

OFFICIAL REPORT OF PROCEEDINGS**Meeting of 12th April 1967****PRESENT**

HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)
SIR DAVID CLIVE CROSBIE TRENCH, KCMG, MC
THE HONOURABLE THE COLONIAL SECRETARY
MR MICHAEL DAVID IRVING GASS, CMG
THE HONOURABLE THE ATTORNEY GENERAL (*Acting*)
MR GRAHAM RUPERT SNEATH
THE HONOURABLE THE SECRETARY FOR CHINESE AFFAIRS
MR DAVID RONALD HOLMES, CBE, MC, ED
THE HONOURABLE THE FINANCIAL SECRETARY
MR JOHN JAMES COWPERTHWITTE, CMG, OBE
THE HONOURABLE ALEC MICHAEL JOHN WRIGHT, CMG
DIRECTOR OF PUBLIC WORKS
DR THE HONOURABLE TENG PIN-HUI, CMG, OBE
DIRECTOR OF MEDICAL AND HEALTH SERVICES
THE HONOURABLE WILLIAM DAVID GREGG
DIRECTOR OF EDUCATION
THE HONOURABLE ROBERT MARSHALL HETHERINGTON, DFC
COMMISSIONER OF LABOUR
THE HONOURABLE ALASTAIR TODD
DIRECTOR OF SOCIAL WELFARE
THE HONOURABLE GEOFFREY MARSH TINGLE
DIRECTOR OF URBAN SERVICES
THE HONOURABLE KENNETH STRATHMORE KINGHORN
DISTRICT COMMISSIONER, NEW TERRITORIES
THE HONOURABLE DHUN JEHangIR RUTTONJEE, CBE
THE HONOURABLE KAN YUET-KENG, OBE
THE HONOURABLE FUNG HON-CHU, OBE
THE HONOURABLE TANG PING-YUAN
THE HONOURABLE TSE YU-CHUEN, OBE
THE HONOURABLE KENNETH ALBERT WATSON, OBE
THE HONOURABLE WOO PAK-CHUEN, OBE
THE HONOURABLE SZETO WAI
THE HONOURABLE WILFRED WONG SIEN-BING, OBE
THE HONOURABLE ELLEN LI SHU-PUI, OBE
THE HONOURABLE JAMES DICKSON LEACH, OBE
THE HONOURABLE MICHAEL ALEXANDER ROBERT YONG-HERRIES, MC

ABSENT

THE HONOURABLE TERNCE DARE SORBY
DIRECTOR OF COMMERCE AND INDUSTRY
THE HONOURABLE LI FOOK-SHU, OBE

IN ATTENDANCE

THE DEPUTY CLERK OF COUNCILS
MR DONALD BARTON

MINUTES

The minutes of the meeting of the Council held on 29th/30th March 1967 were confirmed.

PAPERS

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

| <i>Subject</i> | <i>LN No</i> |
|--|--------------|
| Subsidiary Legislation: - | |
| Commonwealth Preference (Motor Vehicles) Ordinance 1967. | |
| Commonwealth Preference (Motor Vehicles) (Depreciation) Regulations 1967 | 53 |
| Motor Vehicles (First Registration Tax) Ordinance. | |
| Motor Vehicles (First Registration Tax) (Depreciation) Regulations 1967 | 54 |
| Resettlement Ordinance. | |
| Resettlement (Amendment) (No 2) Regulations 1967 | 55 |
| Legal Aid Ordinance 1966. | |
| Legal Aid (Amendment) Regulations 1967 | 56 |
| Revised Edition of the Laws Ordinance 1965. | |
| Annual Revision 1966 | 59 |
| Interpretation and General Clauses Ordinance 1966. | |
| Delegation by Governor | 60 |

LEGAL AID (AMENDMENT) BILL 1967

THE ATTORNEY GENERAL moved the First reading of:—"A Bill to amend the Legal Aid Ordinance 1966."

He said: —As is stated in the Objects and Reasons attached to the Bill the amendments are of a minor nature and have been found necessary in the light of the experience gained in working the legal aid scheme.

