

HONG KONG

No. 22 OF 1963.



I assent.

Governor.

4th July, 1963.

An Ordinance to make amended provision for arbitration in respect of civil matters.

[5th July, 1963.]

BE it enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof, as follows—

PART I.

CITATION, COMMENCEMENT AND INTERPRETATION.

1. (1) This Ordinance may be cited as the Arbitration Ordinance, 1963. Short title and commencement.
- (2) Part III shall come into operation on a day to be appointed by the Governor by Proclamation in the *Gazette*.

Interpretation.

2. In this Ordinance, unless the context otherwise requires—
 “arbitration agreement” means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not;
 “Court” means the Supreme Court;
 “foreign award” means an award to which Part III applies.

PART II.

ARBITRATION WITHIN THE COLONY.

Effect of Arbitration Agreements, etc.

Authority of arbitrators and umpires to be irrevocable.
 14 Geo. 6, c. 27, s. 1.

3. The authority of an arbitrator or umpire appointed by or by virtue of an arbitration agreement shall, unless a contrary intention is expressed in the agreement, be irrevocable except by leave of the Court or a judge thereof.

Death of party.
 14 Geo. 6, c. 27, s. 2.

4. (1) An arbitration agreement shall not be discharged by the death of any party thereto, either as respects the deceased or any other party, but shall in such an event be enforceable by or against the personal representative of the deceased.

(2) The authority of an arbitrator shall not be revoked by the death of any party by whom he was appointed.

(3) Nothing in this section shall be taken to affect the operation of any enactment or rule of law by virtue of which any right of action is extinguished by the death of a person.

Bankruptcy.
 14 Geo. 6, c. 27, s. 3.

5. (1) Where it is provided by a term in a contract to which a bankrupt is a party that any differences arising thereout or in connexion therewith shall be referred to arbitration, the said term shall, if the trustee in bankruptcy adopts the contract, be enforceable by or against him so far as relates to any such differences.

(2) Where a person who has been adjudged bankrupt had, before the commencement of the bankruptcy, become a party to an arbitration agreement, and any matter to which the agreement applies requires to be determined in connexion with or for the purposes of the bankruptcy proceedings, then, if the case is one to which subsection (1) does not

apply, any other party to the agreement, or, with the consent of the committee of inspection, the trustee in bankruptcy, may apply to the Court for an order directing that the matter in question shall be referred to arbitration in accordance with the agreement, and the Court may, if it is of opinion that, having regard to all the circumstances of the case, the matter ought to be determined by arbitration, make an order accordingly.

6. (1) If any party to an arbitration agreement, or any person claiming through or under him, commences any legal proceedings in any court against any other party to the agreement, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to those legal proceedings may at any time after appearance, and before delivering any pleadings or taking any other steps in the proceedings, apply to that court to stay the proceedings, and that court or a judge thereof, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the agreement, and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings.

(2) Notwithstanding anything in this Part, if any party to a submission to arbitration made in pursuance of an agreement to which the protocol set out in the First Schedule applies, or any person claiming through or under him, commences any legal proceedings in any court against any other party to the submission, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to those legal proceedings may at any time after appearance, and before delivering any pleadings or taking any other steps in the proceedings, apply to that court to stay the proceedings, and that court or a judge thereof, unless satisfied that the agreement or arbitration has become inoperative or cannot proceed or that there is not in fact any dispute between the parties with regard to the matter agreed to be referred, shall make an order staying the proceedings.

7. Where relief by way of interpleader is granted and it appears to the Court that the claims in question are matters to which an arbitration agreement, to which the claimants are parties, applies, the Court may direct the issue between the claimants to be determined in accordance with agreement.

Staying court proceedings where there is submission to arbitration.
 14 Geo. 6, c. 27, s. 4.

First Schedule.

Reference of interpleader issues to arbitration.
 14 Geo. 6, c. 27, s. 5.

Arbitrators and Umpires.

When reference is to a single arbitrator.
14 Geo. 6, c. 27, s. 6.

8. Unless a contrary intention is expressed therein, every arbitration agreement shall, if no other mode of reference is provided, be deemed to include a provision that the reference shall be to a single arbitrator.

Power of parties in certain cases to supply vacancy.
14 Geo. 6, c. 27, s. 7.

9. Where an arbitration agreement provides that the reference shall be to two arbitrators, one to be appointed by each party, then, unless a contrary intention is expressed therein—

- (a) if either of the appointed arbitrators refuses to act, or is incapable of acting, or dies, the party who appointed him may appoint a new arbitrator in his place;
- (b) if, on such a reference, one party fails to appoint an arbitrator, either originally, or by way of substitution as aforesaid, for seven clear days after the other party, having appointed his arbitrator, has served the party making default with notice to make the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference and his award shall be binding on both parties as if he had been appointed by consent:

Provided that the Court or a judge thereof may set aside any appointment made in pursuance of this section.

Umpires.
14 Geo. 6, c. 27, s. 8.

10. (1) Unless a contrary intention is expressed therein, every arbitration agreement shall, where the reference is to two arbitrators, be deemed to include a provision that the two arbitrators shall appoint an umpire immediately after they are themselves appointed.

(2) Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to include a provision that if the arbitrators have delivered to any party to the arbitration agreement, or to the umpire, a notice in writing stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators.

(3) At any time after the appointment of an umpire, however appointed, the Court may, on the application of any party to the reference and notwithstanding anything to the contrary in the arbitration agreement, order that the umpire shall enter upon the reference in lieu of the arbitrators and as if he were a sole arbitrator.

11. (1) Where an arbitration agreement provides that the reference shall be to three arbitrators, one to be appointed by each party and the third to be appointed by the two appointed by the parties, the agreement shall have effect as if it provided for the appointment of an umpire, and not for the appointment of a third arbitrator, by the two arbitrators appointed by the parties.

Agreement for reference to three arbitrators.
14 Geo. 6, c. 27, s. 9.

(2) Where an arbitration agreement provides that the reference shall be to three arbitrators to be appointed otherwise than as mentioned in subsection (1), the award of any two of the arbitrators shall be binding.

12. In any of the following cases—

- (a) where an arbitration agreement provides that the reference shall be to a single arbitrator, and all the parties do not, after differences have arisen, concur in the appointment of an arbitrator;
- (b) if an appointed arbitrator refuses to act, or is incapable of acting, or dies, and the arbitration agreement does not show that it was intended that the vacancy should not be supplied and the parties do not supply the vacancy;
- (c) where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator and do not appoint him, or where two arbitrators are required to appoint an umpire and do not appoint him;
- (d) where an appointed umpire or third arbitrator refuses to act, or is incapable of acting, or dies, and the arbitration agreement does not show that it was intended that the vacancy should not be supplied, and the parties or arbitrators do not supply the vacancy,

Power of Court in certain cases to appoint an arbitrator or umpire.
14 Geo. 6, c. 27, s. 10.

any party may serve the other parties or the arbitrators, as the case may be, with a written notice to appoint, or, as the case may be, concur in appointing, an arbitrator, umpire or third arbitrator, and if the appointment is not made within seven clear days after the service of the notice, the Court or a judge thereof may, on application by the party who gave the notice, appoint an arbitrator, umpire or third arbitrator who shall have the like powers to act in the reference and make an award as if he had been appointed by consent of all parties.

13. Where an arbitration agreement provides that the reference shall be to an official referee, any official referee to whom application is made shall, subject to any order of the Court or a judge thereof as to transfer or otherwise, hear and determine the matters agreed to be referred.

Reference to official referee.
14 Geo. 6, c. 27, s. 11.

Conduct of Proceedings, Witnesses, etc.

Conduct of
proceedings,
witnesses,
etc.
14 Geo. 6,
c. 27, s. 12.

14. (1) Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to contain a provision that the parties to the reference, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrator or umpire, on oath or affirmation, in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrator or umpire all documents within their possession or power respectively which may be required or called for, and do all other things which during the proceedings on the reference the arbitrator or umpire may require.

(2) Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to contain a provision that the witnesses on the reference shall, if the arbitrator or umpire thinks fit, be examined on oath or affirmation.

(3) An arbitrator or umpire shall, unless a contrary intention is expressed in the arbitration agreement, have power to administer oaths to, or take the affirmations of, the parties to and witnesses on a reference under the agreement.

(4) Any party to a reference under an arbitration agreement may sue out a writ of *subpoena ad testificandum* or a writ of *subpoena duces tecum*, but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action, and the Court or a judge thereof may order that a writ of *subpoena ad testificandum* or of *subpoena duces tecum* shall issue to compel the attendance before an arbitrator or umpire of a witness wherever he may be within the Colony.

(5) The Court or a judge thereof may also order that a writ of *habeas corpus ad testificandum* shall issue to bring up a prisoner for examination before an arbitrator or umpire.

(6) The Court shall have, for the purpose of and in relation to a reference, the same power of making orders in respect of—

- (a) security for costs;
- (b) discovery of documents and interrogatories;
- (c) the giving of evidence by affidavit;
- (d) examination on oath of any witness before an officer of the Court or any other person, and the issue of a commission or request for the examination of a witness out of the jurisdiction;
- (e) the preservation, interim custody or sale of any goods which are the subject matter of the reference;

- (f) securing the amount in dispute in the reference;
- (g) the detention, preservation or inspection of any property or thing which is the subject of the reference or as to which any question may arise therein, and authorizing for any of the purposes aforesaid any person to enter upon or into any land or building in the possession of any party to the reference, or authorizing any samples to be taken or any observation to be made or experiment to be tried which may be necessary or expedient for the purpose of obtaining full information or evidence; and
- (h) interim injunctions or the appointment of a receiver, as it has for the purpose of and in relation to an action or matter in the Court:

Provided that nothing in this subsection shall be taken to prejudice any power which may be vested in an arbitrator or umpire of making orders with respect to any of the matters aforesaid.

Provisions as to Awards.

15. (1) Subject to the provisions of subsection (2) of section 24 and anything to the contrary in the arbitration agreement, an arbitrator or umpire shall have power to make an award at any time.

Time for
making
award.
14 Geo. 6,
c. 27, s. 13.

(2) The time, if any, limited for making an award, whether under this Ordinance or otherwise, may from time to time be enlarged by order of the Court or a judge thereof, whether that time has expired or not.

(3) The Court may, on the application of any party to a reference, remove an arbitrator or umpire who fails to use all reasonable dispatch in entering on and proceeding with the reference and making an award, and an arbitrator or umpire who is removed by the Court under this subsection shall not be entitled to receive any remuneration in respect of his services.

For the purposes of this subsection, the expression "proceeding with a reference" includes, in a case where two arbitrators are unable to agree, giving notice of that fact to the parties and to the umpire.

16. Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to contain a provision that the arbitrator or umpire may, if he thinks fit, make an interim award, and any reference in this Part to an award includes a reference to an interim award.

Interim
awards.
14 Geo. 6,
c. 27, s. 14.

Specific performance.
14 Geo. 6,
c. 27, s. 15.

17. Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to contain a provision that the arbitrator or umpire shall have the same power as the Court to order specific performance of any contract other than a contract relating to land or any interest in land.

Awards to be final.
14 Geo. 6,
c. 27, s. 16.

18. Unless a contrary intention is expressed therein, every arbitration agreement shall, where such a provision is applicable to the reference, be deemed to contain a provision that the award to be made by the arbitrator or umpire shall be final and binding on the parties and the persons claiming under them respectively.

Power to correct slips.
14 Geo. 6,
c. 27, s. 17.

19. Unless a contrary intention is expressed in the arbitration agreement, the arbitrator or umpire shall have power to correct in an award any clerical mistake or error arising from any accidental slip or omission.

Costs, Fees and Interest.

Costs.
14 Geo. 6,
c. 27, s. 18.

20. (1) Unless a contrary intention is expressed therein, every arbitration agreement shall be deemed to include a provision that the costs of the reference and award shall be in the discretion of the arbitrator or umpire, who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof, and may award costs to be paid as between solicitor and client.

(2) Any costs directed by an award to be paid shall, unless the award otherwise directs, be taxable in the Court.

(3) Any provision in an arbitration agreement to the effect that the parties or any party thereto shall in any event pay their or his own costs of the reference or award or any part thereof shall be void, and this Part shall, in the case of an arbitration agreement containing any such provision, have effect as if that provision were not contained therein:

Provided that nothing in this subsection shall invalidate such a provision when it is a part of an agreement to submit to arbitration a dispute which has arisen before the making of that agreement.

(4) If no provision is made by an award with respect to the costs of the reference, any party to the reference may, within fourteen days of the publication of the award or such further time as the Court or a judge thereof may direct, apply to the arbitrator for an order directing by and to whom those costs shall be paid, and thereupon the arbitrator shall, after hearing any party who may desire to be heard, amend his award by adding thereto such directions as he may think proper with respect to the payment of the costs of the reference.

(5) Section 63 of the Legal Practitioners Ordinance, which empowers a court before which any proceeding is being heard or is pending to declare a solicitor employed in the proceedings entitled to a charge on the property recovered or preserved in the proceedings, for his taxed costs in reference thereto, shall apply as if an arbitration were a proceeding in the Court, and the Court may make declarations and orders accordingly. (Cap. 159).

21. (1) If in any case an arbitrator or umpire refuses to deliver his award except on payment of the fees demanded by him, the Court may, on an application for the purpose, order that the arbitrator or umpire shall deliver the award to the applicant on payment into court by the applicant of the fees demanded, and further that the fees demanded shall be taxed by the taxing officer and that out of the money paid into court there shall be paid out to the arbitrator or umpire by way of fees such sum as may be found reasonable on taxation and that the balance of the money, if any, shall be paid out to the applicant. Taxation of arbitrator's or umpire's fees.
14 Geo. 6,
c. 27, s. 19.

(2) An application for the purposes of this section may be made by any party to the reference unless the fees demanded have been fixed by a written agreement between him and the arbitrator or umpire.

(3) A taxation of fees under this section may be reviewed in the same manner as a taxation of costs.

(4) The arbitrator or umpire shall be entitled to appear and be heard on any taxation or review of taxation under this section.

22. A sum directed to be paid by an award shall, unless the award otherwise directs, carry interest as from the date of the award and at the same rate as a judgment debt. Interest on awards.
14 Geo. 6,
c. 27, s. 20.

Special Cases, Remission and Setting aside of Awards, etc.

23. (1) An arbitrator or umpire may, and shall if so directed by the Court, state— Statement of case.
14 Geo. 6,
c. 27, s. 21.

- (a) any question of law arising in the course of the reference, or
(b) an award or any part of an award,

in the form of a special case for the decision of the Court.

(2) A special case with respect to an interim award or with respect to a question of law arising in the course of a reference may be stated, or may be directed by the Court to be stated, notwithstanding that proceedings under the reference are still pending.

(3) A decision of the Court under this section shall be deemed to be a decision of the Court within the meaning of section 28 of the Supreme Court Ordinance, which relates to the jurisdiction of the Full (Cap. 4).

Court to hear and determine appeals from any decision of the Court, but no appeal shall lie from the decision of the Court on any case stated under paragraph (a) of subsection (1) without the leave of the Court or of the Full Court.

Power to remit award.
14 Geo. 6, c. 27, s. 22.

24. (1) In all cases of reference to arbitration the Court or a judge thereof may from time to time remit the matters referred, or any of them, to the reconsideration of the arbitrator or umpire.

(2) Where an award is remitted, the arbitrator or umpire shall, unless the order otherwise directs, make his award within three months after the date of the order.

Removal of arbitrator and setting aside of award.
14 Geo. 6, c. 27, s. 23.

25. (1) Where an arbitrator or umpire has misconducted himself or the proceedings, the Court may remove him.

(2) Where an arbitrator or umpire has misconducted himself or the proceedings, or an arbitration or award has been improperly procured, the Court may set the award aside.

(3) Where an application is made to set aside an award, the Court may order that any money made payable by the award shall be brought into court or otherwise secured pending the determination of the application.

Power of Court to give relief where arbitrator is not impartial or the dispute involves question of fraud.
14 Geo. 6, c. 27, s. 24.

26. (1) Where an agreement between any parties provides that disputes which may arise in the future between them shall be referred to an arbitrator named or designated in the agreement, and after a dispute has arisen any party applies, on the ground that the arbitrator so named or designated is not or may not be impartial, for leave to revoke the authority of the arbitrator or for an injunction to restrain any other party or the arbitrator from proceeding with the arbitration, it shall not be a ground for refusing the application that the said party at the time when he made the agreement knew, or ought to have known, that the arbitrator, by reason of his relation towards any other party to the agreement or of his connexion with the subject referred, might not be capable of impartiality.

(2) Where an agreement between any parties provides that disputes which may arise in the future between them shall be referred to arbitration, and a dispute which so arises involves the question whether any such party has been guilty of fraud, the Court shall, so far as may be necessary to enable that question to be determined by the Court, have power to order that the agreement shall cease to have effect and power to give leave to revoke the authority of any arbitrator or umpire appointed by or by virtue of the agreement.

(3) In any case where by virtue of this section the Court has power to order that an arbitration agreement shall cease to have effect or to give leave to revoke the authority of an arbitrator or umpire, the Court may refuse to stay any action brought in breach of the agreement.

