balance it might have with other banks. This is indeed logical as banks are entitled to count any such net credit balance as liquid for purposes of their own liquidity ratios; and so, if the bank were required to maintain against its net debit balance with other banks only the standard 25% liquid cover which must be maintained against non-bank deposits, the effect would be to reduce the overall liquidity ratio of the whole banking system below 25%. How far below depends on the proportion of total bank assets represented by the net debit balances of banks with other banks; with the present structure the ratio could fall to 21%. Another difficulty, and this is perhaps a more serious one, is that relaxation of this rule would open the door to abuse, by making possible the practice known as "cross-firing" between banks who conspire together to reduce their joint liquidity ratio, while abiding by the letter of the law.

It has been represented on the other hand that the original provision is unduly burdensome on those banks which, in the

absence of a central bank, act traditionally as depositories for other banks' surplus funds in that they could do nothing with them but invest them in liquid form. And it can be further argued that this may in some circumstances deprive Hong Kong of utilisable funds and keep the whole banking system's liquidity ratio unnecessarily above the standard 25% laid down; and further that, as there are so few vehicles for liquidity inside the Colony, it would be necessary not only to sterilize these surplus funds, but also to invest them outside the Colony.

It is difficult to decide between these arguments but we have come to the conclusion that, in the light of the present structure of banking, the balance of advantage is with the more liberal rule which the Bill now incorporates in subsections (5)(*c*) and (6)(*c*) of clause 18. But I must warn that the Commissioner of Banking will watch the situation very closely, and that if there is any evidence that overall liquidity is dropping to undesirably low levels, or that "cross-firing" is being engaged in, we shall have to revert to the more orthodox arrangement.

Secondly, the categories of specified liquid assets are set out in clause 18(6) of the new Bill. These have been expanded to include securities with less than five years to maturity, issued or guaranteed by any government, provided that they are quoted on the London, Hong Kong or New York Stock Exchange, have been dealt in during the preceding six months and are not in arrears in payment of interest. Bills of exchange payable on demand in the form of bank drafts, travellers cheques, postal orders, etc., have also been included.

Thirdly, the greatest difficulty has been caused by the limits imposed in the original bill on unsecured advances to directors and to firms, partnerships and private companies of which directors are directors; and the search for a solution of this problem has been one of the main causes of delay.

The Tomkins Report proposed a limit, in the case of any one director, of 1% of capital and published reserves or $250,000, whichever was the lesser. This was liberalized in clause 15(1)(*d*) of the original Bill to 2% in any one case or 5% in aggregate and this was accepted by the Exchange Banks. It transpired, however, that their agreement was based on a misunderstanding of the phrase "private company" which they had understood to refer to unincorporated companies only; and they now represented that this provision, as properly interpreted, imposed excessive disabilities on those local banks

which traditionally appointed as directors men who were in the forefront of Hong Kong commerce and for that reason likely to be directors of a wide range of private companies. The provision would mean that either the banks must lose the valuable services of our commercial élite or lose business to banks controlled from outside the Colony.

The problem was to find a formula which would remove these disabilities without opening the door to unsound practices. The solution was finally found in amalgamating all three of the strictly unorthodox banking practices to which limits are set by the bill, i.e. unsecured advances to directors, share dealing and property investment, under one overall limit of 55% of capital and reserves (which is the total of the three previously separate limits) and an individual limit for any one of them of 25%; thus limiting total indulgence in these practices while giving some choice as to the extent of indulgence in each one. These provisions will be found in clauses 27 and 28.

This proposed relaxation applies, however, only to unsecured advances to companies of which the bank's directors are directors and not to unsecured advances made personally to directors and their families. The same justification for a more liberal approach cannot be held to apply to these latter and clause 24 of the Bill therefore now distinguishes them from the former category and re-imposes the original Tomkins Limits of 1% of capital and reserves or $250,000, whichever is the lesser, in the case of each director.