Section 15 of the Ordinance provides a method whereby litigation in progress can be stayed where one of the parties to that litigation applies for legal aid. It has been found however, that this period of 14 days is quite insufficient for the purpose of carrying out the necessary

enquiries to establish whether legal aid should be granted. Accordingly, the amendment now proposed would increase the period from 14 to 42 days.

The original Legal Aid Regulations, Sir, provided that all moneys payable to a person in receipt of legal aid should be paid to the Director in order that he may deduct from them whatever expenses he has incurred on behalf of the legally aided person. It has been found however that some Ordinances provide for certain payments to be made either into Court or at the discretion of the Court, and these statutory provisions naturally override subsidiary legislation. Since it is considered desirable that in all cases referred to in clause 5 of the Bill moneys coming to a legally aided person should pass through the hands of the Director, clause 5 of the Bill seeks to achieve this.

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 make a number of minor amendments to the Legal Aid Ordinance which the working of the scheme has shown to be desirable.

2. Clause 2 extends from 14 to 42 days the time during which proceedings are suspended where a person applies for legal aid, since it has been found that the longer period is necessary to enable the Director to make the proper inquiries as to the applicant's means and the merits of his case.

3. Clause 3 amends section 17 to ensure consistency in wording. Other references in the Ordinance are to revocation or discharge of certificates, not to cancellation, which is the word at present used in that section.

4. The object of clauses 4 and 5 is to combine in a new section, dealing with costs and damages, a requirement that all sums due to an aided person shall be paid to the Director. The new section will reproduce a similar provision which is at present to be found in the Legal Aid Regulations, because doubt has been expressed as to whether the regulations will prevail over provisions in other Ordinances (*e.g.* Cap. 282) which prohibit payments to anyone other than the person to whom they are due under a court order; similar difficulties have arisen over payments to infants. This clause will make it clear that, in legal aid cases, all sums shall be paid to the Director in the first instance.

MATRIMONIAL CAUSES (AMENDMENT) BILL 1967

THE ATTORNEY GENERAL moved the First reading of:—"A Bill to amend the Matrimonial Causes Ordinance 1967."

He said: —Following the enactment in January of this year of the Matrimonial Causes Ordinance an anomaly has crept into our legislation. It is one which has existed for a long time in England and it has crept in here because we have perhaps followed too closely the Matrimonial Causes Act of 1965. Under our present Ordinance, the Court, on a decree of divorce, is empowered to make an order requiring the husband to secure a lump sum or annual sums to the wife. On a decree of judicial separation, on the other hand, the court may order alimony but it may not require the husband to secure the payments.

Under our former Ordinance, which, Sir, was Chapter 179, the court could order security for the payment of lump sum or annual sums on a decree of divorce or on a decree of judicial separation. The present Bill is designed to restore this position by making the relevant provisions for securing such payments applicable in the case of judicial separation as it is in the case of divorce.

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:—

The object of this Bill is to empower the court to make orders for secured provision, for annual or lump sum payments in favour of the wife (or a husband where the grounds for the decree are insanity) in cases of judicial separation, in the same way as where a decree of divorce is pronounced. This provision existed in the previous Hong Kong Divorce Ordinance, but was omitted from the principal Ordinance.

BANKING (AMENDMENT) BILL 1967

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

He said:—Sir, when I introduced the present Banking Ordinance for its First reading in this Council in June 1963,* I drew attention to two factors which had made it particularly desirable to impose a greater

* 1963 Hansard, pages 210-213.

degree of control over the growing banking system, and more particularly over banks dealing with personal savings. The two factors to which I referred at that time were, in the first place, the vulnerability of banks in the Colony to any loss of confidence in banks on the part of the general public; and, in the second place, the need to protect the savings of the individual who relies on the fiduciary status implied by the title "bank". I think that I need hardly draw the attention of honourable Members to-day to the events in our banking system subsequent to the coming into force of the present Banking Ordinance in December 1964, which have served to reinforce the considerations to which I have just referred; nor need I draw the attention of honourable Members to the even greater importance which must be placed on these factors in view of the spectacular rise in bank deposits which has taken place since I spoke in June 1963—the recorded total of bank deposits at that date amounted to \$4,929 million including \$1,020 million of savings deposits, while at the end of 1966 bank deposits amounted to \$8,405 million including \$1,982 of savings deposits, an increase of 70% overall and 94% on savings deposits over a period of 3½ years.