27. (1) Where an arbitrator, not being a sole arbitrator, or two or more arbitrators, not being all the arbitrators, or an umpire who has not entered on the reference is or are removed by the Court, the Court may, on the application of any party to the arbitration agreement, appoint a person or persons to act as arbitrator or arbitrators or umpire in place of the person or persons so removed.

Power of Court where arbitrator is removed or authority of arbitrator is revoked.
14 Geo. 6, c. 27, s. 25.

(2) Where the authority of an arbitrator or arbitrators or umpire is revoked by leave of the Court, or a sole arbitrator or all the arbitrators or an umpire who has entered on the reference is or are removed by the Court, the Court may, on the application of any party to the arbitration agreement, either—

(a) appoint a person to act as sole arbitrator in place of the person or persons removed; or

(b) order that the arbitration agreement shall cease to have effect with respect to the dispute referred.

(3) A person appointed under this section by the Court as an arbitrator or umpire shall have the like power to act in the reference and to make an award as if he had been appointed in accordance with the terms of the arbitration agreement.

(4) Where it is provided, whether by means of a provision in the arbitration agreement or otherwise, that an award under an arbitration agreement shall be a condition precedent to the bringing of an action with respect to any matter to which the agreement applies, the Court, if it orders, whether under this section or under any other enactment, that the agreement shall cease to have effect as regards any particular dispute, may further order that the provision making an award a condition precedent to the bringing of an action shall also cease to have effect as regards that dispute.

Enforcement of Award.

28. An award on an arbitration agreement may, by leave of the Court or a judge thereof, be enforced in the same manner as a judgment or order to the same effect, and where leave is so given, judgment may be entered in terms of the award.

Enforcement of award.
14 Geo. 6, c. 27, s. 26.

Miscellaneous.

29. Where the terms of an agreement to refer future disputes to arbitration provide that any claims to which the agreement applies shall be barred unless notice to appoint an arbitrator is given or an arbitrator is appointed or some other step to commence arbitration proceedings is taken within a time fixed by the agreement, and a dispute arises to which the agreement applies, the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may,

Power of Court to extend time for commencing arbitration proceedings.
14 Geo. 6, c. 27, s. 27.

on such terms, if any, as the justice of the case may require, but without prejudice to the provisions of any enactment limiting the time for the commencement of arbitration proceedings, extend the time for such period as it thinks proper.

Terms as to costs, etc.
14 Geo. 6,
c. 27, s. 28.

30. Any order made under this Part may be made on such terms as to costs or otherwise as the authority making the order thinks just:

Provided that this section shall not apply to any order made under subsection (2) of section 6.

Commencement of arbitration.
14 Geo. 6,
c. 27, s. 29.

31. (1) An arbitration shall be deemed to be commenced when one party to the arbitration agreement serves on the other party or parties a notice requiring him or them to appoint or concur in appointing an arbitrator, or, where the arbitration agreement provides that the reference shall be to a person named or designated in the agreement, requiring him or them to submit the dispute to the person so named or designated.

(2) Any such notice as is mentioned in subsection (1) may be served either—

- (a) by delivering it to the person on whom it is to be served; or
- (b) by leaving it at the usual or last known place of abode in the Colony of that person; or
- (c) by sending it by post in a registered letter addressed to that person at his usual or last known place of abode in the Colony,

as well as in any other manner provided in the arbitration agreement, and where a notice is sent by post in manner prescribed by paragraph (c), service thereof shall, unless the contrary is proved, be deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of post.

Crown to be bound.
14 Geo. 6,
c. 27, s. 30.

32. This Part, except the provisions of subsection (2) of section 6, shall apply to any arbitration to which the Crown is a party.

Application of Part II to statutory arbitrations.
14 Geo. 6,
c. 27, s. 31.

33. (1) Subject to the provisions of section 34, this Part, except the provisions thereof specified in subsection (2), shall apply to every arbitration under any other enactment, whether passed before or after the commencement of this Ordinance, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as this Ordinance is inconsistent with that other enactment or with any rules or procedure authorized or recognized thereby.

(2) The provisions referred to in subsection (1) are sections 5, 7, 26, 27 and 29, subsection (1) of section 4, subsection (2) of section 6 and subsection (3) of section 20.

34. This Part shall not affect any arbitration commenced, within the meaning of subsection (1) of section 31, before the commencement of this Ordinance, but shall apply to an arbitration so commenced after the commencement of this Ordinance under an agreement made before the commencement of this Ordinance.

Transitional—
Part II.
14 Geo. 6,
c. 27, s. 33.

35. Order XXV of the Code of Civil Procedure is revoked.

Revocation.
(Vol. VII,
p. 184).

PART III.

ENFORCEMENT OF CERTAIN FOREIGN AWARDS.

36. This Part shall apply to any award made after the 28th day of July, 1924—

Awards to which Part III applies.
14 Geo. 6,
c. 27, s. 35.
First Schedule.

- (a) in pursuance of an agreement for arbitration to which the protocol set out in the First Schedule applies; and
- (b) between persons of whom one is subject to the jurisdiction of some one of such Powers as Her Majesty, being satisfied that reciprocal provisions having been made, may by Order in Council declare to be parties to the convention set out in the Second Schedule, and of whom the other is subject to the jurisdiction of some other of the Powers aforesaid; and
- (c) in one of such territories as Her Majesty, being satisfied that reciprocal provisions having been made, may by Order in Council declare to be territories to which the said convention applies.

Second Schedule.

37. (1) A foreign award shall, subject to the provisions of this Part, be enforceable in the Colony either by action or in the same manner as the award of an arbitrator is enforceable by virtue of section 28.

Effect of foreign awards.
14 Geo. 6,
c. 27, s. 36.

(2) Any foreign award which would be enforceable under this Part shall be treated as binding for all purposes on the persons as between whom it was made, and may accordingly be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in the Colony, and any references in this Part to enforcing a foreign award shall be construed as including references to relying on an award.

38. (1) In order that a foreign award may be enforceable under this Part it must have—

Conditions for enforcement of foreign awards.
14 Geo. 6,
c. 27, s. 37.

- (a) been made in pursuance of an agreement for arbitration which was valid under the law by which it was governed;
- (b) been made by the tribunal provided for in the agreement or constituted in manner agreed upon by the parties;

- (c) been made in conformity with the law governing the arbitration procedure;
- (d) become final in the country in which it was made;
- (e) been in respect of a matter which may lawfully be referred to arbitration under the law of the Colony;

and the enforcement thereof must not be contrary to the public policy or the law of the Colony.

(2) Subject to the provisions of this subsection, a foreign award shall not be enforceable under this Part if the court dealing with the case is satisfied that—

- (a) the award has been annulled in the country in which it was made; or
- (b) the party against whom it is sought to enforce the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case, or was under some legal incapacity and was not properly represented; or
- (c) the award does not deal with all the questions referred or contains decisions on matters beyond the scope of the agreement for arbitration;

Provided that, if the award does not deal with all the questions referred, the Court may, if it thinks fit, either postpone the enforcement of the award or order its enforcement subject to the giving of such security by the person seeking to enforce it as the Court may think fit.

(3) If a party seeking to resist the enforcement of a foreign award proves that there is any ground other than the non-existence of the conditions specified in paragraphs (a), (b) and (c) of subsection (1), or the existence of the conditions specified in paragraphs (b) and (c) of subsection (2), entitling him to contest the validity of the award, the Court may, if it thinks fit, either refuse to enforce the award or adjourn the hearing until after the expiration of such period as appears to the Court to be reasonably sufficient to enable that party to take the necessary steps to have the award annulled by the competent tribunal.

39. (1) The party seeking to enforce a foreign award must produce—

- (a) the original award or a copy thereof duly authenticated in manner required by the law of the country in which it was made; and
- (b) evidence proving that the award has become final; and
- (c) such evidence as may be necessary to prove that the award is a foreign award and that the conditions mentioned in paragraphs (a), (b) and (c) of subsection (1) of section 38 are satisfied.

Evidence.
14 Geo. 6,
c. 27, s. 38.

(2) In any case where any document required to be produced under subsection (1) is in a foreign language, it shall be the duty of the party seeking to enforce the award to produce a translation certified as correct by a diplomatic or consular agent of the country to which that party belongs, or certified as correct in such other manner as may be sufficient according to the law of the Colony.

(3) Subject to the provisions of this section, rules of court may be made under section 37 of the Supreme Court Ordinance with respect to the evidence which must be furnished by a party seeking to enforce an award under this Part. (Cap. 4).

40. For the purposes of this Part, an award shall not be deemed final if any proceedings for the purpose of contesting the validity of the award are pending in the country in which it was made. Meaning of "final award".
14 Geo. 6,
c. 27, s. 39.

41. Nothing in this Part shall—

- (a) prejudice any rights which any person would have had of enforcing in the Colony any award or of availing himself in the Colony of any award if this Part had not been enacted; or
- (b) apply to any award made on an arbitration agreement governed by the law of the Colony. Saving for other rights, etc.
14 Geo. 6,
c. 27, s. 40.

FIRST SCHEDULE.

[ss. 6 & 36.]

PROTOCOL ON ARBITRATION CLAUSES SIGNED ON BEHALF OF HIS MAJESTY AT A MEETING OF THE ASSEMBLY OF THE LEAGUE OF NATIONS HELD ON THE 24TH DAY OF SEPTEMBER, 1923.

The undersigned, being duly authorized, declare that they accept, on behalf of the countries which they represent, the following provisions—

1. Each of the Contracting States recognizes the validity of an agreement whether relating to existing or future differences between parties, subject respectively to the jurisdiction of different Contracting States by which the parties to a contract agree to submit to arbitration all or any differences that may arise in connexion with such contract relating to commercial matters or to any other matter capable of settlement by arbitration, whether or not the arbitration is to take place in a country to whose jurisdiction none of the parties is subject.

Each Contracting State reserves the right to limit the obligation mentioned above to contracts which are considered as commercial under its national law. Any Contracting State which avails itself of this right will notify the Secretary-General of the League of Nations, in order that the other Contracting States may be so informed.

2. The arbitral procedure, including the constitution of the arbitral tribunal, shall be governed by the will of the parties and by the law of the country in whose territory the arbitration takes place.

The Contracting States agree to facilitate all steps in the procedure which require to be taken in their own territories, in accordance with the provisions of their law governing arbitral procedure applicable to existing differences.

3. Each Contracting State undertakes to ensure the execution by its authorities and in accordance with the provisions of its national laws of arbitral awards made in its own territory under the preceding articles.

4. The tribunals of the Contracting Parties, on being seized of a dispute regarding a contract made between persons to whom Article 1 applies and including an arbitration agreement whether referring to present or future differences which is valid in virtue of the said article and capable of being carried into effect, shall refer the parties on the application of either of them to the decision of the arbitrators.

Such reference shall not prejudice the competence of the judicial tribunals in case the agreement or the arbitration cannot proceed or become inoperative.

5. The present Protocol, which shall remain open for signature by all States, shall be ratified. The ratifications shall be deposited as soon as possible with the Secretary-General of the League of Nations, who shall notify such deposit to all the signatory States.

6. The present Protocol shall come into force as soon as two ratifications have been deposited. Thereafter it will take effect, in the case of each Contracting State, one month after the notification by the Secretary-General of the deposit of its ratification.

7. The present Protocol may be denounced by any Contracting State on giving one year's notice. Denunciation shall be effected by a notification addressed to the Secretary-General of the League, who will immediately transmit copies of such notification to all the other signatory States and inform them of the date of which it was received. The denunciation shall take effect one year after the date on which it was notified to the Secretary-General, and shall operate only in respect of the notifying State.

8. The Contracting States may declare that their acceptance of the present Protocol does not include any or all of the undermentioned territories: that is to say, their colonies, overseas possessions or territories, protectorates or the territories over which they exercise a mandate.

The said States may subsequently adhere separately on behalf of any territory thus excluded. The Secretary-General of the League of Nations shall be informed as soon as possible of such adhesions. He shall notify such adhesions to all signatory States. They will take effect one month after the notification by the Secretary-General to all signatory States.

The Contracting States may also denounce the Protocol separately on behalf of any of the territories referred to above. Article 7 applies to such denunciation.

SECOND SCHEDULE.

[s. 36.]

CONVENTION ON THE EXECUTION OF FOREIGN ARBITRAL AWARDS SIGNED AT GENEVA ON BEHALF OF HIS MAJESTY ON THE 26TH DAY OF SEPTEMBER, 1927.

Article 1.

In the territories of any High Contracting Party to which the present Convention applies, an arbitral award made in pursuance of an agreement, whether relating to existing or future differences (hereinafter called "a submission to arbitration") covered by the Protocol on Arbitration Clauses, opened at Geneva on September 24, 1923, shall be recognized as binding and shall be enforced in accordance with the rules of the procedure of the territory where the award is relied upon, provided that the said award has been made in a territory of one of the High Contracting Parties to which the present Convention applies and between persons who are subject to the jurisdiction of one of the High Contracting Parties.

To obtain such recognition or enforcement, it shall, further, be necessary—

- (a) that the award has been made in pursuance of a submission to arbitration which is valid under the law applicable thereto;

- (b) that the subject-matter of the award is capable of settlement by arbitration under the law of the country in which the award is sought to be relied upon;
- (c) that the award has been made by the Arbitral Tribunal provided for in the submission to arbitration or constituted in the manner agreed upon by the parties and in conformity with the law governing the arbitration procedure;
- (d) that the award has become final in the country in which it has been made, in the sense that it will not be considered as such if it is open to *opposition, appel or pourvoi en cassation* (in the countries where such forms of procedure exist) or if it is proved that any proceedings for the purpose of contesting the validity of the award are pending;
- (e) that the recognition or enforcement of the award is not contrary to the public policy or to the principles of the law of the country in which it is sought to be relied upon.

Article 2.

Even if the conditions laid down in Article 1 hereof are fulfilled, recognition and enforcement of the award shall be refused if the Court is satisfied—

- (a) that the award has been annulled in the country in which it was made;
- (b) that the party against whom it is sought to use the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case; or that, being under a legal incapacity, he was not properly represented;
- (c) that the award does not deal with the differences contemplated by or falling within the terms of the submission to arbitration or that it contains decisions on matters beyond the scope of the submission to arbitration.

If the award has not covered all the questions submitted to the arbitral tribunal, the competent authority of the country where recognition or enforcement of the award is sought can, if it thinks fit, postpone such recognition or enforcement or grant it subject to such guarantee as that authority may decide.

Article 3.

If the party against whom the award has been made proves that, under the law governing the arbitration procedure, there is a ground, other than the grounds referred to in Article 1 (a) and (c), and Article 2(b) and (c), entitling him to contest the validity of the award in a Court of Law, the Court may, if it thinks fit, either refuse recognition or enforcement of the award or adjourn the consideration thereof, giving such party a reasonable time within which to have the award annulled by the competent tribunal.

Article 4.

The party relying upon an award or claiming its enforcement must supply, in particular—

- (1) The original award or a copy thereof duly authenticated, according to the requirements of the law of the country in which it was made;
- (2) Documentary or other evidence to prove that the award has become final, in the sense defined in Article 1(d), in the country in which it was made;
- (3) When necessary, documentary or other evidence to prove that the conditions laid down in Article 1, paragraph 1 and paragraph 2(a) and (c), have been fulfilled.

A translation of the award and of the other documents mentioned in this Article into the official language of the country where the award is sought to be relied upon may be demanded. Such translation must be certified correct by a

diplomatic or consular agent of the country to which the party who seeks to rely upon the award belongs or by a sworn translator of the country where the award is sought to be relied upon.

Article 5.

The provisions of the above Articles shall not deprive any interested party of the right of availing himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

Article 6.

The present Convention applies only to arbitral awards made after the coming into force of the Protocol on Arbitration Clauses, opened at Geneva on September 24th, 1923.

Article 7.

The present Convention, which will remain open to the signature of all the signatories of the Protocol of 1923 on Arbitration Clauses, shall be ratified.

It may be ratified only on behalf of those Members of the League of Nations and non-Member States on whose behalf the Protocol of 1923 shall have been ratified.

Ratifications shall be deposited as soon as possible with the Secretary-General of the League of Nations, who will notify such deposit to all the signatories.

Article 8.

The present Convention shall come into force three months after it shall have been ratified on behalf of two High Contracting Parties. Thereafter, it shall take effect, in the case of each High Contracting Party, three months after the deposit of the ratification on its behalf with the Secretary-General of the League of Nations.

Article 9.

The present Convention may be denounced on behalf of any Member of the League or non-Member State. Denunciation shall be notified in writing to the Secretary-General of the League of Nations, who will immediately send a copy thereof, certified to be in conformity with the notification, to all the other Contracting Parties, at the same time informing them of the date on which he received it.

The denunciation shall come into force only in respect of the High Contracting Party which shall have notified it and one year after such notification shall have reached the Secretary-General of the League of Nations.

The denunciation of the Protocol on Arbitration Clauses shall entail, ipso facto, the denunciation of the present Convention.

Article 10.

The present Convention does not apply to the Colonies, Protectorates or territories under suzerainty or mandate of any High Contracting Party unless they are specially mentioned.

The application of this Convention to one or more of such Colonies, Protectorates or territories to which the Protocol on Arbitration Clauses, opened at Geneva on September 24th, 1923, applies, can be effected at any time by means of a declaration addressed to the Secretary-General of the League of Nations by one of the High Contracting Parties.

