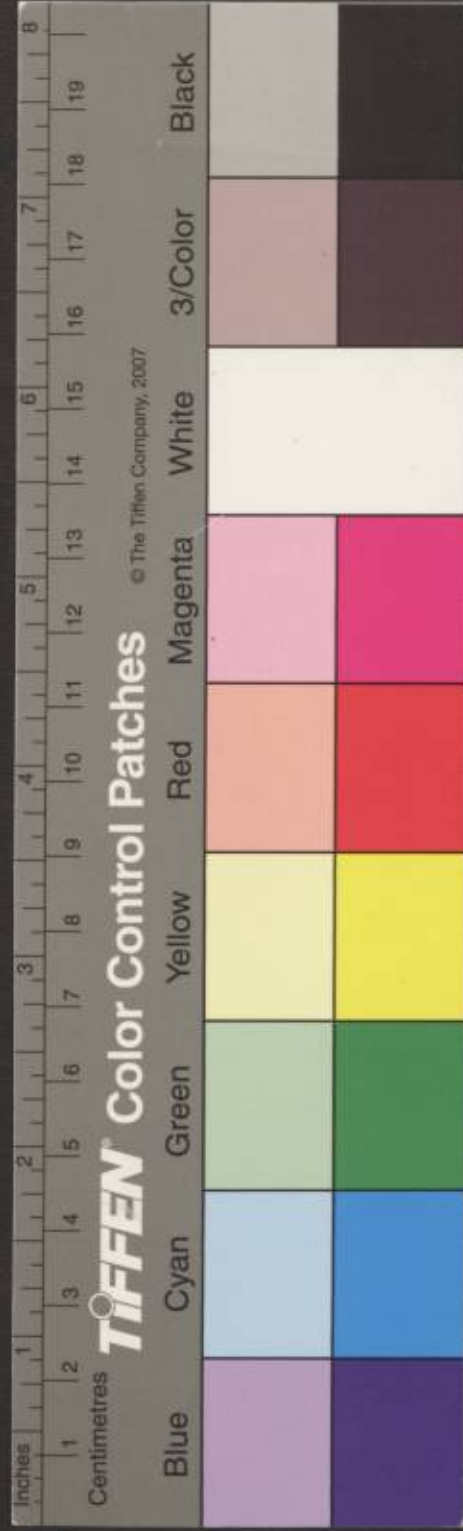




HONG KONG

No. 1 OF 1959.



I assent.

Governor.

8th January, 1959.

An Ordinance to amend the Estate Duty Ordinance, Chapter 111.

[1st February, 1959.]

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 Estate Duty (Amendment) Ordinance, 1959, and shall come into operation on the 1st day of February, 1959.

Short title
and com-
mencement.

2. Section 3 of the Estate Duty Ordinance (hereinafter referred to as the principal Ordinance) is repealed and replaced by the following—

Repeal and
replacement
of section 3.
(Cap. 111).

“Interpre-
tation.”
57 & 58
Vict. c. 30,
s. 22(1).
3 & 4 Geo.
6, c. 29,
ss. 44, 47(2)
& 59 and 7
& 8 Geo. 6,
c. 23, s. 36.

3. (1) In this Ordinance, unless the context other-
wise requires, the following expressions have the meaning
hereby assigned to them respectively—

“account” means an account of the particulars and value
of the estate of a deceased person in such form as
may be prescribed by the Governor in Council, and
verified by affidavit;



"affidavit for the Commissioner" means an affidavit in such form as may be prescribed by the Governor in Council verifying the particulars and value of the estate of a deceased person;

"applicable Schedule" in the case of persons dying before the 27th day of February, 1931, means the First Schedule, and in the case of persons dying thereafter but before the 1st day of July, 1936, means the Second Schedule, and in the case of persons dying on or after the 1st day of July, 1936, but before the 1st day of April, 1941, means the Third Schedule, and in the case of persons dying on or after the 1st day of April, 1941, but before the 1st day of April, 1948, means the Fourth Schedule, and in the case of persons dying on or after the 1st day of April, 1948, but before the 1st day of February, 1959, means the Fifth Schedule, and in the case of persons dying on or after the 1st day of February, 1959, means the Sixth Schedule to this Ordinance;

"assets" includes goodwill;

"associated operations" means any two or more operations of any kind being—

- (a) operations which affect the same property, or one of which affects some property and the other or others of which affect property which represents, whether directly or indirectly, that property or income arising from that property, or any property representing accumulations of any such income; or
- (b) any two operations of which one is effected with reference to the other, or with a view to enabling it to be effected or to facilitating its being effected, and any third operation having a like relation to either of those two, and any fourth operation having a like relation to any of those three, and so on,

whether those operations are effected by the same person or by different persons, whether they are connected otherwise than as aforesaid or not, and whether they are contemporaneous or any of them precedes or follows any other;