Two other changes are introduced in this context. The first is in connexion with property used for banking purposes. In the original Bill these were excluded from the 25% limitation but no clear criterion was laid down as to the treatment of the very large buildings that banks erect in business centres, only a small proportion of which is used for banking purposes. This could have led to abuse and administrative difficulties. The problem has been met by introducing in clause 29 a further global limit of 80% of capital and reserves to cover the three unorthodox practices I have referred to plus bank premises; there being no limit on bank premises themselves within the global limit. The second change is that, for the purposes of these proportionate limits, published reserves have been extended to cover all reserves including hidden reserves. These are defined in clause 31(3).

The fourth major change involves the appointment of auditors. The original bill stipulated two auditors but this was criticised

as being financially onerous on the smaller banks. The Tomkins Report suggested that the appointment of auditors should be subject to the Financial Secretary's approval. Although there are precedents in other legislation, it is regarded as an invidious task for a non-professional Financial Secretary to pronounce on the competence of professional accountants. The profession does, however, recognize that we will have to rely substantially on auditors for the effectiveness of the control imposed on banks by the bill, and that bank audit is to some extent a specialized field. While, therefore, this revised bill itself has no special provisions about auditors, the profession has agreed to the addition, as soon as is practicable, to the authorized list of auditors of a part III to cover the specialized field of bank audit. This will require an amendment of the Companies Ordinance.

The revised bill meets all the major criticisms made against the original bill and has the concurrence of the Exchange Banks association.

By virtue of Article XXVI of the Royal Instructions this Bill is in the class of those to which the Governor may not assent in Her Majesty's name except under certain conditions. One of these is that he shall have previously obtained instructions on the bill through one of the Principal Secretaries of State. Intimation has been received from the Secretary of State that, if the Bill were passed by this Council, Her Majesty's power of disallowance would not be exercised.

Sir, I move that the 1963 Bill be withdrawn and that the Bill now before Council be read a First time.

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 of the Hong Kong Banking System by H. J. TOMKINS. The provisions of this Bill generally follow those of the draft Bill attached to the Report.

2. The main differences between this Bill and the draft Bill attached to the Report are as follows—

(*a*) provision is made by Part VI for existing unincorporated banks, 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 (or such other sum as the Governor in Council may specify) and to the regulatory provisions in the rest of the Bill. The requirements regarding capital, minimum specified liquid assets, reserve, real estate and loans have been relaxed for this category of banks, which will pay a licence fee lower than will incorporated banks;

(*b*) by clause 18 the categories of specified liquid assets have been expanded and provision is made for the Governor in Council to vary the requirements for minimum specified liquid assets for such period as he may consider necessary in exceptional circumstances;

(*c*) the limit on unsecured advances specified in the draft Bill has been raised, by clause 24 of this Bill, to twenty-five per cent of paid up capital and reserves for all such advances at any one time. Further, by clause 29 of this Bill, a bank may not tie up more than fifty-five per cent in the aggregate of its paid up capital and reserves in unsecured advances, shares and real property (other than banking premises and staff housing) and eighty per cent if banking premises and staff housing are included;

(*d*) by subsection (2) of clause 32 banks shall value their holdings of shares and real property at current book value;

(*e*) compradores have been excluded from the prohibition in clause 62 on payments therein specified, since their renumeration is derived partly from commission;

(*f*) by clause 75 a period of two years from the date of commencement will be allowed for the liquidation of transactions, incompatible with the provisions of clauses 21 to 28 and 29, which had been entered into before the date of commencement;

(*g*) in Part VIII 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 58 for directors and managers who have exercised all due diligence to prevent the commission of the offence concerned.

INLAND REVENUE (AMENDMENT) BILL, 1964

THE FINANCIAL SECRETARY moved the Second reading of a Bill intituled "An Ordinance further to amend the Inland Revenue Ordinance."

He said: Sir, I rise to move the second reading of a Bill intituled an Ordinance further to amend the Inland Revenue Ordinance.

I think that I must first re-state fairly fully, and on some points elaborate on, the circumstances necessitating this Bill, as they appear to have been widely misunderstood. Its main purpose is to rectify an unintended anomaly in the treatment of dividend income, and the consequential opening of a potential way to reducing liability to tax, which will arise if a recent decision of the Full Court, reversing an earlier decision of the Supreme Court, is upheld on appeal by the Privy Council. The point at issue is the deductibility for profits tax purposes of expenses incurred in respect of dividends.