It is therefore of even greater importance to-day than when I spoke in June 1963, to ensure that the purposes for which the Banking Ordinance was introduced and passed into law in 1964 should be achieved. Taking into account the experience that has been gained in the operation of the Ordinance, and in view of a number of weaknesses which have come to light, as one might expect, in the course of the day to day operation of the Ordinance, it is proposed now to introduce a number of amendments. This is the purpose of the Banking (Amendment) Bill, now in the hands of honourable Members.

This Bill, as it stands, is I am afraid, a rather difficult document, and it might be argued that it would have been better to have replaced the present Ordinance *in toto* with a new Bill. This might have been misunderstood however for, while the amendments are numerous, they do not materially affect the nature or purpose of the Ordinance. To ease honourable Members' difficulties in comprehending the extent and import of these changes, a consolidated version has already been made available to them.

The amendments proposed in the Bill fall roughly into a number of headings to each of which I propose now to refer briefly.

The first heading refers to certain re-allocations of powers granted, and functions imposed, by the Ordinance. In many cases these powers and functions are essentially of a technical banking nature, and these would be more appropriately vested in (he Commissioner of Banking than in the Financial Secretary as many are at present. Provision is therefore included in the Bill for the transfer of a number of powers from the Financial Secretary to the Commissioner of Banking.

At the same time it is proposed to amend section 16 of the Ordinance so as to make the Commissioner no longer statutorily subject to the direction of the Financial Secretary in the exercise of his functions and duties under the Ordinance, but instead to make both the Financial Secretary and the Commissioner subject to the direction of the Governor, thus putting beyond doubt the Governor's ultimate power to direct both in the exercise of their statutory powers. It is also proposed that the Commissioner should exercise the very important power transferred to him under section 13 of the Ordinance of assuming control of a bank in certain circumstances, only after consultation with the Financial Secretary.

The second heading, under which fall amendments proposed in the Bill, refers to changes in the provisions covering the licensing of banks. In view of the fact that the basic power in the overall control of the banking system in the Colony is the power to grant or revoke licences and, since in making decisions, it may be necessary to take into account factors other than the status of the particular applicant concerned, it is proposed that these powers should be exercised by the Governor in Council instead of the Financial Secretary.

The third heading covers alterations in the provisions covering inspections and investigations of banks. The Ordinance at present only envisages investigations of banks being made in specific, closely denned, circumstances. Experience gained from the operation of the Ordinance has, however, shown that it is necessary that the Commissioner should have the power to carry out routine inspections of banks at any time on his own initiative, so as to be able to satisfy himself on a continuing basis that their operations are not detrimental to the interest of their depositors and creditors. The Bill seeks to give this power. The maintenance of a continuing surveillance over the more routine operations of banks represents a considerable extension of the degree of inspection of banks' operations beyond that previously envisaged under the existing Ordinance; our experience over the last two years has convinced us that it is necessary to seek this power in the interests of depositors.

The fourth major category of amendments concerns alterations in the provisions covering the capital and reserve requirements of banks. It is now proposed that an incorporated bank should be required to have a minimum paid-up capital (and a minimum surplus of assets in the Colony over deposit liabilities in the Colony) of \$10 million. However, as it is recognized that such a requirement may cause some difficulty for existing banks, it is proposed that a bank which is already licensed should be given four years grace in which to comply with this requirement; and, further, that, if at the end of this period any bank is unable to, or chooses not to, meet the requirement, then it will be permitted to continue to operate with a capital less than \$10 million

but not less than \$5 million, but will not be permitted to accept deposit liabilities amounting to more than ten times its paid-up capital and published reserves. This in effect will allow the continued existence of smaller banks but will prevent their incurring deposit liabilities which are excessive in relation to their capital and reserves.