"average rate" means, in relation to a company, a rate per cent per annum, the percentage being ascertained by—

- (a) computing the aggregate amount of the net profits of the company for the relevant accounting years,

a deduction being made, where the company sustained a loss in any of those years, of the amount of the loss;

- (b) dividing that amount by the number of those years; and
- (c) comparing the result with the principal value of the assets of the company passing on the death of the deceased by virtue of section 32 after making the allowances to be made under section 36;

"Commissioner" means such person as the Governor may appoint as Commissioner for the purpose of this Ordinance, and includes any person appointed by the Governor to be deputy Commissioner of estate duty;

"company" includes any body corporate, wheresoever incorporated;

"debenture" means, in relation to a company, any obligation of the company in respect of any loan capital issued by the company otherwise than as consideration for a loan made to it in the ordinary course of banking business, or in respect of any debt incurred by the company—

- (a) for any money borrowed by the company, otherwise than by way of temporary loan made in the ordinary course of a banking business;
- (b) for any transfer of capital assets made to the company by any person, unless the obligation is one resulting from a dealing with a person who transferred such assets to the company in, and on terms consistent with, the ordinary course of a business carried on by him;
- (c) without consideration, or for consideration the value of which to the company at the time when the debt was incurred was substantially less than the value at that time of the debt, including any premium thereon; or
- (d) where the debt was of such a nature that it would inure the ordinary course of business and apart from some special arrangement, have carried interest, if the debt did not carry interest or carried interest at a rate which was either unreasonably high or unreasonably low;

"disposition" includes any trust, covenant, agreement or arrangement, whether made by a single operation or by associated operations, and also, in relation to shares

in or debentures of a company, the extinguishment or any alteration of rights attaching thereto, whether effected by a single operation or by associated operations;

"distributed assets" means, in relation to a company, assets of the company to which subsection (3) of section 32 applies which were disposed of or distributed by the company as mentioned in that subsection, and "value of the distribution" means, in relation to any distributed assets, the value thereof or, if partial consideration, other than the extinguishment, or an alteration, of rights attaching to shares in or debentures of a company to which that section applies, was given for the distribution in money or money's worth received by the company for its own use and benefit, the value thereof less the value of the consideration given;

"dividend" includes a bonus chargeable to tax under the Inland Revenue Ordinance and also any bonus which would be so chargeable if it had arisen in or been derived from the Colony.

"estate duty" means duty chargeable under this Ordinance;

"executor" means the executor or administrator of a deceased person and includes, as regards any obligation under this Ordinance, any person who takes possession of or intermeddles with the property of a deceased person or any portion thereof;

"incumbrance" includes mortgage and terminable charge;

"interest in expectancy" includes an estate in remainder or reversion and every future interest whether vested or contingent, but does not include a reversion expectant upon the determination of a lease;

"member" means, in relation to a company, a holder in his own right of any share in or debenture of the company, and a person interested in any share in or debenture of the company held, whether by himself or another, otherwise than in the holder's own right;

"officer" means, in relation to a company, any person who exercises the functions of a director, manager, secretary or liquidator of the company;

"payment" includes a transfer of property and a set-off or release of an obligation, and references to the amount of a payment include, in relation to property transferred or to an obligation set-off or released, references to the value thereof;

(Cap. 112,
1956
Reprint).

"periodical payment" means a payment by way of dividend or interest, a payment by way of remuneration not being a single lump sum payment, and any other payment being one of a series of payments, whether interconnected or not, whether of the same or of varying amounts, and whether payable at regular intervals or otherwise;

"property" includes movable and immovable property and the proceeds of sale thereof respectively and any money or investment for the time being representing the proceeds of sale;

"property passing on the death" includes property passing either immediately on the death or after any interval, and either certainly or contingently, and either originally or by way of substitutive limitation, and "on the death" includes "at a period ascertainable only by reference to the death";

"power" includes any right or power exercisable by virtue of the holding of shares in or debentures of a company, and any right or power to procure an issue of shares in or debentures of a company;

"settlement" means any non-testamentary disposition in writing, whether made voluntarily or upon a good or valuable consideration other than a *bona fide* pecuniary consideration, whereby any definite and certain property is settled or agreed to be settled in any manner for any purpose whatsoever.

57 & 58
Vict. c. 30,
s. 22(2).