It is Government's view, although it was never put to judicial test, that prior to 1955, in the case of a corporation, expenses incurred in the receipt of dividends were not deductible, whether the corporation's income was confined to dividends or included taxable profits in addition. In the former case, at least, there was no room whatever for doubt. On the other hand, at that time persons liable to salaries, business profits, interest or property tax, if they elected for personal assessment, enjoyed the advantage of deductibility in respect of certain such expenses, *e.g.* interest on borrowed moneys invested to produce the dividends in question. This was by virtue of section 42(1)(*e*) of the pre-1955 Ordinance. The situation was plainly anomalous.

The anomaly was considered by the Inland Revenue Ordinance Committee of 1954 and, on their recommendation, it was decided to correct it. The method chosen, in the interests of simplicity, was in future to regard corporation profits tax as levied on the corporation as a separate person, as in law it is, not on the dividends distributed by the corporation and received by the shareholder. This is a not uncommon concept elsewhere; although largely foreign to the British tax system, it fits with particular logic into a tax structure like ours which taxes neither the overseas income of residents nor the total income of the ultimate recipient. It also has the virtue, in our case, of simplicity, to which we are prepared to sacrifice, at present low tax rates, a degree of equity.

In conformity with this principle it was decided to exclude dividends from personal assessment, so bringing all recipients of dividends on to the same basis of deductibility (although the effect was somewhat softened by the general increase in personal allowances introduced at

this time). Section 42(2) was accordingly amended to exclude dividends from total income for purposes of personal assessment; and section 27, which dealt with the deduction of profits tax from dividends before payment was repealed as no longer appropriate.

Certain other amendments were introduced at this time which had the effect, for the year of assessment 1955-56, of putting it beyond doubt that no person could in any circumstances deduct dividend expenses in the calculation of profits for purposes of profits tax. This followed the express recommendation of the 1954 Committee that it should be made clear that deductions were restricted to those outgoings and expenses incurred in the production of, to use their word, taxable profits (by which term they referred to assessable profits); a general principle which is not, I think, seriously open to challenge. These amendments are clear evidence that it was intended as a matter of policy, to introduce a new concept of corporation profits tax as being a tax on the corporation as such, and not on its shareholders.

Then in 1956 certain other amendments were made, including the introduction of the phrase "profits in respect of which he is chargeable to tax" into sections 16(1) and 17(1). The purpose of these amendments is not specifically explained in the Objects and Reasons attached to the amending Bill. It appears, however, that they were deemed necessary in consequence of the amendment made at this time to the definition of assessable profits in section 2 of the Ordinance whereby they bacame tied to "basis periods" instead of being relatable to "any period". It is these amendments which paradoxically have given rise to the Full Court's decision in the Mutual Investment case, which hinged largely on the proper distinction between "assessable profits" and "chargeable profits", a distinction I will not go into here. The Full Court's decision in that case was that, as the law stands after these amendments, in the case of those companies earning other, taxable, profits in addition to receiving dividends from a Hong Kong corporation, expenses incurred in the receipt of such dividends may be deducted in the calculation of these profits for tax purposes, notwithstanding that the dividends are themselves excluded from the calculation.

If, then, the Full Court decision is upheld by the Privy Council, the amendments will have had the unintended effect of substituting a new anomaly for an old one, in that they will have accorded to a new limited category of taxpayer, (that is those in receipt of dividends who also earn other, taxable, profits), and to them alone, the privilege which has been withdrawn from certain other categories which enjoyed it before 1955, that is, the privilege of securing relief from these expenses by deducting them from taxable income, although not incurred in the production of this income; and of being enabled thereby to earn a

higher after-tax income than other investors from investments made in identical circumstances. Quite apart from the clear language of the report of the 1954 Committee, it is surely inconceivable that it was the intention of Government or of this Council to withdraw deductibility through the medium of personal assessment from payers of salaries, business profits, interest or property taxes, and at the same time to grant it in a new form to a new privileged category, many of whom did not enjoy it before. It is this substituted anomaly that the main provisions of the present Bill are designed to remedy, should the Privy Council find against the Commissioner in the Mutual Investment case. It could, of course, be remedied alternatively by adopting the complex British system of personal taxation, but I do not think it would be reasonable to abandon the simplicity of our present system at our present rate of tax and in the absence of a full income tax or taxation of overseas income.