Such declaration shall take effect three months after the deposit thereof.

The High Contracting Parties can at any time denounce the Convention for all or any of the Colonies, Protectorates or territories referred to above. Article 9 hereof applies to such denunciation.

Article 11.

A certified copy of the present Convention shall be transmitted by the Secretary-General of the League of Nations to every Member of the League of Nations and to every non-Member State which signs the same.

This printed impression has been carefully compared by me with the Bill which passed the Legislative Council on the 3rd day of July, 1963, and is found by me to be a true and correctly printed copy of the said Bill.

C. S. S. S.

Deputy Clerk of Councils.

(Secretariat GR1/3231/63)

HONG KONG

No. 23 OF 1963.



I assent.

Governor.

22nd August, 1963.

An Ordinance to amend the Landlord and Tenant Ordinance, Chapter 255.

[23rd August, 1963.]

BE it enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof, as follows—

1. This Ordinance may be cited as the Landlord and Tenant (Amendment) Ordinance, 1963. Short title.

2. Section 27 of the Landlord and Tenant Ordinance (hereinafter referred to as the principal Ordinance) is amended by the deletion of paragraph (a) of subsection (1) and the substitution therefor of the following— Amendment
of section 27.
(Cap. 255,
1953 Re-
print).

“(a) A tenancy tribunal shall, when the Chief Justice so directs, be constituted by a president alone and in all other cases by a president and such one or more members of the tenancy tribunal panel appointed under paragraph (a) of section 30 as the Chief Justice may direct. For the purposes of this section

a president shall be either a member of Her Majesty's Overseas Judiciary, a legal officer within the meaning of section 2 (Cap. 87) of the Legal Officers Ordinance or a barrister or solicitor of not less than five years' standing."

Amendment of section 31. 3. Section 31 of the principal Ordinance is amended by the deletion of subsection (5A).

This printed impression has been carefully compared by me with the Bill which passed the Legislative Council on the 21st August, 1963, and is found by me to be a true and correctly printed copy of the said Bill.

Opussten.


Deputy Clerk of Councils.

(Secretariat CR30/3231/55^{II})

HONG KONG

No. 24 OF 1963.

I assent.



[Signature]

Governor.

5th September, 1963.

An Ordinance to amend the Demolished Buildings (Re-development of Sites) Ordinance, 1963.

[6th September, 1963.]

BE it enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof, as follows—

1. This Ordinance may be cited as the Demolished Buildings (Re-development of Sites) (Amendment) Ordinance, 1963. Short title.

2. Section 7 of the Demolished Buildings (Re-development of Sites) Ordinance, 1963, is amended, in subsection (3), by the deletion of the brackets and words "(constituted as provided in subsection (5A) of section 31 of the Landlord and Tenant Ordinance)" and the substitution therefor of the following—

"under the provisions of the Landlord and Tenant Ordinance".

Amendment of section 7. (2 of 1963).

This printed impression has been carefully compared by me with the Bill which passed the Legislative Council on the 4th day of September, 1963, and is found by me to be a true and correctly printed copy of the said Bill.

Feuister
Deputy Clerk of Councils.

(Secretariat BL2/741/60)



HONG KONG

No. 25 OF 1963.



I assent.

[Signature]

Governor.

5th September, 1963.

An Ordinance to establish a Preventive Service and to make provision as to its duties and powers and as to the discipline of members thereof and to make provision for a welfare fund; and for purposes connected with the matters aforesaid.

[]

BE it enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof, as follows—

PART I.

PRELIMINARY.

1. This Ordinance may be cited as the Preventive Service Ordinance, 1963, and shall come into operation on a day to be appointed by the Governor by Proclamation in the *Gazette*.

Short title
and com-
mencement.

Inter-pretation.

2. In this Ordinance, unless the context otherwise requires—

“Colonial Regulations” means the regulations applicable to Her Majesty’s Overseas Civil Service;

“General Orders” means the general orders of the Government;

First Schedule.

“member” means a person holding an office specified in the First Schedule;

“Preventive Service” means the service established by section 3.

PART II.

CONSTITUTION, DUTIES AND POWERS.

Establishment and function. (Cap. 109).

3. There shall be established a Preventive Service which shall perform the functions hitherto performed by the revenue officers appointed under the Dutiable Commodities Ordinance, and shall take lawful measures for the enforcement of the laws of the Colony pertaining to dutiable commodities, importation and exportation and smuggling and do such other things as may be required of it by law.

Direction and administration.

4. (1) The Director of Commerce and Industry shall be the Commissioner of the Preventive Service; a Deputy Director of Commerce and Industry shall be a Deputy Commissioner of the Preventive Service and Assistant Directors of Commerce and Industry shall be Assistant Commissioners of the Preventive Service.

(2) The Commissioner, subject to the orders and control of the Governor, shall be charged with the direction and administration of the Preventive Service.

Constitution. First Schedule.

5. The Preventive Service shall consist of the offices specified in the First Schedule.

Payment.

6. Provision for the payment and maintenance of the Preventive Service shall be by charges on the general revenues of the Colony, to such amount and in such proportion as may from time to time by annual vote or otherwise be voted by the Legislative Council.

Powers, rights and duties of members. First Schedule.

7. (1) Any member holding an office specified in the First Schedule may exercise and discharge any of the rights, powers and duties conferred by any enactment upon the holder of such office.

(2) Any rights, powers and duties conferred by any enactment upon a revenue officer shall be deemed to be conferred upon the holder of any office specified in the First Schedule.

(3) A warrant card shall be issued to every member and shall be conclusive evidence of his appointment under this Ordinance.

8. (1) Any member, in addition to powers conferred by any other enactment, may, subject to the provisions of this section, arrest or detain for further inquiries without warrant any person found or reasonably suspected of committing or attempting to commit, or employing, aiding or assisting any person in committing any offence against, or of the unlawful possession of any article liable to forfeiture under, the provisions of any enactment specified in the Second Schedule, or any regulations made thereunder.

Power of arrest.

Second Schedule.

(2) The Governor in Council may by order amend, add to or delete from the Second Schedule.

(3) Every member who with or without warrant arrests any person under this Ordinance shall, where he is of opinion that an offence has been committed against the provisions of this Ordinance, take the person to a police station, or if further inquiries are necessary first to the office of the Commissioner and then to a police station, there to be dealt with in accordance with the provisions of the Police Force Ordinance:

(Cap. 232).

Provided that in no case shall any person be detained for more than forty-eight hours from the time of arrest without either being charged and brought before a magistrate or being released.

9. (1) The Pensions Ordinance and the Pensions Regulations, the Public Services Commission Ordinance and the Public Services Commission Regulations, Colonial Regulations and General Orders for the time being in force, save in so far as is otherwise provided therein or in this Ordinance or in any regulations made under this Ordinance, shall apply to all members.

Terms of service of members. (Cap. 89). (Vol. IX, p. 6). (Cap. 93). (Vol. IX, p. 31).

(2) Save as is otherwise provided in this Ordinance, the conditions of service of members, including conditions as to appointment, promotion, transfer, discipline and termination of appointment, and the grant of benefits upon retirement, shall be in accordance with the provisions of the Public Services Commission Ordinance, the Public Services Commission Regulations, Colonial Regulations, General Orders, the Pensions Regulations and the Pensions Ordinance.

PART III.
DISCIPLINE.

Offences against discipline, Third Schedule.

10. Any member who commits any of the offences against discipline specified in the Third Schedule shall be liable to be dismissed or otherwise punished or dealt with as provided in this Ordinance and in regulations made thereunder.

Discipline of senior officers.

11. Whenever it is alleged that a revenue inspector or any officer of more senior rank has committed an offence against discipline—

- (a) the provisions of Colonial Regulations and General Orders which relate to interdiction and to the payment of emoluments thereafter shall apply;
- (b) the matter shall be investigated and the officer concerned dealt with in the appropriate manner provided by the said regulations and orders for allegations of misconduct made against a public officer.

Discipline of junior officers.

12. (1) Whenever it is alleged that a revenue sub-inspector or any officer of more junior rank has committed an offence against discipline, the Chief Preventive Officer may hear and determine the case. The proceedings shall be conducted in accordance with the rules of procedure for the investigation of offences against discipline contained in the Fourth Schedule.

Fourth Schedule.

(2) The Commissioner may interdict from duty any revenue sub-inspector or any officer of more junior rank against whom proceedings are taken or about to be taken for an offence against discipline. Any such officer who is interdicted from duty shall receive half of the emoluments of his office unless the Commissioner orders that he shall receive a larger portion. If the proceedings against him are dismissed, he shall be entitled to receive the balance of the full amount of the emoluments which he would have received if he had not been interdicted.

Penal deductions from emoluments.

13. (1) The following penal deductions may be made from the emoluments due to a member—

- (a) all emoluments for every day of absence without leave;
- (b) the sum required to pay any fine or other sum ordered to be paid as an award in respect of an offence against discipline.

(2) For the purposes of paragraph (a) of subsection (1), the number of days shall be reckoned as from the time when the absence commences.

14. Sections 11, 12 and 13 shall not preclude the summary dismissal in accordance with Colonial Regulations and General Orders of any member who is absent from duty without reasonable cause or who wilfully refuses or wilfully omits to perform his duties if the absence from duty or omission to perform his duty is unduly prolonged.

Summary dismissal.

15. (1) If criminal proceedings are instituted or about to be instituted against a member, he may be interdicted from duty and thereafter paid emoluments as follows—

Interdiction from duty where criminal proceedings instituted against member.

- (a) if a revenue inspector or officer of more senior rank, in accordance with the provisions of Colonial Regulations and General Orders;
- (b) if a revenue sub-inspector or officer of more junior rank, in accordance with the provisions of subsection (2) of section 12.

(2) If a member is convicted of a criminal offence he may be dismissed in accordance with the provisions of Colonial Regulations and General Orders.

16. The employment of a member may be terminated in accordance with Colonial Regulations on the ground that, having regard to the conditions of the public service, the usefulness of the officer thereto and all other circumstances of the case, such termination is desirable in the public interest.

Termination of employment under Colonial Regulations.

17. (1) Where it appears to the Governor that any revenue sub-inspector, or officer of more junior rank (hereinafter in this section referred to as the officer) is or has been—

Dismissal of members in control of unexplained pecuniary resources.

- (a) maintaining a standard of living above that which is commensurate with his official emoluments; or
- (b) in control of pecuniary resources in excess of his official emoluments,

the Governor may, after consultation with the Attorney General, direct that such officer be notified in writing by the Commissioner of the grounds on which the allegations against him are based, and be called upon to give an explanation in writing before a date to be specified.

(2) If, when so called upon, the officer fails to give an explanation which satisfies the Governor, the Governor may refer the matter to a Tribunal consisting of—

- (a) a judge of the Supreme Court or of the District Court or a magistrate, nominated, as the occasion requires, by the Chief

Justice, and such judge or magistrate shall be Chairman of the Tribunal; and

- (b) two other public officers appointed by the Governor.
- (3) Upon such reference the Tribunal shall inquire into the matter referred.
- (4) The officer shall be notified by the Commissioner of the day appointed for the hearing by the Tribunal and that he will be required to appear before it.
- (5) At the inquiry the Government may be represented by the Attorney General or by a public officer appointed by him and the officer may be represented by a solicitor or counsel or by another public officer.

(6) (a) The officer shall be entitled to be present throughout the hearing and to cross-examine any witness called on behalf of the Government and to give evidence himself and to call witnesses on his own behalf.

(b) No documentary evidence shall be adduced on behalf of the Government unless the officer has previously been supplied with a copy thereof or been given access thereto.

(c) Evidence shall not be taken on oath.

(7) If at the inquiry it is proved that the officer is or has been—

(a) maintaining a standard of living above that which is commensurate with his official emoluments; or

(b) in control of pecuniary resources in excess of his official emoluments,

the onus of explaining how he is or has been able to maintain such a standard of living or how such pecuniary resources came under his control shall be upon the officer.

(8) The Tribunal, having inquired into the matter, shall make a report to the Governor. If the Governor is of opinion that the report should be amplified in any respect or that further inquiry is desirable, he may refer any matter back to the Tribunal for further inquiry or report accordingly, or may himself, in the presence of the officer subject to the inquiry, hear such further evidence as he may think necessary.

(9) If after considering the report of the Tribunal, together with such further report or evidence, if any, the Governor is of opinion that the officer has failed to give a satisfactory explanation of his standard of living or his pecuniary resources, the officer shall be liable to be dismissed:

Provided that no officer shall be dismissed by virtue of this section without the approval of the Secretary of State.

(10) If the Governor is of the opinion that the officer should not be dismissed but that the proceedings disclose grounds for requiring him to retire in the public interest, he may so require him to retire:

Provided that no officer who holds an appointment which is subject to the approval of the Secretary of State or who was selected for appointment by the Secretary of State shall be required to retire by virtue of this section without the approval of the Secretary of State.

(11) Notwithstanding anything contained in this Ordinance the provisions of Colonial Regulations relating to interdiction and suspension and to the payment of emoluments and allowances thereof shall apply to all officers in the case of proceedings under this section.

PART IV.

WELFARE FUND.

18. There shall be established a fund to be known as the "Preventive Service Welfare Fund" which shall consist of— Establishment of fund.

(a) any donations and voluntary contributions thereto;

(b) such sums as may be voted by the Legislative Council.

19. The Preventive Service Welfare Fund shall be controlled by the Commissioner subject to regulations made under section 22 and applied for the purpose of— Control of fund.

(a) procuring for members who are serving or for former members who have been retired on pension, gratuity or other allowance, comforts, convenience or other advantages not chargeable to public revenue;

(b) granting loans to members who are serving or to former members who have been retired on pension, gratuity or other allowance on rates and terms in accordance with regulations made under section 22.

PART V.

MISCELLANEOUS.

20. (1) The Commissioner may make orders called "Preventive Service Standing Orders" not inconsistent with the provisions of— Preventive Service Orders.

(a) this Ordinance and any regulations made thereunder;

(b) the Stores Regulations of the Government;

(c) Colonial Regulations and General Orders, as modified by this Ordinance and by regulations made thereunder.

- (2) Such orders may prescribe or provide for—
- (a) the control, direction and information of the Preventive Service;
 - (b) discipline;
 - (c) training;
 - (d) classifications and promotions;
 - (e) inspections, drills, exercises and parades;
 - (f) welfare;
 - (g) departmental finance;
 - (h) buildings, grounds, stores, furniture and equipment;
 - (i) services to be performed by members;
 - (j) the manner and form of reports, correspondence and other records;
 - (k) the performance of any act which may be necessary for the proper carrying out of the provisions of this Ordinance or any regulations made thereunder or of any other enactment or for the discharge of any duty imposed by law on the Preventive Service;
 - (l) such other matters as may be necessary or expedient for preventing abuse or neglect of duty, for rendering the Preventive Service efficient in the discharge of its duties and for carrying out the objects of this Ordinance.

Protection
of members.

21. No member acting *bona fide* under powers conferred by this Ordinance shall be liable to any action for damages for any act done or omitted to be done by him in connexion with his duties.

Power to
make
regulations.

22. The Governor in Council may by regulation prescribe or provide for—

- (a) the administration of the Preventive Service Welfare Fund;
- (b) such other matters as may be necessary or expedient for rendering the Preventive Service efficient in the discharge of its duties;
- (c) generally for carrying into effect the provisions of the Ordinance.

Offences.

23. (1) Any person who resists or obstructs any member acting in the execution of his duty shall be guilty of an offence and shall be liable on conviction to a fine of two hundred and fifty dollars and to imprisonment for six months.

(2) Any person who, not being a member, wears, without permission of the Commissioner, the uniform of the Preventive Service, or any dress having the appearance or bearing any of the distinctive marks of

that uniform or in any manner passes himself off as being a member, shall be guilty of an offence and shall be liable on conviction to a fine of two hundred and fifty dollars.

FIRST SCHEDULE.

[ss. 2 and 5.]

Offices.

Commissioner.
Deputy Commissioner.
Assistant Commissioner.
Chief Preventive Officer.
Deputy Chief Preventive Officer.
Assistant Chief Preventive Officer.
Senior Revenue Inspector.
Revenue Inspector.
Revenue Sub-Inspector.
Woman Revenue Sub-Inspector.
Senior Revenue Officer.
Woman Senior Revenue Officer.
Revenue Officer.
Woman Revenue Officer.
Assistant Revenue Officer.
Woman Assistant Revenue Officer.

SECOND SCHEDULE.

[s. 8.]

Merchandise Marks Ordinance.	(Cap. 41).
Importation and Exportation Ordinance.	(Cap. 50).
Foreign Copper Coin Ordinance.	(Cap. 67).
Foreign Silver and Nickel Coin Ordinance.	(Cap. 69).
Ships (Prohibition of Sale of Liquor) Ordinance.	(Cap. 82).
Post Office Ordinance.	(Cap. 98).
Dangerous Drugs Ordinance.	(Cap. 134).
Penicillin Ordinance.	(Cap. 137).
Pharmacy and Poisons Ordinance.	(Cap. 138).
Marine Hawkers Ordinance.	(Cap. 160).
Arms and Ammunition Ordinance.	(Cap. 238).
Dutiable Commodities Ordinance, 1963.	(25 of 1963).