It is proposed that the reserve requirements too should be amended by providing that, until a bank's total paid-up capital and published reserves amount to \$20 million, it should be required to transfer not less than one third of its published profits to its published reserve.

A number of amendments are also proposed to the minimum liquidity requirements at present laid down by the Ordinance, some extending the categories of liquid assets, some further restricting them. These proposals are in general of a fairly routine nature. The main proposal of importance is one that I foreshadowed when I introduced the present Ordinance, that is that a bank must retain 100% liquid cover against any net debit balance it may have with other banks. At present we have the odd situation that a bank depositing funds with another bank may count this as 100% liquid in calculating its own liquidity ratio, but the bank with which the funds are deposited need maintain only 25% liquidity against this liability. It will be seen that this is likely to reduce the real liquidity of the total banking system below 25%. It also affords an opportunity for two or more banks by what is known as "cross-firing" to help each other to break the liquidity rules. At the time the present Ordinance was introduced it was feared that, in the light of the practice in Hong Kong where by certain banks acted as depositories of other banks' funds in the absence of a central bank, the strict provision might cause some degree of credit squeeze. I am satisfied that there is no danger of this now.

Honourable Members might be interested to know in this connexion that, at the end of February 1967, the liquidity ratio of all banks in the Colony, calculated under the present rules, amounted to 49.6% while under the new rules it would have amounted to 45.4%. These ratios compare with the minimum statutory requirement of 25%.

One matter which has caused difficulty and controversy since the idea of legislative control of banking was first mooted is the question of bank audit. This differs from ordinary company audit not only in its specialist nature but more particularly in that, while normal audit is carried out largely in the interests of the shareholders, or potential shareholders, there is a second equally, if not more, important, interest requiring protection in the case of banks—that of depositors. Mr TOMKINS suggested in his Report that two auditors be required; this was rejected as a general rule on grounds of cost. We have thought

of giving the Commissioner power to approve a bank's auditors but here, and in some other suggested solutions, we come up against the problems involved in the professional status of accountants. The solution we now proposed is to give the Commissioner power to appoint a second auditor to audit a bank, at the bank's expense, if he considers that the special interests of the depositors, as opposed to the shareholders, require this. It is, I need hardly add, hoped that it will not often be necessary to invoke this power.

In addition, so as to ensure that all returns submitted by a Bank are true and accurate, the Commissioner is to be empowered to require that they should be certified by its auditor. It is also proposed that a bank should be required to publish its auditors' report together with its annual balance sheet, which is, in turn, to be in a form approved by the Commissioner, so as to ensure that it gives a full and true picture of the affairs of the bank.

While control can be maintained under the Ordinance over the number of banks operating in the Colony, no power is at present given to control the number of branches which any bank, licensed to operate in the Colony, may open. It is therefore, now proposed that no branch should be allowed to be opened in the Colony without the prior approval of the Commissioner. In consideration whether approval should be given in any case the Commissioner would chiefly consider whether the proposed expansion of the bank's activities, which the opening of the branch would represent, was in keeping with its overall resources.

Another provision provides for an increase in licence fees from \$7,500 at present to \$15,000, plus a new fee of \$1,000 in respect of each branch operated by a licensed bank in the Colony. The proposed expansion of routine bank inspection will add significantly to the cost of the Commissioner's office; it is expected that the income from the new fees should meet the cost of operating the Ordinance.

The original draft of the Bill, after preliminary consideration by the Banking Advisory Committee, was seen by the Exchange Banks' Association and by other representative bankers. Their comments were then considered by the Advisory Committee and a number of changes made to meet these comments, notably in connexion with the provisions for minimum capital. I should like to take this opportunity of expressing my thanks to the Advisory Committee for their assistance.

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 amend the Banking Ordinance in the light of experience gained since it came into operation in December, 1964.