When I introduced the first reading of this Bill I concluded with the following words: —

> "Because of the rather special circumstances surrounding this Bill, and of the technical problems which can be involved in the apportionment of expenses between different elements of income, it is the intention to allow an interval of six, instead of the normal four, weeks between the first and second readings so that the public and the professional associations with special interests in these matters may have adequate time to study and, if they think fit, comment on the Bill."

Eleven weeks have in fact elapsed since the first reading. Comment was invited from the four accountants' associations and from the Law Society. One of the former associations has intimated that it supports the Bill. Another has proffered no comment. The two others, while not stating any objection to the principles of the Bill, have made two comments which I will speak about later. The Law Society has objected to the provisions dealing with investment expenses on two main grounds, and also to one other clause. I will comment on the former two objections first.

The Law Society's main objection is, in their own words: —

> "We are of the opinion that under existing established principles governing profits tax all expenditure incurred by a corporation for the purpose of earning receipts which fall within the charge of profits tax must be deducted to determine that corporations actual assessable profits upon which the standard rate of tax is to be applied."

The principle stated by the Society appears to be derived solely from the construction they themselves put on the present wording of the

Ordinance. Their interpretation of it is fairly close to, although not identical with, that of the Full Court, against which the Commissioner has appealed to the Privy Council. This does not seem very firm ground for deducing an established principle; but, in any event, this is not a matter of interpretation of existing law, which may be defective, but of our tax policy. I have adduced clear and abundant evidence that Government policy and legislative intent was entirely different from the effect of the law as construed by the Full Court and that, if the Full Court's decision is upheld by the Privy Council, that policy and intention will have been frustrated by a defect in drafting. The intention was to remove the previous unequal treatment of dividends by introducing a different concept of corporation profits tax, as a tax on profits, not on dividends either directly or indirectly. Dividends were to cease to be the subject of tax and were therefore to be excluded from the category of income subject to tax from which expenses might be deducted. Government is therefore unable to accept this ground of objection on the part of the Society.

I might refer at this point to a related objection which I have heard voiced, that is, that dividends have in effect been taxed in the shape of profits and that, consequentially, expenses incurred in receiving them should be deductible, as otherwise an element of double, or at least, of excessive taxation will have been imposed. But, as I have repeatedly stressed, it is a basic principle of our tax policy that it is not the shareholders' dividends that are taxed; what is taxed is the profits of a separate legal person, the corporation. It may be argued, of course, that this principle has been wrongly adopted and that it would be more equitable and more reasonable to regard profits tax as a tax on the shareholder on the British model, and grant him relief for his expenses. But this case is weak so long as we maintain the related principles of taxing an individual's income from separate sources separately, and of not taxing overseas income. We have adopted these principles for the sake of simplicity and have accepted a degree of inequity to achieve it. But we must, I think, make sure that, so to speak, we apply our not wholly equitable principles as equitably as possible between categories of taxpayers and this is the object of the present Bill.

There is one even more serious objection to the argument adduced by the Law Society and to any argument based on the theory that dividends have in fact been taxed. As the law stands, section 26(*a*) provides that a dividend from a corporation which is chargeable to tax in Hong Kong shall not be included in the assessable profits of any other person. But, as we do not impose tax on the overseas profits of a company, a Hong Kong company chargeable to tax may make some profits on which it pays Hong Kong tax and some profits on which it does not pay Hong Kong tax. The dividends it subsequently