THIRD SCHEDULE.

[s. 10.]

Offences against discipline.

Any member commits an offence against discipline who—

- (1) without good and sufficient cause fails to carry out any lawful order, whether written or verbal;
- (2) is insubordinate towards any member whose orders it is his duty to obey;
- (3) (a) neglects or without good and sufficient cause fails to do, promptly and diligently, anything it is his duty to do;
(b) by carelessness or neglect in the performance of his duty contributes to the occurrence of any loss, damage or injury to any person or property;
- (4) sleeps on duty without permission;

- (5) smokes in a public place while on duty in uniform;
- (6) knowingly makes any false, misleading, or inaccurate statement in connexion with his duty either verbally or in writing;
- (7) with intent to deceive destroys any official record, document or book or alters or erases any entry therein;
- (8) without proper authority—
 - (a) divulges any matter which it is his duty to keep secret;
 - (b) directly or indirectly communicates to the press or to any other person any matter which may have come to his knowledge in the course of his official duties;
 - (c) publishes any matter or makes any public pronouncement relating to the Preventive Service;
- (9) (a) solicits or receives any unauthorized fee, gratuity or other consideration in connexion with his duties as a member;
- (b) fails to account for, or to make a prompt and true return of, any money or property for which he is responsible, either in connexion with his duties as a member or with any fund connected with the Preventive Service or any member of the Preventive Service;
- (c) improperly uses his position as a member;
- (10) without proper authority or reasonable excuse—
 - (a) absents himself from duty or from any place of parade;
 - (b) arrives late for any duty or parade;
- (11) (a) wilfully or negligently damages or loses any articles of clothing or equipment or any implement, accoutrement or appointment whatever, with which he has been provided or entrusted, or fails to take proper care thereof;
- (b) neglects to report any damage to, or loss of, any article of clothing or equipment, or any implements, accoutrement or appointment whatever, with which he has been provided or entrusted;
- (12) when on duty, or called upon for duty, is unfit for duty through drinking intoxicating liquor;
- (13) except with the special permission of a senior revenue inspector, carries on his person when on duty more than ten dollars in the case of senior revenue officers and below, and twenty-five dollars in the case of revenue sub-inspectors;
- (14) fails to report immediately to senior officers breaches of discipline and offences against the laws of the Colony;
- (15) when on or off duty acts in a disorderly manner, or in any manner prejudicial to discipline, or likely to bring discredit upon the Preventive Service or the public service;
- (16) is guilty of anything, whether by reason of contravention of General Orders or otherwise, which amounts to misconduct in a public officer.

FOURTH SCHEDULE.

[s. 12.]

Rules of procedure for the investigation of offences against discipline.

Interpretation.

1. In this Schedule—

"member" means a member of the rank of revenue sub-inspector and below.

Procedure as to charges.

2. (1) A charge against any member in respect of any offence enumerated in the Third Schedule shall be entered on a charge sheet.

(2) The offence alleged shall be specifically stated in the charge sheet which shall also contain such particulars as shall leave the member in no doubt as to the charge against him.

- (3) (a) The charge sheet together with a list of witnesses whom it is proposed to call and documents which it is proposed to adduce in support of the charge shall be handed to the member at the earliest possible moment.
- (b) The member charged shall be allowed a reasonable opportunity to make copies of all original documents for the purposes of his defence, and shall, if he so requests, be given copies of them.

3. The member charged shall, as soon as possible, and in any case not later than twenty-four hours after the receipt by him of the charge sheet, state in writing upon the charge sheet whether or not he admits the charge and shall give the names of any witness he desires to call.

Duty to make reply.

4. (1) If the member charged admits the charge, the Chief Preventive Officer, if he considers his powers of punishment are adequate, shall, after hearing the member charged and any witness he may wish to call in extenuation or explanation and any other witnesses whom the Chief Preventive Officer may consider desirable to call, either caution the member or make a disciplinary award within his powers.

Power of Chief Preventive Officer to hear charges.

(2) If the member charged denies the charge, the Chief Preventive Officer shall, at the earliest possible moment, arrange for the attendance of all necessary witnesses and shall, after hearing all the evidence as provided in rule 5, either dismiss the charge or, if he finds the charge proved and if he considers his powers of punishment are adequate, administer a caution or make a disciplinary award within his powers.

(3) Where the Chief Preventive Officer considers that his powers of punishment are inadequate, he shall refer the case to the Commissioner and shall so inform the member charged.

(4) When a case is referred to the Commissioner under paragraph (3) the Chief Preventive Officer shall send to the Commissioner the notes taken in accordance with rule 5(2)(b) together with the record of service of the member charged.

5. (1) At the hearing of the charge as provided in rule 4, the Chief Preventive Officer shall hear the evidence in support of the charge and any evidence the member charged wishes to call in his defence.

Rights of member charged.

(2) At the hearing by the Chief Preventive Officer—

- (a) the member charged shall be allowed to hear all the evidence against him and to cross-examine the witnesses giving that evidence and to examine witnesses called in his defence;
- (b) the Chief Preventive Officer shall take or cause to be taken notes of the statements made in evidence or under examination or cross-examination and of any statement or evidence either in his defence or in mitigation of punishment made or given before him by the member charged, and shall ensure that the notes are signed at the foot thereof by the person by whom the statement was made.

6. If the Chief Preventive Officer finds the charge proved he may make any of the following disciplinary awards—

Power of Chief Preventive Officer to make disciplinary awards.

- (a) (i) administer a fine not exceeding fifty dollars, which may or may not be accompanied by a reprimand, or a severe reprimand; or
- (ii) without administering a fine, award a reprimand, or a severe reprimand; or
- (b) award extra duty for a period not exceeding twelve hours provided that such extra duty shall not exceed six hours in one working week:

Provided that no award made by the Chief Preventive Officer shall take effect until it has been confirmed by an Assistant Commissioner.

7. (1) After confirmation of his award by an Assistant Commissioner, the Chief Preventive Officer shall enter the award on the charge sheet which shall be shown to and initialled by the member concerned, and the award shall be recorded in the record of service of such member.

Entry of disciplinary award.

(2) If the Chief Preventive Officer dismisses a charge or administers a caution without making a disciplinary award, no entry shall be made in the record of service of the member concerned.

Appeal.

8. (1) Any member may appeal in writing to the Commissioner against any award made by the Chief Preventive Officer.

(2) The Chief Preventive Officer shall forward to the Commissioner the written appeal, the documents required by rule 2 and the notes taken at the hearing in accordance with rule 5(2)(b), together with a written statement by the member appealing stating whether he is appealing against the Chief Preventive Officer's finding or award and giving the grounds of his appeal. The Chief Preventive Officer's written observations thereon, which shall be shown to and initialled by the member appealing, shall accompany the appeal. The Commissioner, having heard such submission as the member appealing and the Chief Preventive Officer may wish to make, shall thereupon determine the appeal.

Power of Commissioner to make disciplinary awards.

9. The Commissioner may, on consideration of a case referred to him by the Chief Preventive Officer under rule 4(3), dismiss the charge or, if he finds the charge proved, make one or more of the following recommendations or disciplinary awards—

- (a) recommend to the Governor that the member concerned be dismissed;
- (b) recommend to the Governor that the employment of the member concerned be terminated in accordance with Colonial Regulations on the ground that, having regard to the conditions of the public service, the usefulness of the member concerned thereto and all the other circumstances of the case, such termination is desirable in the public interest;
- (c) recommend to the Governor that the member concerned be reduced in rank;
- (d) recommend to the Governor the suspension of the member concerned or the deferment or stoppage of his increment;
- (e) recommend to the Governor that the seniority of the member concerned be reduced or forfeited;
- (f) recommend to the Governor that the pay of the member concerned be forfeited for such period as he may think appropriate;
- (g) award any of the punishments which are within the competence of the Chief Preventive Officer to award.

Duty to inform member concerned of proposed recommendation.

10. (1) In the event of the Commissioner proposing to make a recommendation to the Governor under rule 9, the member concerned shall be informed of the proposed recommendation and he shall have the right of a personal hearing by the Commissioner before such recommendation is made.

(2) Every member in respect of whom a recommendation is to be made to the Governor shall be allowed within fourteen days of his being informed of the recommendation, or within such extended period as the Governor may permit, to submit in writing to the Governor any considerations which he wishes to bring to the attention of the Governor in his defence or in mitigation of his offence.

Decision of Governor.

11. Upon a reference of a case to the Governor under rule 9, the Governor may affirm the recommendation of the Commissioner, may award any punishment which could have been the subject of a recommendation under rule 9 or may quash the finding of the Chief Preventive Officer that the charge is proved.

Duty of Chief Preventive Officer to communicate decision of the Governor or of the Commissioner.

12. (1) The Chief Preventive Officer shall, on receipt by him of the decision of the Governor or of the Commissioner, communicate it orally to the member concerned who may, if he so desires, make a copy of such decision.

(2) Every caution administered and every disciplinary award made by the Governor shall be entered in the record of service of the member concerned:

Provided that on the dismissal of a charge an entry to that effect shall not be made.

13. For the avoidance of doubt, it is hereby declared that nothing in this Schedule shall be construed to preclude—

Removal of doubt.

- (a) the dismissal in accordance with Colonial Regulations of a member convicted of a criminal offence; or
- (b) the termination of the employment in accordance with Colonial Regulations of a member on the ground that, having regard to the conditions of the public service, the usefulness of such member thereto and all the other circumstances of the case, such termination in accordance with Colonial Regulations is desirable in the public interest.

This printed impression has been carefully compared by me with the Bill which passed the Legislative Council on the 4th day of September, 1963, and is found by me to be a true and correctly printed copy of the said Bill.

C. E. W. S. T. R. E. N. S. O. N.
Deputy Clerk of Councils.

(Secretariat PR6/1610/53)

2. (1) In this Ordinance, unless the context otherwise requires—
- “container” includes any receptacle or vessel and any wrapper, packing, cover or stopper;
- “Director” means the Director of Commerce and Industry and includes a deputy and assistant director;
- “dutiabale goods” means goods to which this Ordinance applies, which are not exempt from duty and on which the duty has not been paid, and includes goods on which duty has been paid if subsequently reimported;
- “duty-paid goods” means goods on which the full duty prescribed by law has been paid;
- “export” means to carry or cause to be carried out of the Colony by land, air or water and includes the export of anything carried or sent from any country and brought into the Colony by land, air or water for the sole purpose of being carried to another country after transshipment into another conveyance, but does not include transit cargo;
- “gallon” means the Imperial gallon;
- “Government Chemist” means the person so appointed by the Governor and includes such other person as the Director of Medical and Health Services may appoint to carry out duties under this Ordinance;
- “import” means to carry or cause to be carried into the Colony by land, air or water;
- “licence” means a licence granted or issued under this Ordinance;
- “manifest” means the manifest of a ship or aircraft, and in relation to a vehicle, the statement referred to in section 22 of goods imported or for export in such vehicles;
- “manufacture” includes every kind of preparation, mixing and treatment except packing and unpacking;
- “master” includes every person, except a pilot, having command or charge of any ship;
- “member of the Preventive Service” means a person holding an office specified in the First Schedule to the Preventive Service Ordinance, 1963;

- “net register” means net registered tonnage or its equivalent calculated according to English rules under the Merchant Shipping Acts, 1894 to 1948;
- “offence” means an offence against any of the provisions of this Ordinance and any regulations made thereunder, and includes any act or omission declared or deemed by any of the provisions of this Ordinance and any regulation made thereunder to be an offence;
- “permit” means a permit granted or issued under this Ordinance;
- “railway” means the Kowloon-Canton Railway, British Section, and “by rail” means by means of the railway;
- “ship” includes every description of vessel (not being or having the status of a vessel of war) used, or adapted for use, in navigation or for the carriage of goods or persons;
- “transshipment cargo” means goods consigned from a foreign place to another foreign place which are to be offloaded from the incoming ship, vehicle, train or aircraft pending onward carriage to the foreign destination in another ship, vehicle, train or aircraft;
- “transit cargo” means goods which are destined for a foreign place and are passing through the Colony on the same ship or aircraft without transshipment;
- “warehouse” means any premises or place or any part thereof specified by the Director either as a general bonded warehouse or as a licensed warehouse and set apart for storing only dutiable goods.
- (2) In this Ordinance “Commonwealth” means the countries specified in the Schedule and for the purposes of this Ordinance goods shall be deemed to be—
- (a) of Commonwealth origin, if they are proved to the satisfaction of the Director to have been grown, or produced in, any part of the Commonwealth; or
- (b) of Commonwealth manufacture, if they are proved to the satisfaction of the Director to have been substantially manufactured in any part of the Commonwealth: But no goods shall be deemed to have been substantially manufactured within the Commonwealth unless in the opinion of the Director at least

one-quarter of their value is the result of labour within the Commonwealth; or

- (c) of Hong Kong origin or manufactured in this Colony, if they are proved to the satisfaction of the Director to have been substantially produced or manufactured, as the case may be, in the Colony.

(3) The Governor in Council may by order amend, add to, or delete from the Schedule.

Application.

3. (1) This Ordinance shall apply to alcoholic liquors, tobacco, hydrocarbon oils, table waters and methyl alcohol.

(2) The Legislative Council may from time to time by resolution published in the *Gazette* apply to any substance any of the provisions of this Ordinance specified in the resolution with such modifications, if any, as may to them seem desirable, having regard to the nature of the substance to which the resolution relates.

(3) While any resolution relating to any substance is in force under this section the provisions of this Ordinance thereby applied shall have effect as if the substance were goods to which this Ordinance applies, but subject to such modifications, if any, as may be provided by the resolution.

(4) Except as provided in section 18, this Ordinance shall not apply to goods which are the property of or imported or purchased for the Governor or for the Government of the United Kingdom or of this Colony.

(5) Except as may be prescribed by regulations, the provisions of this Ordinance relating to the importation, exportation and movement of goods shall not apply to postal packets as defined in the Post Office Ordinance.

(Cap. 98).

PART II.

GENERAL.

Duties.

4. (1) The Legislative Council may from time to time by resolution published in the *Gazette* impose any duty on any dutiable goods, or any class of dutiable goods, and may increase, decrease, recast, abolish, vary, waive or remit whether generally or particularly any such duty to any extent whatever, or may impose new duties on any such

goods or class of goods, whether or not on the coming into operation of such resolution the goods, or the goods of that class, are already in the Colony.

(2) Every such resolution, and any resolution under section 3 or section 6, shall come into operation at the time of the passing thereof unless some other time be specified in the resolution and in that case at the time so specified and any resolution may be varied or revoked by any subsequent resolution.

(3) Subject to the provisions of the Public Revenue Protection (Cap. 120) Ordinance, and any order of the Governor thereunder, any duties payable at the time of the coming into operation of any resolution under this section shall continue payable, except as otherwise expressly provided in the resolution, until other provision is made therefor under or by virtue of this Ordinance.

5. (1) Where it is proved to the satisfaction of the Director that any duty-paid goods have been used in this Colony by qualified persons in the manufacture or preparation of any goods exported or taken as stores on board a ship, vehicle, train or aircraft departing from the Colony, drawback shall be payable to such persons in respect of such duty-paid goods at such rate as may from time to time by regulations be prescribed. Drawback.

(2) In this section, "qualified person" means a person qualified in manner prescribed by regulations for the purpose of drawback.

6. (1) The Governor in Council may by regulations prescribe or provide for— Regulations.

(a) regulating, restricting, licensing or prohibiting, except by licensed persons and on, from or to licensed premises, vehicles, trains, ships or aircraft, as the case may be, the importation, exportation, manufacture, storage, sale, supply and possession of goods to which this Ordinance applies;

(b) standards of quality for and determining the quality and origin of, and for packing, canning or bottling any goods to which this Ordinance applies to be manufactured, sold or exported under licence; and for materials to be used in such manufacture;

(c) conditions to be attached to licences and permits, the officers who may grant licences or permits and the periods for which licences and permits may be issued; and for the surrender of permits after issue;

- (d) the construction, maintenance, management and control of licensed premises;
- (e) books and records to be kept for the purposes of this Ordinance, the manner in which they are to be kept, and the periods for which they are to be preserved;
- (f) the containers in which goods to which this Ordinance applies may be imported, exported, kept, sold or supplied and for the labelling or marking of such goods and containers;
- (g) fees;
- (h) the payment of fees, duties and drawback, and for the refund of duty on goods destroyed in or exported from the Colony with the consent of the Director or on such other goods as the Legislative Council may by resolution direct;
- (i) dispensing with or relaxing any of the provisions of this Ordinance or any regulations made or duties imposed thereunder relating to goods—
 - (i) used or intended to be used in the sacrament, or solely for educational, scientific, medical or charitable purposes;
 - (ii) used or intended to be used in navigation, air or land traffic through or outside the Colony, or as ships' or aircraft stores;
 - (iii) imported by passengers in their baggage for their own use;
 - (iv) exported and subsequently re-imported, or to such other goods as the Legislative Council may by resolution direct;
 - (v) used or intended to be used as samples or advertising matter of no commercial value and not intended for resale;
 - (vi) which are *bona fide* gifts sent to residents of this Colony and are not intended for resale;
- (j) the furnishing of bonds, or cash or other securities, by licensees and others to secure the due payment of duty and the observance of the provisions of this Ordinance and any regulations made thereunder and the conditions of licences;
- (k) the examination of the baggage and goods of persons entering or leaving the Colony;
- (l) requiring importers and exporters of goods to which this Ordinance applies to furnish certificates relating to the goods from places outside the Colony;
- (m) marking by means of chemicals and coloration of hydrocarbon oils;
- (n) matters in which the Director may give directions for the protection of the revenue and the carrying out of the provisions of

- this Ordinance and any regulations made thereunder, and for empowering him to give such directions;
- (o) anything which is by this Ordinance to be prescribed or provided for by regulations;
 - (p) generally carrying into effect the provisions of this Ordinance.
- (2) Regulations made under this section may provide that a contravention of any regulation shall be an offence and prescribe a penalty therefor:
- Provided that no penalty so prescribed shall exceed a fine of a hundred thousand dollars and imprisonment for two years.
- (3) Any regulation made under this Ordinance may provide that in any criminal proceedings for a contravention thereof—
- (a) it shall be for the person charged with such contravention to prove certain facts; or
 - (b) facts may be presumed, with or without proof of other facts, until the contrary is proved.
- (4) Any regulation made in exercise of the powers conferred by subsection (3) shall be subject to the approval of the Legislative Council.