Certain changes are proposed in the authorities by which powers conferred by the principal Ordinance are exercised. The most significant changes concern the grant and revocation of licences and the powers conferred by section 13 of the principal Ordinance. It is proposed that the Governor in Council should assume sole responsibility for the grant and revocation of licences, and that the powers conferred by section 13 should be vested in the Commissioner of Banking in place of the Financial Secretary, though the Commissioner will be required to consult the Financial Secretary before he exercises them. A number of other powers and functions, largely of a technical banking nature, will be transferred from the Financial Secretary to the Commissioner of Banking.

A related amendment will abrogate the Financial Secretary's power to give directions to the Commissioner of Banking with respect to the exercise of his powers and functions under the principal Ordinance. Instead, both the Financial Secretary and the Commissioner will be subject to the Governor's directions.

An increase in the capital of banks and in the surplus of assets over deposit liabilities is considered desirable. It is proposed that this should be ten million dollars in each case. Any bank which holds a licence under the principal Ordinance when the Bill comes into operation will, however, be permitted to continue to transact banking business notwithstanding that it does not comply with the new requirements if it complies with the existing requirements, but, if such a bank does not comply with the new requirements after four years, restrictions will be imposed on the maximum amount of its deposit liabilities. Clauses 9 and 24 seek to effect the necessary amendments.

Section 15 of the principal Ordinance is repealed and replaced so as to empower the Commissioner of Banking to make a routine inspection of a bank at any time. At present, he is empowered to investigate the affairs of a bank when required or ordered to do so by the Financial Secretary. The revised section 15 also requires the Commissioner to investigate the affairs of a bank in certain cases.

Clause 14 seeks to introduce controls over the establishment of branches of a bank in Hong Kong and, in the case of locally

incorporated banks, overseas. This will ensure that a bank's expansion is reasonable in relation to its resources. The proposal is that no branch may be established without the approval of the Commissioner of Banking. There will be a right of appeal to the Governor in Council where the Commissioner refuses to give his approval.

The amendments proposed by clauses 2(a) and 20 will strengthen in a number of ways the provisions of the principal Ordinance relating to the minimum liquidity of banks.

Clause 36 seeks to amend section 36 of the principal Ordinance so as to empower the Commissioner of Banking to appoint a second auditor of a bank. A bank will also be required to publish the report of the auditor or auditors in addition to its audited balance sheet and profit and loss account (clause 37(a)). The Commissioner of Banking will also be empowered to require returns and information delivered to him pursuant to section 38 of the principal Ordinance to 'be verified by the auditor or auditors appointed under section 36 of the principal Ordinance.

Clause 4 seeks to enlarge the membership of the Banking Advisory Committee and to make the Commissioner of Banking a member *ex officio*.

The annual fee for a bank's licence is increased to fifteen thousand dollars on account of the considerable rise in the expense involved in the administration of the principal Ordinance (clause 13(a)).

Some modification of the provisions of the Companies Ordinance relating to winding up and of the provisions of the Bankruptcy Ordinance is considered desirable where a bank has been under the control of the Commissioner of Banking or some other person during the period immediately preceding a petition for winding up or a bankruptcy petition, as the case may be (clauses 51(b) and 52).

The Bill makes a number of other amendments to the principal Ordinance and in addition seeks to improve the expression of certain of its provisions without affecting their substance.

ESTATE DUTY (AMENDMENT) BILL 1967

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

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a Second time.

Council then went into Committee to consider the Bill clause by clause.

Clauses 1 to 6 were agreed to.

Council then resumed.

THE FINANCIAL SECRETARY reported that the Estate Duty (Amendment) Bill 1967 had passed through Committee without amendment and moved the Third reading.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a Third time and passed.

ADJOURNMENT

THE COLONIAL SECRETARY moved the adjournment.

THE ATTORNEY GENERAL seconded.

The question was put and agreed to.

NEXT MEETING

HIS EXCELLENCY THE GOVERNOR: —Council is accordingly adjourned. The next meeting will be held on 26th April.