pays out of profits may, therefore, derive in lesser or greater part from profits which have *not* been charged with Hong Kong tax. I do not think that even those who would maintain that dividends are taxed in the form of profits would claim that, in the case of dividends derived from profits not taxed in Hong Kong, the recipient should not only be permitted to exclude them from his own taxable profits but should also be permitted to deduct expenses incurred in connexion with them from his other profits for purposes of assessment to Hong Kong tax. But this is the effect of the present law of the Mutual Investment decision is upheld. Even if, then, it were accepted, as we do not accept it, that dividends are taxed as profits and expenses should therefore be deductible, it would be necessary to introduce into the law provision for apportioning dividends into two categories according to the tax status of the profits from which they derive and allowing only expenses incurred in connexion with that portion which can be shown to derive from Hong Kong tax. That would be a very complicated and controversial matter, at least as much, if not more so, than that of identifying expenses incurred by the dividend receiver in respect of his investment, which is the alternative required by our present policy.

I understand, incidentally, that the British tax authorities are much exercised at present at the difficulty under their complex system of identifying dividends with the profits on which tax has been paid, in theory, on account of the shareholder. We avoid that difficulty.

The second ground of objection on the part of the Law Society is that the present law is unambiguous whereas the amendments proposed in the Bill will introduce uncertainty into its effect. The effect which the Society claims the law has without ambiguity is one, of course, which is contrary to Government's policy and therefore all the more surely calls for amendment of the law if the Society is right. But, apart from that, I find it difficult to agree with the Society that the present law is unambiguous in this matter, when the Full Court has reversed a decision of the Supreme Court and the Privy Council has given leave to appeal. The main purpose of the amendments is, indeed, to clear up the present uncertainty resulting from the Full Court's decision in the Mutual Investment case as to the proper distinction between "assessable profits" and "chargeable profits"; and to give effect to the policy adopted in 1955. Government's legal advisers are of the opinion that the amendments will achieve their purpose.

Both the Law Society and two of the accountants' associations suggest that amendment of the Ordinance should await the outcome of the anneal to the Privy Council. I think this suggestion is misconceived. The appeal has been taken with the object of settling the substantial number of assessments outstanding from past years for which we do not, and would not, propose to legislate retrospectively,

whatever the outcome of the appeal. But it is desirable in the meantime to ensure as early as possible that the law has its intended effect from this financial year on. To wait longer involves either considerable inconvenience both to the Commissioner and to taxpayers, as it would not be possible to finalize assessments until the appeal was decided; or, alternatively, postponement for a year should the Commissioner lose the appeal, and I can see no justification for that. In these circumstances it is normal practice in the field of taxation to legislate at once for the future, even while the past is still *sub judice*. Legislation in no way affects or is affected by the appeal or by its outcome.

The second point made by the two accountants' associations refers to the difficulty involved in apportionment of expenses between taxable and other income. This is a difficulty which is specially inherent in our tax system, not only in these particular provisions. I understand that doubts in professional circles on this score in relation to the amending bill have been to some extent resolved by the issue in July this year, by the Commissioner to the professional bodies principally concerned, of a Circular Note setting out the principles and practices which he recommends that his assessors should follow in making such apportionments, particularly in the case of investment management expenses. But doubts have not been wholly resolved because the Note has no legal effect and is not binding on assessors. It is not easy to lay down completely precise practices in this field on a statutory basis, there being such a wide range of possible circumstances. It is, however, Government's intention to propose, when putting forward further proposals for amendment of the Ordinance later this year, that the principles of the Commissioner's Circular Note should be given statutory form, so far as that is practicable, probably in the form of rules make by the board of Inland Revenue.

The final ground of objection by the Law Society is to the proposed amendment of section 70A, which is designed to remove doubt that this section permits the re-opening of final assessments only in respect of mistakes of fact or calculations, and not in respect of mistakes or misinterpretations of the law. The Society has said in this context: —

> "We think it repugnant to justice that taxpayers should be denied the inherent right of correction of an assessment which has been made according to departmental practice but contrary to law."