7. (1) Subject to the provisions of this Ordinance and any regulations made thereunder—

Grant of licences and permits.

- (a) the Director or other officer deputed by him in that behalf may in his absolute discretion grant and issue licences or permits on payment of the fees, for the periods prescribed, or if no such period is prescribed in any case, for periods of one year at a time, and may renew such licences for like periods and grant and issue permits in prescribed form;
- (b) an officer deputed by the Director to grant a licence or permit may—
 - (i) in granting the licence or permit impose such special conditions or restrictions in particular cases as he thinks fit;
 - (ii) permit the transfer of the licence or permit from one person to another or, if the licence was issued for certain premises, the substitution therefor of other premises, or may amend the licence or permit, on sufficient cause being shown to his satisfaction and on payment of the fee prescribed for such transfer, substitution or amendment and of such fee, or such proportionate part of such fee, payable under paragraph (a) as the change may involve;
 - (iii) give such directions to licensees in writing in prescribed matters as he may deem necessary for the protection of the revenue;

(iv) revoke the licence or permit on proof to his satisfaction of an offence against this Ordinance, whether any person has been convicted of such offence or not;

(c) a list of general bonded warehouses shall be published in the *Gazette* in January of each year and additions thereto or deletions therefrom shall be similarly published within one month of such addition or deletion becoming necessary.

(2) Any person who is aggrieved by the exercise of the powers conferred by this section by the Director or by any officer deputed by him in that behalf may appeal by way of petition to the Governor in Council.

Applications for licences and permits.

8. Any person requiring a licence or permit or the renewal or any extension, transfer or amendment of a licence or permit shall make application either personally or in writing to an officer authorized to grant the same, as he may direct, and in such form as the Director shall prescribe, and shall furnish such information and evidence relating to the application as may be prescribed by regulations or as the Director may require.

Register of requisitions and permits.

9. Every requisition for a permit and a copy of every permit issued shall be entered in a book or books in the office of the officer authorized to issue the permit, and the absence of a requisition or copy therefrom shall be *prima facie* evidence that a permit has not been applied for or, as the case may be, that a permit has not been issued.

Deputy for absent licensee.

10. If the holder of a licence for any premises in which dutiable goods may be stored or manufactured leaves this Colony for more than forty-eight hours at a time, or is, by reason of any disability, incapable of acting, he, or in the case of disability, his legal representative, shall appoint a responsible person, approved by the Director, to act on his behalf during his absence or disability and shall lodge with the Director a notice of such appointment endorsed or countersigned by the person appointed and during the absence or disability of the licensee the person appointed shall, without prejudice to the responsibility of the licensee, have the same duties and liabilities as the licensee under this Ordinance.

Powers of the Preventive Service.

11. (1) Every member of the Preventive Service shall for the purposes of this Ordinance have power to do all or any of the following things—

(a) to enter at all reasonable times, or, if specially authorized in writing by the Commissioner of the Preventive Service for the purposes of this section, at any time, by day and night, and remain as long as he thinks fit upon any premises or place in

respect of which any person holds a licence under this Ordinance and to inspect and examine the premises or place and every part thereof;

(b) to require the production of any licence, permit, and any book or document kept in pursuance of this Ordinance or any regulations made thereunder or any other document which has a bearing on the quantity, origin or nature of any goods to which this Ordinance applies, and to inspect, examine and copy any such books or documents;

(c) to make such examination and inquiry as may be necessary to ascertain whether the provisions of this Ordinance and of any regulations are complied with as respects any goods to which this Ordinance applies;

(d) without payment, to take such samples of any goods to which this Ordinance applies as the Commissioner of the Preventive Service may direct for examination or for ascertaining the duty payable on such goods, and samples so taken for examination or for ascertaining the duty payable may be disposed of as the Commissioner may think fit; and

(e) to exercise such other powers as may be necessary for giving effect to the provisions of this Ordinance.

(2) The holder of every licence or permit issued under this Ordinance and his servants or agents shall furnish the means required by a member of the Preventive Service as necessary for any entry, inspection, examination, inquiry or the exercise of his powers under this Ordinance in relation to any goods to which this Ordinance applies and which are or have been in the possession, custody or control of such licensee or permittee.

(3) If in pursuance of this section any member of the Preventive Service, having demanded admission into any premises and declared his name and business at any entrance thereof, is not immediately admitted, he and any person acting in his aid may break into and forcibly enter the premises.

12. Any member of the Preventive Service may without warrant—

(a) seize, remove and detain any goods to which this Ordinance applies and in respect of which he finds or has reasonable cause to suspect that an offence against this Ordinance or any regulations made thereunder has been committed, or that the goods are otherwise liable to forfeiture under this Ordinance;

(b) stop and board any ship, aircraft, train or vehicle and search the same and every part thereof, and may remain thereon as long as it remains in this Colony.

Seizure without warrant.

Ships failing to bring to. 15 & 16 Geo. 6 & 1 Eliz. 2, c. 44, s. 78.

13. The master of any ship not exceeding two hundred and fifty tons net register in the waters of this Colony who shall refuse to stop and receive any member of the Preventive Service on board such ship or who shall refuse or neglect, to bring his ship to when hailed by a member of the Preventive Service in charge of any ship employed in the service of the Government of this Colony having displayed the customary flag or having exhibited or made a recognition signal shall be guilty of an offence and liable to a fine of five thousand dollars in addition to any other penalty to which he may be liable under the provisions of this Ordinance.

Search of place or ship with warrant or authority or by police officer.

14. (1) Where it appears to any magistrate upon the oath of any person that there is reasonable cause to believe that in any place or any premises there are concealed or deposited any goods subject to forfeiture under this Ordinance, or with respect to which an offence has been committed or is about to be committed against the provisions of this Ordinance, and any regulations made thereunder, the magistrate may, by his warrant directed to any member of the Preventive Service or to any police officer, empower such member or officer by day or by night—

- (a) to enter the place or the premises named in the warrant and there to search for and seize, remove and detain any such goods; and
- (b) to arrest any person being in such place or in such premises in whose possession such goods may be found, or whom such member or officer may reasonably suspect of having concealed or deposited any such goods there or thereabout.
- (2) Such member or officer may, if necessary—
 - (a) break open any outer or inner door of the place or the premises and enter thereinto;
 - (b) forcibly enter the place or the premises and every part thereof;
 - (c) remove by force any obstruction to such entry, search, seizure and removal as he is empowered to effect;
 - (d) detain every person found in such place or such premises, and prevent every person from approaching or entering the same, until the search is complete;
 - (e) seize, remove and detain any such goods, whether in such place or such premises or in any place whatever within this Colony, in the possession, custody or control of any of the persons against whom his warrant has been issued.

(3) Whenever it appears to any member of the Preventive Service generally or specially authorized in writing by the Commissioner for the purposes of this section, or to any police officer not below the

rank of inspector, that there is reasonable cause to believe that in any place or any premises there are concealed or deposited goods liable to forfeiture under this Ordinance, or with respect to which an offence has been committed or is about to be committed against this Ordinance, and he has reasonable ground for believing that unless the place or the premises are searched forthwith the goods are likely to be removed, the said officer in virtue of his office may exercise in, upon and in respect of such place or such premises all the powers mentioned in this section as if he were empowered to do so by warrant.

(4) For the purposes of this section, "premises" includes any ship, vehicle, train or aircraft.

15. (1) Whenever it is lawful under this Ordinance for a member of the Preventive Service or a police officer to seize any goods, it shall be lawful for him in a like manner to seize—

- (a) any receptacle in which the goods are contained;
- (b) any ship not exceeding two hundred and fifty tons net register or any vehicle or aircraft not being a public transport or state aircraft in which the goods are found;
- (c) any machinery, implement, utensil or material used or intended to be used for the commission of an offence against this Ordinance; and
- (d) anything which may appear to be or to contain evidence that any offence against this Ordinance or any regulations made thereunder has been or is about to be committed.

(2) For the purposes of this section "public transport" in relation to "vehicle" shall mean "taxi" or "public omnibuses" as defined in subsection (2) of section 2 of the Road Traffic Ordinance, 1957.

Seizure of things used for commission of offences.

(39 of 1957).

16. No person shall—

- (a) delay, obstruct, hinder or molest any person duly engaged in the performance of any duty or in the exercise of any power imposed or conferred on him by or under this Ordinance and any regulations made thereunder or any person acting in his aid; or
- (b) rescue, damage or destroy any thing so liable to forfeiture or do anything calculated to prevent the procuring or giving of evidence as to whether or not any thing is so liable to forfeiture; or
- (c) fail to produce any licence, permit, book or document which he is required by or in pursuance of this Ordinance to produce; or
- (d) fail to comply with the requisition of any person duly engaged in the performance of any duty or the exercise of any power under this Ordinance.

Obstruction of member of the Preventive Service or police officer.

Restrictions
on dealing
with and
possession
of certain
goods.

17. (1) No person shall import or export or have in his possession, custody or control, or in any way deal with or dispose of, any goods to which this Ordinance applies—

- (a) except in accordance with the provisions of this Ordinance and any regulations made thereunder; or
- (b) unless he has discharged all the obligations with respect to the goods imposed upon him by or under this Ordinance.

(2) No person shall have in his possession, custody or control any goods knowing that in respect thereof an offence against this Ordinance has been committed:

Provided that no person shall be convicted of an offence against this subsection if he proves that when such goods came into his possession, custody or control he had good and sufficient reason to believe that the provisions of this Ordinance and of any regulations made thereunder relating to the goods had been complied with.

(3) No person shall import, export, produce, make, manufacture, sell, whether wholesale or retail, or advertise or expose for sale, or supply, any goods to which this Ordinance applies unless he is authorized to do so by and under and in accordance with a prescribed licence or permit or, if both a licence and a permit are prescribed for any transaction, both such licence and such permit:

Provided that this subsection shall not apply in the case of goods which are exempt from duty or in such other cases, in relation to duty-paid goods, as may be prescribed by regulations, or in the case of any transaction for which a licence or permit is not prescribed, or in the case of the import of transit and transshipment cargo or in the case of the export of transshipment cargo.

(4) No person shall sell, advertise or expose for sale, or supply, any goods to which this Ordinance applies, as goods of a standard prescribed by regulations, if the goods are not goods of that standard.

(5) No person shall have any dutiable goods in his possession, custody or control unless—

- (a) he is—
 - (i) the holder, or the servant of the holder, of a removal or export permit, personally conveying the goods direct from one place, ship, vehicle, train or aircraft to another place, ship, vehicle, train or aircraft in accordance with the permit; or
 - (ii) the licensee, or the servant of the licensee, of a general bonded warehouse, personally conveying the goods, if imported in a ship, vehicle, train or aircraft and duly entered in the manifest, direct from the ship, vehicle, train or aircraft in which they were imported to the warehouse; or

(b) the goods are—

- (i) in a general bonded or a licensed warehouse; or
- (ii) in a place licensed for the manufacture of such goods; or
- (iii) on railway premises and under the control of the railway authorities, if the nature of the goods has been disclosed to those authorities; or
- (iv) in a ship, vehicle, train or aircraft, if the goods were imported, or are to be exported, in that ship, vehicle, train or aircraft and are duly entered in the manifest.

It shall be no defence to any charge under this subsection or subsection (1) or (2) that the possession or control of the accused was a joint possession or control.

(6) No person, not being authorized so to do by permit or otherwise in accordance with the provisions of this Ordinance and any regulations made thereunder, shall remove, deliver or send out any dutiable goods from his stock, custody or possession; nor shall any person take, receive or have in his stock, custody or possession any dutiable goods removed or delivered thereto in contravention of this subsection.

2 & 3 Will.
4 c. 16.
s. 10.

(7) No person shall, on his own account or on behalf of another, sell, offer for sale or buy any dutiable goods which are in this Colony, unless the goods are—

- (a) in a general bonded or licensed warehouse; or
- (b) in the place where they were manufactured; or
- (c) in the ship, vehicle, train or aircraft in which they were imported; or
- (d) on the railway premises.

(8) The onus of proving that dutiable goods are in course of direct removal from any place, ship, vehicle, train or aircraft to any other place, ship, vehicle, train or aircraft shall be upon the accused.

18. (1) Notwithstanding anything in this Ordinance, an auctioneer licensed under the Miscellaneous Licences Ordinance may, without any licence under this Ordinance, sell any goods to which this Ordinance applies by auction but, unless the person for whom he sells holds a prescribed licence to sell such goods, only with the written permission of the Director.

Saving as
to sale of
goods by
licensed
auctioneer.
(Cap. 114).

(2) The auction may be held on the auctioneer's premises or on any premises at which his principal is licensed to sell the goods or at any place indicated in the permission aforesaid.

(3) This section shall apply notwithstanding that the goods are the property of the Government of the United Kingdom or of the Colony or form part of the estate of a bankrupt or deceased person or are sold by order of the court.

Goods embarked for export not to be reloaded.
39 & 40 Vict. c. 36, s. 120
42 & 43 Vict. c. 21, s. 5
and Schedule.

19. (1) If any goods to which this Ordinance applies are placed on board any ship, vehicle, train or aircraft for exportation or as stores and, except with the express permission of the Director in writing, are not duly exported or are unshipped or removed or reloaded in any part of the Colony, the master of the ship, the person in charge of the vehicle, train or aircraft and any person by whom or by whose orders or means the goods are so unshipped, removed or reloaded, shall be guilty of an offence, and the ship, if less than two hundred and fifty tons net register, vehicle, train or aircraft, not being a public transport or state aircraft, may by order of a magistrate be forfeited.

(2) For the purpose of this section "public transport" in relation to "vehicle" shall mean "taxi" or "public omnibus" as defined in subsection (2) of section 2 of the Road Traffic Ordinance, 1957.

(39 of 1957).

Restrictions on import and export.

20. Except with the written permission of the Director, no goods to which this Ordinance applies shall—

- (a) be imported or exported otherwise than by air, road, rail or sea and to or from such ports or places and by such routes, or
- (b) be landed from or loaded or taken on any ship, aircraft, train or vehicle elsewhere than at such places,

as the Director by notification in the *Gazette* may appoint.

Penalty on not bringing to at stations; or carrying away officers.
39 & 40 Vict. c. 36, s. 136
46 & 47 Vict. c. 55, s. 5.

21. (1) If any ship arriving in or departing from the Colony does not bring to at such stations as may be appointed by the Director for examination or for the landing of officers from such ships, the master of the ship shall be guilty of an offence and shall on summary conviction be liable to a fine of five thousand dollars.

(2) If any ship departs from any such station without the knowledge of the proper member of the Preventive Service or from the Colony with any member of the Preventive Service or other Government officer on board, without the consent of such member or officer, the master of the ship shall be guilty of an offence and shall on summary conviction be liable to a fine of five thousand dollars.

(3) This section shall apply to aircraft and vehicles and persons in charge thereof as it applies to ships and the masters of ships.

Import and export statements.

22. (1) The owners, charterers or agents of every ship, aircraft or vehicle, in which goods to which this Ordinance applies are imported or exported, or the master of every such ship, the person in charge of every such aircraft or the driver of every such vehicle shall, within

seven days or such longer period as the Director may specify, after the arrival in or departure from the Colony of such ship, aircraft or vehicle furnish to the Director at the office of the Director an accurate and complete statement of all such goods.

(2) The owners, charterers or agents of every ship or aircraft which arrives in or departs from this Colony having on board no goods to which this Ordinance applies, or the master of every such ship or the persons in charge of every such aircraft, shall, within twelve hours after such arrival or within twenty-four hours after such departure furnish to the Director or other prescribed officer at the office of the Director a statement that no such goods were carried in the ship or aircraft.

(3) Every statement furnished in accordance with the provisions of this section shall be in the prescribed form, signed by the party furnishing it, and shall contain such particulars, if any, as may be prescribed by regulations and such further particulars as the Director or other prescribed officer may require.

(4) Separate statements shall be furnished in respect of each class of goods specified in section 3 or by any resolution under that section:

Provided that where no goods to which this Ordinance applies were carried a single statement to that effect shall suffice.

(5) If any statement is not furnished in accordance with, or is furnished in breach of, the provisions of this section, the owners, charterers and agents of the ship, aircraft or vehicle, the master of the ship, the person in charge of the aircraft and the driver of the vehicle, in respect of which the statement is, or should have been, furnished, shall each and all be guilty of an offence.

23. (1) If any goods to which this Ordinance applies are in any ship, vehicle or aircraft or on the railway premises they shall not be removed therefrom by, or discharged or delivered therefrom to, any person except the licensee of a general bonded warehouse or the holder of a valid permit in that behalf or the servant of such permittee or licensee:

Removal of goods from ships, vehicles or aircraft.

Provided that goods put on board any ship, vehicle or aircraft or on the railway premises under permit shall not be reloaded or removed therefrom except under permit:

Provided also that this subsection shall not apply to duty-paid goods after their first removal within this Colony from the ship, vehicle or aircraft on which they were imported or from the railway premises.

(2) Where an offence of removing, discharging or delivering any goods from any ship, vehicle or aircraft contrary to subsection (1) is proved to have been committed, every person being an owner, charterer, agent, master or other person in charge or comprador of the ship,

vehicle or aircraft shall be deemed guilty of that offence unless he proves that the goods were removed or discharged without his knowledge and that he had exercised due diligence to prevent such removal or discharge.

[cf. 39 & 40
Vict. c. 36
s. 179.]

(3) Goods thrown overboard from any ship, vehicle or aircraft shall be deemed to have been unlawfully removed therefrom in contravention of this section.

Ships' or
aircraft
stores, etc.

24. (1) Goods to which this Ordinance applies and which are imported as transit cargo or which are to be used as ships' or aircraft stores shall, while the ship or aircraft is in this Colony, be kept in a secure place under the custody and control of the master or person in charge of the ship or aircraft. Goods so imported shall not be landed in this Colony unless the landing of such goods is specially authorized by the Director in writing.

(2) The issue of permits to export any dutiable commodities as ships' or aircraft stores shall be at the absolute discretion of the Director or any person authorized by him.

(3) The master shall use only such quantity of dutiable commodities as ships' stores as the Director or any person authorized by him shall in his discretion provide.

Inspection,
etc. of
goods.

25. (1) The Director or any member of the Preventive Service or other person authorized by him in writing either generally or in any particular instance may at all times inspect any goods to which this Ordinance applies and place locks, marks or seals on any container or place in which they may be.

15 & 16
Geo. 6 &
1 Eliz. 2
c. 44, s. 70.

(2) Where in pursuance of any powers conferred by this section an authorized officer has placed any lock, mark or seal upon any goods in any place, ship, vehicle, train or aircraft or upon any container in which such goods are kept, then if, without the authority of such officer, at any time or in the case of a ship, vehicle, train or aircraft, while the ship, vehicle, train or aircraft is within the limits of the Colony, that lock, mark or seal is opened, altered or broken, or if, before that lock, mark or seal is lawfully removed, any of the goods are conveyed away, any person so doing and the person who was in control of the goods, container or place at the time any such lock, mark or seal was placed upon them or the master of the ship or person in charge of the vehicle, train or aircraft shall be guilty of an offence and shall be liable to a fine of five thousand dollars.

Assessment
of duty and
drawback.

26. (1) Subject to the provisions of section 4, the duty on dutiable goods shall be assessed by the Director or any officer authorized by him in that behalf, and shall be paid at such times and to such officer, at the office of the Director or elsewhere, as he may direct. In assessing the duty on any goods allowance may be made for any loss or contrac-

tion which may since the goods became dutiable have occurred therein from unavoidable accident or natural causes and, in the discretion of the Director, for waste or loss in manufacture if the loss, contraction or waste has been duly notified and accounted for to the satisfaction of the Director. The decision of the Director as to the amount of duty or drawback payable on any goods shall be final.

(2) Where any notification of duty payable is given under the provision of subsection (1) such notice shall be deemed to have been duly served on the person concerned—

- (a) if given verbally by the Director or other authorized officer to the person responsible; or
- (b) if delivered to him personally; or
- (c) if addressed to him and left or forwarded by registered post to him at his usual or last known place of abode or business.

27. The Director may require the importer or manufacturer of any goods to which this Ordinance applies to produce invoices and other documents which the Director considers are necessary for the purpose of assessing and calculating duties and such documents may be retained by the Director and disposed of as he may think fit.

Production
of documents
necessary for
calculating
duty.

28. (1) Where it is impracticable immediately to ascertain whether any or what duty is payable in respect of any imported goods which are imported into the Colony, the Director or other officer authorized in accordance with section 25 may, if he thinks fit and notwithstanding any other provision of this Ordinance, allow these goods to be delivered upon the importer giving a security by deposit of money or otherwise to his satisfaction for the payment of any amount unpaid which may be payable by way of duty.

Delivery of
imported
goods on
giving
security for
duty.
15 & 16
Geo. 6 &
1 Eliz. 2
c. 44, s. 255.

(2) Where goods are allowed to be delivered under this section the Director or authorized officer shall, when he has determined the amount of duty which in his opinion is payable, give to the importer a notice specifying the amount; and the amount so specified or, where any amount has been deposited under subsection (1), any difference between those amounts shall forthwith be paid or repaid as the case may require.

29. (1) The licensee of every general bonded or licensed warehouse shall be liable for the duty payable in respect of any goods of which he has, or has had, the custody, whether the goods are in his warehouse or not, until the goods are removed from the warehouse in accordance with a permit under this Ordinance and shall in addition be presumed to have unlawfully and in contravention of this Ordinance removed any dutiable goods of which he has had the custody and for which he cannot account; a deficiency shall be deemed sufficiently accounted for if it is shown to the satisfaction of the Director to have been caused by leakage, breakage or other accident.

Liability of
licensee of
general
bonded or
licensed
warehouse.

(2) If when assessing duty under the provisions of subsection (1) it is not possible to ascertain the exact quantity, nature or value of the goods concerned, the Director may assess duty on the basis of the best evidence available or where such evidence does not exist or is not considered to be correct he may decide on the quantity and nature of the goods or he may fix a value which shall be deemed to be the value of the goods for the purposes of calculation of duty.

(3) Any person who is aggrieved by a decision of the Director made under subsection (2) may appeal by way of petition to the Governor in Council.

Contracts for sale of duty-paid goods when duties are altered or repealed.

30. (1) When any new duty is imposed and when any duty is increased and any duty-paid goods are delivered on or after the day on which the new or increased duty takes effect, in pursuance of a contract made before that day, and the seller has paid such new or increased duty, he may in the absence of any agreement to the contrary recover as an addition to the contract price a sum equal to the amount paid by him in respect of the goods on account of the new duty or the increase of duty, as the case may be.

(2) When any duty is repealed or decreased and any duty-paid goods are delivered on or after the day on which the duty ceases or the decrease in duty takes effect, in pursuance of a contract made before that day, the buyer, in the absence of any agreement to the contrary, may, if the seller has had in respect of those goods the benefit of the repeal or decrease in the duty, deduct from the contract price a sum equal to the amount of the duty or the decrease of duty, as the case may be.

(3) When any addition to or deduction from the contract price may be made under this section on account of any new or repealed duty, such sum as may be agreed upon, or in default of agreement as may be determined by the Director, as representing in the case of a new duty any expenses incurred and in the case of a repealed duty any expenses saved may be included in the addition to or deduction from the contract price and may be recovered or deducted accordingly.

(4) This section shall apply although the goods have undergone some process of manufacture since the duty was paid.

Execution and distress against licensees. 15 & 16 Geo. 6 & 1 Eliz. 2, c. 44, s. 253.

31. (1) Where any sum is owing by any person licensed under the provisions of this Ordinance or any regulation made thereunder in respect of any duty or of any penalty incurred by him under this Ordinance or any regulations made thereunder, all goods on which duty is liable to be paid, whether or not that duty has been paid, and all materials for manufacturing or producing any such goods and all apparatus, equipment, machinery, tools, vessels and utensils for, or for preparing any such materials for, such manufacture or product or by which the trade in respect of which the duty is imposed is carried on, which are in the possession, custody or control of that licensee or of

any agent of his or of any other person on his behalf or which, whether or not still in such custody or possession, were in such custody or possession—

- (a) at the time when the duty was charged or became chargeable or at any time while it was owing; or
- (b) at the time of the commission of the offence for which the penalty was incurred,

shall be liable to be taken in execution in default of the payment of that sum.

(2) Notwithstanding anything in subsection (1), where the Director or other officer authorized under section 26 has taken account of and charged any goods chargeable with duty, and those goods are in the ordinary course of trade sold for full and valuable consideration to a *bona fide* purchaser and delivered into his possession before the issue of any warrant or process for distress or seizure of the goods, those goods shall not be liable to be seized under subsection (1):

Provided that, where any goods have been so seized, the burden of proof that the goods are by virtue of this subsection not liable to be so seized shall lie upon the person claiming that they are not so liable.

(3) Where any duty payable by a licensee remains unpaid after the time within which it is payable, the Director may authorize in writing any person to distrain anything liable to be taken in execution under this section and to sell anything so distrained by public auction after giving seven days' notice of the sale:

Provided that where the licensee is a distiller, brewer, or manufacturer, he may, subject in the case of a distiller to the requirements of this Ordinance or any regulations made thereunder as to permits for the removal of spirits, at any time before the date appointed for the sale, remove the whole or part of any product or materials for his manufacture which may have been so distrained upon paying to the Director in or towards payment of the duty the true value of those products or materials.

(4) Any notice required by subsection (3) shall be given by the Director in writing to any person, who to his knowledge was at the time of seizure the licensee or the agent or servant of the licensee, and shall be deemed to have been duly served on the person concerned—

- (a) if delivered to him personally; or
- (b) if addressed to him and left or forwarded by registered post to him at his usual or last known place of abode or business.

(5) Where such notice cannot be served as provided in subsection (4) then a notice that anything has been seized in default of any payment in accordance with the provisions of subsection (1) shall be exhibited in a place available to the public at the office of the Director for a

period of seven days, such period to commence seven days before anything is sold.

(6) The proceeds of sale of any such distress as aforesaid shall be applied in or towards payment of the cost and expenses of the distress and sale and in or towards payment of the duty due from the licensee, and the surplus, if any, shall be paid to the licensee.

Recovery of duty, etc.

32. Without prejudice to any other mode of recovery provided in this Ordinance, any duty payable or sum forfeited or deemed to be forfeited under this Ordinance shall be deemed to be a debt due to the Crown.

Search of baggage and goods.

33. (1) Any person landing from or proposing to embark in any ship or aircraft or entering or leaving the Colony by land shall on demand by any member of the Preventive Service or police officer either permit his person, goods and baggage to be searched by such member or officer or together with his goods and baggage accompany such member or officer to a place appointed by the Director or to the office of the Director or to a police station and there permit his person, goods and baggage to be searched by any member of the Preventive Service or police officer in the presence or under the supervision of a member of the Preventive Service not below the rank of revenue sub-inspector or a police officer not below the rank of inspector:

Provided that no female person shall be searched except by a female:

Provided further that the goods and baggage of any person who wishes to be present when they are searched shall not be searched except in his presence.

(2) Any member of the Preventive Service or police officer may make the searches authorized by this section and any person who refuses to comply with any lawful demand under this section may be arrested without warrant by the officer making the demand.

Examination of articles (other than baggage) on shore, ship, etc.

34. Any box, chest, package or other article, other than passenger's baggage accompanied by the owner thereof, which is being landed from or is being embarked on any ship, aircraft, vehicle or train or has been landed therefrom or is in or on board thereof, or which is on or is being removed from or on to any island, landing place, wharf, warehouse, platform or place adjoining thereto or used in connexion therewith, or which is being brought into or which is being taken out of or has been brought into this Colony by land, sea or air—

(a) may be examined and searched by any member of the Preventive Service and may be detained until any person in charge thereof has opened the same for such examination and search, and if not so opened may be removed by such member of the Preventive Service to such place as the Director may direct;

(b) may be broken open by the orders of any member of the Preventive Service authorized by the Director in that behalf either generally or for a particular occasion, or of any police officer not below the rank of inspector, for such examination and search:

Provided that any person in charge or possession of such box, chest, package or other article shall be given every reasonable facility for being present at such breaking, examination and search.

35. (1) No person shall without lawful authority or excuse have in his possession any label, wrapper or mark issued by the Director for use under this Ordinance.

Improper possession of labels, etc.

(2) No person shall without lawful authority or excuse have in his possession, with intent that it may be used on another container any label, wrapper or mark which has been removed from any container.

(3) No person shall without lawful authority or excuse have in his possession any label, wrapper or mark so resembling any such label, wrapper or mark as to constitute a colourable imitation thereof, or shall have in his possession any die, block or type apparently intended for the production of any such label, wrapper or mark.

(4) For the purposes of this section, "label", "wrapper or mark", "die", "block" and "type" shall be deemed respectively to include any portion of a label, wrapper or mark, die, block or type.

36. (1) No person shall make any incomplete statement or declaration or furnish any incorrect information, whether or not such statement, declaration or information is made verbally or in writing, or apply any incorrect description or supply any incorrect particulars in any document made or furnished for the purposes of this Ordinance or in connexion with any application for any drawback or for any licence or permit to be issued under this Ordinance.

Misrepresentation, concealment, removal of goods, and defacement of licence or permit.
3 & 4 Vict. c. 18, s. 15.
8 & 9 Geo. 5 c. 15, s. 15 (5).

(2) Any person who—

(a) with intent unduly to obtain any drawback or any greater drawback than that to which he is entitled or who attempts to evade payment of duty on any goods to which this Ordinance applies, embarks or causes to be embarked for exportation on any ship or aircraft, or produces or causes to be produced to any member of the Preventive Service to be so embarked—

(i) any goods to which this Ordinance applies and which are not entitled to drawback or not intended for export; or

(ii) any goods, matter or thing as goods to which this Ordinance applies, the same not being goods to which this Ordinance applies or which are different in type, nature, quantity or

quality from the goods shown on any export permit or statement which is presented and which purports to cover such goods; or

- (b) with any such intent fraudulently removes, deposits or conceals any goods, matter or thing; or
- (c) after any goods to which this Ordinance applies have been embarked for exportation on any ship or aircraft, without the consent of the Director opens the packages in which the goods are contained or cancels, or obliterates, or alters the marks, letter or devices thereon,

shall upon summary conviction, in addition to all other penalties which he may thereby incur, pay or forfeit either treble the amount of duty payable on any goods involved or such drawback as the case may be or the sum of five thousand dollars, at the election of the Director (which election shall be certified by the Director in writing under his hand), and all such goods, matters or things shall be forfeited and may be seized by any member of the Preventive Service.

(3) No person shall without lawful authority alter, deface or make any erasure on a licence or permit, or have in his possession a licence or permit on which such an erasure has been made or which has been so defaced or altered.

37. No person shall—

- (a) counterfeit or falsify any document which is required by or under the provisions of this Ordinance or any regulations made thereunder or which is used in the transaction of any business relating to any trade involving goods to which this Ordinance applies; or
- (b) knowingly accept, receive, or use any such document so counterfeited or falsified; or
- (c) alter any such document after it is officially issued; or
- (d) counterfeit any seal, signature, initials or other mark of, or used by any officer for the verification of such a document or for the security of goods or for any other purpose relating to the provisions of this Ordinance or any regulations made thereunder.

38. (1) No person shall without the consent of the Director or an officer authorized in accordance with section 7—

- (a) transfer; or
- (b) supply, permit or allow any other person to use,

any licence or permit issued under this Ordinance or any regulations made thereunder.

Counter-
feiting
documents,
etc.
15 & 16
Geo. 6 &
1 Eliz. 2
c. 44, s. 302.

Restrictions
on use and
transfer of
permits and
licences.

(2) No person shall, without the consent of the Director or an officer authorized in accordance with section 7, receive, obtain or use any permit or licence issued to any other person under this Ordinance or any regulations made thereunder.

39. No person shall, for or on behalf of any other person who is not the holder of a dealer's licence, accept or receive orders for, or import on commission or act as agent for the import of—

- (a) any liquor in quantities exceeding two gallons;
- (b) cigarettes in quantities exceeding two thousand;
- (c) cigars in quantities exceeding two hundred;
- (d) manufactured tobacco in quantities exceeding three pounds in weight;
- (e) unmanufactured tobacco in quantities exceeding thirty pounds in weight;
- (f) any table water in quantities exceeding two gallons;
- (g) any hydrocarbon oils in quantities exceeding eight gallons,

at any one time, without an appropriate licence, under which the licensee is permitted to sell such commodities as a dealer.

40. In all proceedings under this Ordinance and in all proceedings for the recovery of any duties imposed by or under this Ordinance, it shall be presumed until the contrary is proved—

- (a) that any goods to which this Ordinance applies are dutiable goods;
- (b) that dutiable goods on any premises are in the possession of the licensee, tenant, lessee, occupier or person in charge of such premises;
- (c) that every person employed in or about any licensed premises is employed by the person named in the licence or in charge of the premises, as the case may be;
- (d) that goods delivered or supplied are goods sold;
- (e) that goods are of the weight and measure described in any bill of lading, permit or other document accompanying or relating to the goods.