The amendment is, however, merely designed to re-inforce the original intention of, and consistent practice since 1956 in regard to, this section. It also conforms with British law on the subject. With respect to the Society, I think we must conclude that the objection is misconceived. The Ordinance gives a right of appeal against an assessment which is incorrect in law, but, as in all similar statutes, there is a time limit on appeals, after which the assessment is regarded as final, because, in

the interests of all concerned, there must be finality in these matters. There is, I think, general agreement that the reversal in a particular case of an interpretation of the law which has previously gone unchallenged in practice cannot, as a matter of practical tax administration, be applied to re-open what may be exceedingly numerous past assessments which have already been finalized, and in respect of which statutory rights of appeal have not been exercised. Any other course would make the time limit on appeals non-effective. When, on the other hand, it is merely a question of mistake of fact or calculation, only the assessment immediately concerned is affected and the same practical problems do not arise. I am afraid that this objection, too, must be rejected.

One other general criticism I have heard of the Bill is that it is morally wrong, or at least politically inadvisable, for Government to hasten to legislate against taxpayers when an appeal goes against the Commissioner, but to take its time about amending in favour of the taxpayer in the opposite case. Government may not always, of course, in the latter case, regard it as desirable to amend the law (the Four Seas decision mentioned by Mr. GORDON in this Council earlier this year being a case in point); and there is no further point in answer to this criticism which I should like to make. When a case goes against the Commissioner, he must, until and unless the law is amended, conform to the Court's decision. Where, however, cases or circumstances arise where the law appears unreasonable or excessively onerous or inequitable, the assessor may on occasion exercise a degree of administrative discretion in the taxpayer's favour. He has no discretion in the opposite direction. Some, indeed, or the amendments to be proposed later this year are designed to give statutory sanction to some of these, at present extra-statutory concessions.

There is one final point. It has been suggested that clauses 3 and 7 of the Bill, which deal with situations where only part depreciation is allowable as a deduction, could, as they now stand, be so interpreted that taxation of capital would result. This would arise if a balancing charge were raised at some later date without having regard to the previous apportionment. This is, of course, not the intention but it appears advisable to remove the possible doubt. Amendments have been drafted for this purpose for moving at the Committee stage.

Sir, I must apologize for this unusually long introduction to a second reading but the complexities of the subject have made it necessary.

THE COLONIAL SECRETARY seconded.

MR R. C. LEE: —Sir, since the main object of the Bill is to deal with a point of Law now under consideration by the Privy Council

I feel that the matter is still sub-judice and I wish to abstain from voting.

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.

THE FINANCIAL SECRETARY: —Your Excellency, I beg to move that Clause 3 be amended as set forth in the papers before honourable Members.

Proposed Amendment

3. In the new subsection (2A) of section 12, leave out the words "'which shall be computed as if the full amount of the allowance had been granted" and substitute therefor the following—

> "which shall be computed in the first place as if the full amount of the allowance had been granted and may then be apportioned in relation to the extent to which the machinery or plant concerned is or has been used in the production of such assessable income".

Clause 3, as amended, was agreed to.

Clauses 4 to 6 were agreed to.

THE FINANCIAL SECRETARY: —Sir, I beg to move that Clause 7 be amended as set forth in the papers before honourable Members.

Proposed Amendment

7. In subsection (2) of the new section 16, leave out the words "which shall be computed as if the full amount of the allowance had been granted" and substitute therefor the following—

> "which shall be computed in the first place as if the full amount of the allowance had been granted and may then be apportioned in relation to the extent to which the relevant assets are or have been used in the production of such profits".

Clause 7, as amended, was agreed to.

Clauses 8 to 11 were agreed to.

Council then resumed.

THE FINANCIAL SECRETARY reported that Inland Revenue (Amendment) Bill, 1964, 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 into law.

SUPPLEMENTARY APPROPRIATION (1963-1964) BILL, 1964

THE FINANCIAL SECRETARY moved the Second reading of a Bill intituled "An Ordinance to authorize a supplementary appropriation to defray the charges of the financial year ended the 31st day of March 1964."

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 and the Schedule were agreed to.

Council then resumed.

THE FINANCIAL SECRETARY reported that the Bill before Council 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: —That concludes the business for today, gentlemen. When is it your pleasure that we should meet again?

THE ATTORNEY GENERAL: —May I suggest this day fortnight, Sir.

HIS EXCELLENCY THE GOVERNOR: —Council stands adjourned until this day fortnight.

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