41. In any proceedings in respect of or involving any matter, civil or criminal, arising from or in connexion with this Ordinance or any regulations made thereunder, if any cargo appears on any import manifest furnished to the Director by the owners, charterers or agents of any ship or aircraft, or by the master of a ship or person in charge of an aircraft, at any time before or after the arrival of such ship or aircraft in the Colony, it shall be presumed in favour of the Crown

Prohibition
of certain
transactions
without
licence.

Presumptions.

Import
manifests to
be evidence
of importa-
tion.

against any other party that such cargo was imported into the Colony on board such ship or aircraft unless any such other party proves affirmatively that such cargo was not in fact carried into the Colony on board such ship or aircraft.

Certain certificates to be evidence.

42. (1) In all proceedings under this Ordinance and in all proceedings for the recovery of any duty on goods to which this Ordinance applies, copies of or extracts from the records of the Director or the officer authorized to grant any licence or permit, purporting to be certified by him, shall be *prima facie* evidence of the facts stated or appearing therein or to be inferred therefrom.

(2) At the hearing of any charges under this Ordinance a certificate purporting to be signed by the Government Chemist shall, unless he is called as a witness, be sufficient evidence of the matters therein stated. When any such certificate bears the same number or mark as a sealed packet produced by the prosecution at the hearing, it shall until the contrary is proved be presumed that the certificate relates to the contents of that packet.

Magistrate may call in expert.

43. The magistrate hearing any charge under this Ordinance may, at the request of the accused, employ an analyst or other expert to report on any matter of a technical nature.

Informers.

44. Save where, in the opinion of the court or magistrate, justice so requires, the name or identity of any informer and the information given by such informer shall not be disclosed in any civil or criminal proceedings and the court or magistrate may make any order and adopt any procedure necessary to prevent any such disclosure.

Manner of seizure not to be inquired into by court.

45. On any trial before any magistrate and in any proceedings on appeal in the Supreme Court relating to the seizure of anything under this Ordinance, the magistrate or the court shall proceed to such trial and to the hearing of such appeal on the merits of the case only, without reference to matters of form and without inquiring into the manner or form of making any seizure except in so far as the manner or form of seizure may be evidence on such merits.

Offences and penalties.

46. (1) Except as otherwise expressly provided, any person who contravenes the provisions of sections 16, 17, 22, 24, 35, 36, 37, 38, 39, 55, 56, 57, 58, 68, 72 and 74 shall commit an offence and upon summary conviction, in addition to any forfeiture which may be ordered, be liable to a fine of one hundred thousand dollars and to imprisonment for two years.

(2) In any case where a magistrate is of the opinion that an offence was committed with intent to avoid payment of duty, he may in addition to the fine presented by subsection (1) inflict a fine not exceeding ten times the amount of duty payable on the goods in respect of which the offence was committed.

47. Any prosecution of any person for any offence against the provisions of this Ordinance or any regulations made thereunder shall be commenced within twelve months from the date of such offence or six months from the discovery of the offence whichever is the later.

Commencement of prosecution.

48. (1) Wherever there occurs a contravention or an attempted contravention of any provision of this Ordinance or of any regulations made thereunder in respect of any goods, such goods shall be liable to forfeiture whether or not any person is convicted of any offence.

Forfeiture.

(2) Wherever there occurs a contravention or an attempted contravention of any provision of this Ordinance or of any regulations made thereunder, any thing which is mentioned in paragraphs (a), (b), (c) and (d) of subsection (1) of section 15 and which is made use of in such contravention or attempted contravention shall be liable to forfeiture whether or not any person is convicted of any offence.

(3) The Director shall within twenty-one days of seizure give notice of the seizure of any such goods or thing as liable to forfeiture to any person who to his knowledge was at the time of the seizure the owner or one of the owners thereof:

Provided that where there appears to be more than one owner notice given to any one such owner shall satisfy the provisions of this section.

(4) Notice under subsection (3) shall be given in writing and shall be deemed to have been duly served on the person concerned—

(a) if delivered to him personally; or

(b) if addressed to him and left or forwarded by registered post to him at his usual or last known place of abode or business.

(5) Where a notice under subsection (3) cannot be given, then a notice of the seizure together with the date and place thereof shall be exhibited in a place available to the public at the office of the Director for a period of seven days, such period to commence within twenty-one days after the said seizure.

(6) Any person claiming that any goods or thing seized as liable to forfeiture is not so liable shall, within one month of the date of notice of seizure, give notice of his claim in writing by registered post or by delivery by hand of the same to the office of the Director.

(7) If on the expiration of the relevant period aforesaid for the giving of notice of claim in respect of any goods or thing no such notice has been given to the Director, the goods or thing in question shall be deemed to have been duly condemned as forfeited.

(8) When notice of claim in respect of any goods or thing is duly given in accordance with subsection (6), the Director shall apply to a magistrate for the condemnation of that goods or thing and if the

magistrate finds that the goods or thing was at the time of seizure liable to forfeiture he shall condemn it as forfeited.

(9) In any application to a magistrate as aforesaid—

- (a) the claimant shall first satisfy the magistrate that at the time of the seizure the claimant had a proprietary interest in the goods or thing so seized;
- (b) a certified true copy of the record of evidence, proceedings, including the decision of the court in any criminal trial relating to such goods or thing shall be admissible in evidence;
- (c) a certificate purporting to be issued under the hand of the Director of Marine certifying the gross tonnage of any ship shall be admissible in evidence upon production of the certificate and without proof of the signature thereon;
- (d) a certificate purporting to be issued under the hand of the Director of Marine certifying that the gross tonnage of any ship does not exceed two hundred and fifty gross tons shall upon production of the certificate and without proof of the signature thereon be conclusive evidence as to the facts stated therein.

(10) If no claimant satisfies the magistrate that at the time of seizure he had a proprietary interest in the article or thing so seized, such article or thing shall be deemed to be forfeited.

(11) Where proceedings as aforesaid are taken for condemnation of a ship, vehicle or aircraft the magistrate may order delivery to the claimant of the ship, or vehicle or aircraft seized until the hearing of the case on security being given by payment into court of a sum of money equivalent to the value of the ship, vehicle or aircraft as assessed by the Director and if the ship, vehicle or aircraft is not surrendered to the Director before or at the hearing of the case the security shall be deemed to be forfeited:

Provided that nothing in this subsection shall prevent an order for forfeiture being made in respect of such ship, vehicle or aircraft.

(12) Notwithstanding the earlier provisions of this section it shall be lawful for the Governor in Council in his absolute discretion after the conclusion of legal proceedings, if any, to entertain and to give effect to any moral claim to or in respect of any article or thing liable to forfeiture.

Evidence of forfeiture.

49. Forfeiture by order of a magistrate under this Ordinance may be proved in any court, or before any competent tribunal, by the production of a certificate of such forfeiture purporting to be signed by the magistrate or by an examined copy of the record of such forfeiture certified by the magistrate's clerk.

50. (1) Where in any proceedings which may involve the condemnation of anything seized as liable to forfeiture judgment is given for the claimant the magistrate may certify that there were reasonable grounds for the seizure.

Protection of members of Preventive Service in forfeiture proceedings.

(2) Where any proceedings, civil or criminal, are brought against the Director, any member of the Preventive Service or other prescribed officer in respect of anything seized or forfeited which has subsequently been restored to any person under the provisions of this Ordinance, then if the court is satisfied that there were reasonable grounds for the seizure and for the restoration of such thing, the plaintiff or the prosecutor shall not be entitled to recover any damages or costs and the defendant shall not be liable to any punishment.

51. (1) Dutiable goods abandoned by the importer or proprietor as not worth the duty may be destroyed or disposed of within such time and in such manner as the Director may direct.

Goods abandoned as not worth the duty.

(2) Dutiable goods unclaimed by the importer or proprietor after a period of seven days from the time of notice being given by the Director that the goods had been received into his custody shall be deemed to have been abandoned as not worth the duty and may be disposed of in the manner prescribed in subsection (1) above.

52. If any article seized under the provisions of this Ordinance is, in the opinion of the Director, of a perishable nature or of such nature that it may deteriorate if stored for any length of time, such article may, by direction of the Director, be sold and the proceeds thereof retained to abide the result of any claim that may legally be made in respect thereof.

Sale of perishables.

PART III.

LIQUORS.

53. In the application of this Ordinance to liquor—

Interpretation.

“adulterated liquor” means any liquor mixed or coloured with any ingredient whatever or with water, so as to increase the bulk and measure of the liquor, to impair its quality or to conceal its inferior quality, and includes any liquor, whether injurious to health or not, which is in nature and quality not virtually that as which it is labelled: spirits mixed with water only so as not to reduce the strength below twenty-five degrees under proof in the case of brandy, whisky, or rum, or below thirty degrees under proof in the case of gin and vodka, and brandy which in the opinion of the Director is very old liqueur brandy, shall not be considered adulterated: a certificate of contents purported to be signed by the Government Chemist, relating to adulterated liquor as prescribed in this definition shall in any proceeding be conclusive evidence as to the facts stated therein;

"beer" includes ale, porter, stout, cider, perry, spruce beer, black beer and any other kind of beer and extends to any liquor made or sold as beer or as a substitute for beer;

"Chinese type spirits" means intoxicating spirits made by the distillation of rice, molasses or millet up to and including a strength of alcohol by volume at 60° Fahrenheit of fifty-eight per cent for rice and molasses spirit and seventy per cent for millet spirit which in the opinion of the Director are commonly consumed by Chinese.

"denatured spirits" means liquor so mixed with any substance as to render the mixture in the opinion of the Government Chemist not liable to duty under this Ordinance: subject to the provisions of section 64 liquor to which has been added not less than—

(a) to every hundred gallons of liquor, half a gallon of crude pyridine of a quality approved by the Government Chemist, if coloured to his satisfaction with methyl-violet; or

(b) an equal quantity, bulk for bulk, of Chinese vinegar containing not less than two per cent of acetic acid,

shall be deemed to be denatured spirits;

"European type wines" means wines or wine-substitutes which, in the opinion of the Director, are of a type commonly consumed by Europeans, whether made by a process of fermentation of the expressed juice of fruits or otherwise, and includes medicated wines.

"gallon" means the Imperial gallon or six reputed quart bottles or twelve reputed pint bottles;

"intoxicating liquors" includes spirits, liqueurs, wines, beer, Chinese type spirits and all other liquors fit or intended for use as a beverage;

"liquor", "alcoholic liquor" or "spirituous liquor" means any liquid except denatured spirits which contains more than two per cent of proof spirit;

"Non-European type wines" means all wines or wine-substitutes not being European type wines whether made by a process of fermentation of the expressed juice of fruits or otherwise and includes medicated wines;

"original gravity" in relation to beer means the specific gravity, at 60° Fahrenheit, of the worts before fermentation;

"over proof" and "under proof" shall be construed by reference to a scale at which one hundred degrees denotes the strength of proof spirit, and

(a) one hundred and one degrees, or one degree over proof, denotes the strength of spirits which would have the alcoholic strength of proof spirit if there were added thereto such quantity of

distilled water as would increase by one per cent the volume of the spirits computed as at 60° Fahrenheit; and so in proportion for any other number of degrees;

(b) ninety-nine degrees, or one degree under proof, denotes the strength of spirits which would have the alcoholic strength of proof spirits if there were removed therefrom such quantity of distilled water as would reduce by one per cent the volume of the spirits computed as at 60° Fahrenheit; and so in proportion for any other number of degrees;

"pint bottle" and "quart bottle" mean respectively the reputed pint and quart bottles ordinarily used in commerce;

"proof spirit" means a mixture of ethyl alcohol and water containing 49.28 per cent alcohol by weight, or, at 60° Fahrenheit, 57.10 per cent alcohol by volume;

"retail" in relation to the sale of liquors means sale in quantities not exceeding two gallons at one time: a sale with an understanding that any quantity in excess of two gallons is to be returned is nevertheless a retail sale;

"wholesale" in relation to the sale of liquors means sale by the unopened cask, jar or case, in quantities exceeding two gallons of one liquor at one time: a licence to sell liquor wholesale on specified premises does not authorize sale for consumption on those premises.

54. (1) In case of the death or insolvency of the holder of a licence to which this section applies, his executor or administrator or trustee may carry on the business on the licensed premises until the expiration of the licence, subject in every respect to the same regulations and conditions as the licensee. Provision for case of death or insolvency of licensee.

(2) This section shall apply to brewery, distillery, dealers' and retailers' licences.

55. Every person licensed to sell liquors retail shall have his full name, the nature and number of his licence, and such other particulars as may be prescribed by regulations, painted legibly and permanently in letters at least three inches high on some conspicuous part of his licensed premises to the satisfaction of the Director: and no person not so licensed shall exhibit any sign, writing, painting or other mark reasonably calculated to suggest that his premises are licensed for the retail sale of intoxicating liquors, or that such liquors are retailed or served therein. Licensee to exhibit name, etc.

56. Every person licensed under this Ordinance to sell liquor shall sell and dispose of his liquors by measures or weights of the standards in use in this Colony and not otherwise, except when the quantity is less Measures or weights for sale of liquor.

than half a pint, or except when the liquor is sold in bottles; he shall also measure or weigh such liquors in the presence of any customer who may require him to do so.

Prohibition of taking pledge for liquor.

57. No person licensed under this Ordinance shall take or receive in payment or pledge for liquor or any entertainment whatever supplied in or out of his house any article or thing whatever, except money.

Illegal possession of still or fermented material, etc.

58. (1) No person shall, except under and in accordance with the prescribed licence, or except with the specific approval in writing of the Director or officer authorized by him in that behalf—

- (a) knowingly keep or have in his possession any still or other utensil or apparatus suitable for making, purifying, refining, distilling, rectifying or processing spirits;
- (b) have in his possession, custody or control any fermenting or fermented material.

(2) No person shall remove any denaturants from any denatured spirits without the specific authority in writing of the Director.

15 & 16 Geo. 6 & 1, Eliz. 2, c. 44, s. 106.

(3) Where there is insufficient evidence to convict a person of an offence under the foregoing subsections, but it is proved that such an offence has been committed on some part of the premises belonging to or occupied by that person in such circumstances that it could not have been committed without his knowledge, that person shall be liable on summary conviction to a penalty of one thousand dollars.

(4) Any person found on premises on which spirits are being unlawfully manufactured, distilled, rectified, purified, refined or processed may be detained.

(5) All spirits and all stills, vessels, utensils, wort, wash and other materials for manufacturing, distilling, rectifying, purifying, refining or processing spirits—

- (a) found in the possession of any person who commits an offence under subsection (1); or
- (b) found on any premises on which such offence has been committed,

shall be liable to forfeiture.

(6) Notwithstanding any other provisions of this Ordinance relating to goods seized as liable to forfeiture, any member of the Preventive Service by whom anything is seized as liable to forfeiture under this section may at his discretion forthwith spill, break up or destroy that thing.

59. (1) In any proceedings under this Ordinance relating to illicit distillation, all spirits and all stills, vessels, utensils, worts, wash or any chattels or things, whether fixed to the premises or not, found in or upon any land or other premises shall be deemed to have been in the possession, custody or control of the occupier of the premises unless he proves that he did not know, and could not with reasonable diligence have known, that such spirits, stills, vessels, utensils, worts, wash or other such chattels or things were in or upon the premises.

Presumptions in proceedings for illicit distillation, etc.
13 & 14 Geo. 5, c. 14, s. 13 (5).

(2) Every person found in or escaping from any room or place where, in contravention of this Ordinance or any regulations made hereunder, materials are being fermented or fermenting materials or intoxicating liquors are being made or prepared or in which any stills, vessels, utensils or other materials for manufacturing, distilling, rectifying, purifying, refining or processing spirits are found or are being made or prepared shall, until the contrary is proved, be deemed to have been unlawfully making, distilling, rectifying, purifying, refining or processing spirits and to be guilty of an offence.

[cf. 1 & 2 Will. 4, c. 55, s. 19.]

60. The Director may in his discretion issue a licence free of charge to any practitioner registered under the Medical Registration Ordinance, 1957, or to any pharmacist registered under the Pharmacy and Poisons Ordinance, to keep and use on any specified premises a still of not more than eight gallons capacity for the purposes only of his profession or business.

Free licences for small stills for registered doctors and pharmacists. (25 of 1957). (Cap. 138).

61. (1) Any person who imports, distills, makes, sells, supplies or deals in any adulterated liquor shall be guilty of an offence and shall, if such adulterated liquor is proved to the satisfaction of a magistrate to be injurious to health, be liable to imprisonment for twelve months, in addition to any other penalty to which he may be liable under this Ordinance.

Distilling, etc. adulterated liquor.

(2) In the case of any conviction under this section the magistrate may order that any liquor to which the conviction relates and any similar liquor, whether the same be proved to have been adulterated or not, which was on the defendant's premises or in his possession or under his control at the time of the commission of the offence, or which has been seized under this Ordinance, shall be forfeited:

Provided that no such liquor shall be forfeited if it is proved to the satisfaction of the magistrate by the defendant, or by any person into whose possession such liquor may have come, that the same has not been adulterated or was not for sale.

(3) Any liquor forfeited under this section shall be disposed of as the Director directs.

Duty on spirit distilled in this Colony.

62. Duty on feints and spirits is to be charged on the quantity of absolute alcohol contained therein after making due allowance for feints, if any, remaining from a previous distillation and included in the account of feints and spirits last produced, at a rate prescribed by regulations made under this Ordinance.

Duty on beer except cider and perry.

63. (1) The duty on beer, except cider and perry, shall be assessed according to its quantity and original gravity as determined by the Government Chemist.

(2) The duty on beer brewed in the Colony shall be assessed on the worts according to the quantity and gravity thereof either as entered by the brewer in the prescribed book or as ascertained by a member of the Preventive Service, whichever is the greater. A deduction of five per cent shall be made from the quantity of worts produced to cover such accidental loss and waste as arise in the brewing of beer:

Provided that if in the opinion of the Government Chemist the quantity and the gravity of the worts produced from any brewing fall short of the quantity and gravity which should have been produced having regard to the materials used, the charge for duty may be assessed in the Director's discretion on such production as determined by the Government Chemist.

Denatured spirits to be dutiable goods until certified to the contrary.

64. (1) All the provisions of this Ordinance relating to dutiable goods shall apply to any denatured spirits unless and until the Government Chemist certified in writing in each case that such spirits are non-dutiable, and upon the issue of such certificate the liquor to which it relates shall be deemed to be duty-paid goods.

(2) Any fee prescribed by the Governor in Council for such certificate may be proportionate to the duty which would have been payable had the liquor not been denatured: but no such fee (except a minimum fee) shall exceed one-tenth of the duty.

PART IV.

TOBACCO.

Definition of tobacco.

65. In the application of this Ordinance to tobacco—

“Chinese prepared tobacco” (Suk Yin 熟烟) is tobacco prepared in the traditional Chinese manner from tobacco leaf grown in the Hok San (鶴山) district of China, and comprises seven main types, namely—

Sang Chit	(生切)
Ting Sook	(丁熟)
Yee Sook	(二熟)
Chai See	(齊絲)

Kan Yip (揀葉)

Sheung Sook (上熟)

and Jing Chit (正切)

and may include any other traditional Chinese prepared tobacco which, in the opinion of the Director, is of a type and quality approximate to any of the seven types of Chinese prepared tobacco specified above;

“manufacture” means the conversion of tobacco into manufactured tobacco;

“manufacturer” includes any person who owns or controls any factory or other place wherein tobacco is manufactured;

“tobacco” includes manufactured and unmanufactured tobacco of every description and tobacco stalks, tobacco refuse, tobacco seedlings and tobacco plants;

“unmanufactured tobacco” means tobacco which has undergone no process of manufacture except curing, stripping or drying or any of them.

66. (1) For the purposes of this Ordinance or any regulations made thereunder, the proportion of moisture contained in any tobacco shall be deemed to be the proportion by which the weight of that tobacco would decrease on being dried at a temperature of 212° Fahrenheit under such conditions as the Director may direct, and the weight of any tobacco after the removal of the moisture contained therein shall be calculated accordingly.

Proportion of moisture in tobacco.

(2) For the purposes of calculating any duty or drawback on tobacco, any question as to the proportion of moisture or of sand or other inorganic matter contained in any tobacco shall be determined by the examination by the Government Chemist of a sample of the tobacco taken by a member of the Preventive Service and his decision shall be final.

67. (1) A tobacco manufacturer shall not in manufacturing tobacco use any substance other than water or steam, except to such extent as may be permitted by the Director and subject to such conditions as the Director may impose.

Manufacture, etc. of adulterated tobacco.

(2) Save where their use by him is permitted by or under this section, a tobacco manufacturer shall not receive or have in his possession any of the following substances, namely—

(a) sugar or any other saccharine substance or extract, except such as he proves to be for domestic use;

(b) leaves or plants of any description other than tobacco leaves or plants;

(c) any substance for use, or capable of being used, as a substitute for or to increase the weight of tobacco.

(3) Any tobacco manufacturer who contravenes any of the provisions of this section shall be liable to a fine of five thousand dollars and the tobacco or other substance in respect of which the offence was committed shall be liable to forfeiture.

Restriction on tobacco growing.

68. No person shall plant or cultivate tobacco (on any land of any category) without a prescribed licence.

PART V.

HYDROCARBON OILS.

Definition of hydrocarbon oils.

69. In the application of this Ordinance to hydrocarbon oils—

“aircraft spirit” means any light oil suitable and intended for use as fuel in any aircraft;

“heavy oils” means any hydrocarbon oils except light oils; and heavy oils shall be deemed to be used as fuel for a heavy oil road vehicle if they have a flash-point of 150° Fahrenheit (66° Centigrade) or more and are used as fuel for any engine with which the vehicle is equipped, whether for the propulsion of the vehicle or not;

“heavy oil road vehicle” means a mechanically propelled road vehicle which is constructed or adapted to use heavy oils as fuel;

“hydrocarbon oils” means petroleum oils, coal tar, and oils produced from coal, shale, peat, or any other bituminous substances, and all hydrocarbons in a liquid form, but does not include such hydrocarbons or bituminous or asphaltic substances as are solid or semi-solid at a temperature of 60° Fahrenheit;

“light oils” means hydrocarbon oils of which not less than fifty per cent by volume distils at a temperature not exceeding 365° Fahrenheit (185° Centigrade), or of which not less than ninety-five per cent by volume distils at a temperature not exceeding 468° Fahrenheit (240° Centigrade), or which gives off an inflammable vapour at a temperature of less than 73° Fahrenheit (22.8° Centigrade) when tested in the manner prescribed by the Commissioner of Customs and Excise of the United Kingdom;

“motor spirit” means any light oil which has been rendered suitable for use as a fuel in any internal combustion engine by the addition of any compound or compounds of lead, and any other light oil suitable and intended for use in any internal combustion engine, but shall not include aircraft spirit.

PART VI.

TABLE WATERS.

70. In the application of this Ordinance to table waters—

“table waters” includes any aerated waters and any beverages sold or kept for sale other than syrups or other liquids intended to be consumed only in a diluted form.

Interpretation.

PART VII.

METHYL ALCOHOL.

71. In the application of this Ordinance to methyl alcohol—

“methyl alcohol” means the substance having the chemical formula $\text{CH}_3 \text{OH}$, also known as methanol.

Interpretation.

72. No person shall place or cause to be placed or keep or cause to be kept in any container any methyl alcohol unless such container is conspicuously marked in English and Chinese with the word “poison”.

Marking of containers.

73. The Director may require an importer, dealer or retailer of methyl alcohol to add such colouring or flavouring substance, as the Director may from time to time specify, to any methyl alcohol in his possession. Any person who fails to comply with a requirement of the Director in accordance with the provisions of this section shall commit an offence and upon summary conviction, in addition to any forfeiture which may be ordered, be liable to the penalties prescribed by section 46.

Colouring or flavouring matter.

74. No distiller, importer, dealer or retailer of intoxicating liquor licensed under this Ordinance, shall store methyl alcohol in any place without the written permission of the Director.

Storage.

75. Notwithstanding any other provision of this Ordinance or any regulations made thereunder, no duty shall be payable on any methyl alcohol which is shown to the satisfaction of the Director to be intended for use and which is in fact used solely in the testing of aircraft engines.

No duty payable in respect of methyl alcohol used for testing aircraft engines.

PART VIII.

REPEALS.

Repeal.
(Cap. 109).

76. The Dutiable Commodities Ordinance is repealed:

Provided that—

- (a) any licence or permit issued under the Dutiable Commodities Ordinance shall continue in force until the date of expiry endorsed thereon and shall be deemed to have been issued under this Ordinance; and
- (b) sections 48, 48A, 48B, 49, 50, 51, 52, 53, 53A, 54, 55, 56, 57, 58, 59, 66A, 69, 70, 71 of that Ordinance and the provisions of sections 6, 7, 8, 34, 37, 38, 43, 47 and 61 of that Ordinance so far as may be necessary for the purposes of liquor licences and the aforesaid sections shall continue in force until they are replaced by an enactment expressed to be in substitution therefor.

SCHEDULE.

[s. 2.]

Aden
Antigua
Ashmore and Cartier Islands
Australian Antarctic Territory
Bahamas
Barbados
Basutoland
Bechuanaland Protectorate
Bermuda
British Guiana
British Honduras
British Solomon Islands Protectorate
Brunei
Burma
West Cameroons
Canada
Cayman Islands
Ceylon
Channel Islands
Christmas Island
Cocos or Keeling Islands
Commonwealth of Australia
Cyprus
Dominica
Falkland Islands and Dependencies
Federation of Malaya
Federation of Nigeria
Federation of Rhodesia and Nyasaland (comprising Northern Rhodesia, Southern Rhodesia and Nyasaland Protectorate)
Fiji
Gambia

Ghana
Gibraltar
Gilbert and Ellice Islands Colony
Grenada
Heard Island
McDonald Islands
Hong Kong
India
Isle of Man
Jamaica
Kenya
Leeward Islands (that is to say Antigua, Montserrat, St. Christopher, Nevis and Anguilla, and the British Virgin Islands which are here shown separately)
Maldiv Islands
Malta
Mauritius
Montserrat
Nauru
New Zealand
Norfolk Island
North Borneo
Pakistan
Papua
Republic of Ireland
Ross Dependency
St. Christopher, Nevis and Anguilla
St. Helena (with Ascension and Tristan da Cunha)
St. Lucia
St. Vincent
Sarawak
Seychelles
Sierra Leone
Singapore
South West Africa
Swaziland
Tanganyika
Territory of New Guinea
Tonga
Trinidad and Tobago
Turks and Caicos Islands
Uganda
Republic of South Africa
United Kingdom
Virgin Island (British)
Western Samoa
Windward Islands (that is to say Dominica, Grenada, St. Lucia and St. Vincent, which are here shown separately)
Zanzibar

This printed impression has been carefully compared by me with the Bill which passed the Legislative Council on the 4th day of September, 1963, and is found by me to be a true and correctly printed copy of the said Bill.

C. S. ...
Deputy Clerk of Councils.

(Secretariat FIN48/3231/47)

HONG KONG

No. 27 OF 1963.



I assent.

[Handwritten signature]

Governor.

5th September, 1963.

An Ordinance to provide for the registration, control and inspection of medical clinics and for purposes connected therewith.

[1st January, 1964.]

BE it enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof, as follows—

1. This Ordinance may be cited as the Medical Clinics Ordinance, 1963, and shall come into operation on the 1st day of January, 1964.

Short title and commencement.

2. In this Ordinance, unless the context otherwise requires—
“clinic” means any premises used or intended to be used for the medical diagnosis or treatment of persons suffering from, or

Interpretation.

believed to be suffering from, any disease, injury or disability of mind or body, but does not include—

- (a) premises used in the manner aforesaid which are maintained or controlled by any department of the Government of the United Kingdom or of the Government of Hong Kong, or by the University of Hong Kong;
- (b) private consulting rooms used exclusively by registered medical practitioners in the course of their practice on their own account and not bearing any title or description which includes the word "clinic" or "polyclinic" in any language;
- (29 of 1959). (c) premises used exclusively by dentists duly registered in accordance with the provisions of the Dentists Registration Ordinance, 1959, in the course of their practice on their own account and not bearing any title or description which includes the word "clinic" or "polyclinic" in any language;
- (Cap. 114). (d) premises used exclusively by persons duly licensed under the Miscellaneous Licences Ordinance to carry on a physiotherapy clinic on such premises;
- (Cap. 114). (e) premises used exclusively by persons duly licensed under the Miscellaneous Licences Ordinance to carry on a massage establishment on such premises;
- (25 of 1957). (f) premises used exclusively for treatment given according to purely Chinese methods by persons entitled by virtue of section 30 of the Medical Registration Ordinance, 1957, to practise medicine or surgery according to purely Chinese methods;
- (Cap. 138). (g) premises used exclusively for the dispensation of medicines by pharmacists duly registered in accordance with the provisions of the Pharmacy and Poisons Ordinance in the course of their practice on their own account;
- (h) premises used exclusively by chiropodists, or chiropractors, or opticians, or osteopaths in the course of their practice on their own account;
- (i) premises used exclusively for a scheme of medical treatment recognized by the Director of Medical and Health Services

for the purposes of section 8 of the Industrial Employment (53 of 1961). (Holidays with Pay and Sickness Allowance) Ordinance, 1961;

"medical treatment" means medical treatment of any description other than—

- (a) dental treatment given by dentists duly registered in accordance with the provisions of the Dentists Registration Ordinance, (29 of 1959). 1959;
- (b) the dispensation of medicines by pharmacists duly registered in accordance with the provisions of the Pharmacy and Poisons (Cap. 138). Ordinance;
- (c) the dispensation of purely herbal medicines;
- (d) treatment given according to purely Chinese methods by persons entitled, by virtue of section 30 of the Medical (25 of 1957). Registration Ordinance, 1957, to practise medicine or surgery according to purely Chinese methods;
- (e) treatment by way of physiotherapy given in premises by persons duly licensed under the Miscellaneous Licences Ordin- (Cap. 114). ance to carry on a physiotherapy clinic on such premises or by approved assistants employed by such persons;
- (f) treatment by way of massage given in premises by persons duly licensed under the Miscellaneous Licences Ordinance to carry (Cap. 114). on a massage establishment on such premises or by approved assistants employed by such persons;
- (g) treatment by way of chiropody, or chiropractic, or osteopathy; or
- (h) treatment by way of first aid;

"registered medical practitioner" means a person who is duly registered in accordance with the provisions of the Medical Registration (25 of 1957). Ordinance, 1957, or who is deemed, by virtue of section 28 or 32 of that Ordinance, to be so registered;

"Registrar" means the Registrar of Clinics.

3. For the purposes of this Ordinance, there shall be a Registrar Appointment of Registrar. of Clinics who shall be the Director of Medical and Health Services.

Register of clinics.

4. (1) The Registrar shall cause a register of clinics to be kept in such form as shall be prescribed containing names and addresses and such other particulars as may be prescribed of applicants who have been registered.

(2) The Registrar shall be responsible for the maintenance and custody of the register of clinics.

(3) The Registrar shall cause to be published in the *Gazette*—

(a) as soon as may be after the first day of January of every year a list of clinics registered under section 5 and of clinics exempted under section 8; and

(b) notification of any exemption granted or cancellation thereof under section 8 or of any cancellation of registration under section 9.

(4) A certificate purporting to be under the hand of the Registrar that a clinic is registered or is not registered or is exempted or is not exempted shall be evidence of the facts set out therein until the contrary is proved.

Registration of clinics.

5. (1) Application for registration as a clinic shall be made to the Registrar in such form as he may prescribe, and such form shall require a statement of the objects of the clinic to be included.

(2) Subject to the provisions of this Ordinance, the Registrar shall, on receipt of an application for registration, register the applicant in respect of the clinic named in the application, subject to such conditions, if any, as he may impose, and issue to the applicant a certificate of registration in the prescribed form:

Provided that the Registrar may refuse to register the applicant if he is satisfied—

(a) that the applicant or any person employed by him at the clinic is not a fit person, whether by reason of age or otherwise, to carry on or to be employed at a clinic; or

(b) that for reasons connected with situation, construction, accommodation, staffing or equipment, the premises to be used in connexion with the clinic are not fit to be used for the purposes of a clinic or that such premises are used or to be used for purposes which are in any way improper or undesirable in the case of a clinic; or

(c) that the clinic will not be under the continuous personal supervision of a registered medical practitioner; or

(d) that—

(i) the income derived or to be derived from the establishment or operation of the clinic is not, or will not be, applied solely towards the promotion of the objects of the clinic; or

(ii) any portion of such income, except payment in good faith of remuneration to any such properly employed registered medical practitioners, persons employed pursuant to an exemption granted under section 8, nurses and menial servants working in the clinic, is, or will be, paid or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever by way of profit to the applicant himself, or to any persons properly so employed, or to any other persons howsoever.

(3) In the case of a clinic run by a registered trade union exclusively for its members and the families of such members, the Registrar shall not refuse registration solely on the grounds set out in paragraph (d) of subsection (2) where the income derived or to be derived from the establishment or operation of the clinic and remaining after expenditure for the purposes permitted in such paragraph (d) is or will be applied solely for the purposes authorized in paragraph (f) of section 33 of the Trade Unions Registration Ordinance, 1961 and so applied in such a manner that no part thereof shall be paid to or for the benefit of any person employed in such clinic. (52 of 1961).

(4) The current certificate of registration issued in respect of a clinic shall be kept affixed in a conspicuous place at the clinic.

6. (1) Subject to the provisions of section 9, a registration shall, as indicated by the Registrar on the certificate of registration, be valid— Period of registration.

(a) until the end of the year in which it is made, and any person registered in respect of a clinic who desires to continue to be so registered for any subsequent year shall make application for re-registration during the first week of the month of December, or, for good reason shown to the satisfaction of the Registrar, at such later date as the Registrar may allow; or

(b) for such months in any one year and such extended periods thereof, if any, as the Registrar in his absolute discretion may allow.

(2) The Registrar may, in his absolute discretion—

(a) when granting re-registration under paragraph (a) of subsection (1); or

(b) when extending the period of validity under paragraph (b) of subsection (1),

impose conditions or amend conditions already imposed.