(2) For the purposes of this Ordinance—

- (a) a person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general power as would, if he were *sui juris*, enable him to dispose of the property; and "general power" includes every power or authority enabling the donee or other holder thereof to appoint or dispose of property as he thinks fit, whether exercisable by instrument *inter vivos* or by will, or both, but exclusive of any power exercisable either in a fiduciary capacity under a disposition not made by himself or as mortgagee;
- (b) a disposition taking effect out of the interest of the deceased person shall be deemed to have been made by him, whether the concurrence of any other person was or was not required;

Gifts creating
burdens or
releasing
rights.
3 & 4 Geo.
6, c. 29,
s. 45(1)
& (2).

3 & 4 Geo.
6, c. 29,
s. 58(2).

3 & 4 Geo.
6, c. 29,
s. 58(3).

- (c) money which a person has a general power to charge on property shall be deemed to be property of which he has power to dispose;
 - (d) the creation by a person or with his consent of a debt or other right enforceable against him personally or against property of which he was or might become competent to dispose, or to charge or burden for his own benefit, shall be deemed to have been a disposition made by that person, and in relation thereto the expression "property" shall include the debt or right created;
 - (e) the extinguishment at the expense of the deceased of a debt or other right shall be deemed to have been a disposition made by the deceased in favour of the person for whose benefit the debt or right was extinguished, and in relation thereto the expression "property" shall include the benefit conferred by the extinguishment of the debt or right;
- (3) A person shall be deemed to have made a transfer of property to a company if the property came to be included in the resources of the company by the effect of a disposition made by him or with his consent or of any associated operations of which such a disposition formed one.
- (4) A person shall be deemed to have received or had any payment, income, profit, enjoyment, assets, or interest, the receipt or having whereof by him is relevant for the purposes of this Ordinance, if any of the following conditions have been satisfied in relation thereto, that is to say—
- (a) if the relevant payment or other matter has been applied in any manner for the benefit of that person, or has been dealt with by that or any other person in any manner calculated to cause it to inure for the benefit of that person at any time, whether in the form of income or not or if any property which was or would be available for the purpose by reason of the effect or successive effects of any one or more of associated operations relating to the relevant payment or other matter has been so applied or dealt with;
 - (b) if any advantages received or to be received at any time by that person have been provided out of that payment or other matter, or out of any such property as aforesaid;

- (c) if that person became able in any manner to control the application of the relevant payment or other matter, or of any such property as aforesaid, otherwise than in a fiduciary capacity;
- (d) if the relevant payment or other matter, or any such property as aforesaid, has been applied in any manner so as to increase the value to that person of any property in which he was beneficially interested; or
- (e) as respects such profits as are mentioned in section 33, if the receipt by, or accrual to, the company of those profits operated in any manner so as to increase the value to that person of any property in which that person was beneficially interested, so however that the amount of the income or profits which that person is to be treated as having received by virtue of this paragraph shall be limited to the amount of the increase in value of the property in question,

and references in this Ordinance to the deceased's receiving or having, or being or becoming entitled to receive or have, any such payment or other matter as aforesaid shall be construed accordingly.

3 & 4 Geo.
6, c. 29,
s. 58(4).

2 & 3 Eliz.
2, c. 44,
s. 29(6).

- (5) References in this Ordinance—
- (a) to a disposition's being made by any person, to a power's being exercised or exercisable by any person, or to any other act's being done by any person, include references to its being made, or being exercised or exercisable, or being done, by him and another jointly or by another at his direction or by a company of which he had control, or powers equivalent to control, within the meaning of subsection (3) of section 41, whether with or without the consent of any other person having similar powers; references importing an omission on the part of any person in relation to any such matter as aforesaid shall be construed in like manner; and references in relation to any such matter, as aforesaid to its being made, or being exercised or exercisable, or being done or omitted, with the consent of any person include references to its being made, or being exercised or exercisable, or being done or omitted, at his request or with or subject to his acquiescence;

3 & 4 Geo.
6, c. 29,
s. 58(5).

(b) to a person having any power or control or doing any act in a fiduciary capacity shall be construed as references to his having that power or control or doing that act in a fiduciary capacity imposed on him otherwise than by a disposition made by him and in such a capacity only;

3 & 4 Geo.
6, c. 29,
s. 58(6).

(c) to an interest ceasing or being limited to cease on a death shall be construed as including references to its being subject to a limitation, in whatsoever form, having the effect of providing in the alternative for its cesser on the death or on the occurrence of some event, or the expiration of some period, before the death;

15 & 16 Geo.
6, & 1 Eliz.
2, c. 33,
s. 72(2).

(d) to a transfer of property, (except in the definition of "payment" in subsection (1)) shall include a reference to a payment of money, and the expressions "disposition" and "value" respectively, in relation to money, shall include payment and amount."

Amendment
of section 6.

3. Section 6 of the principal Ordinance is amended—

(a) by the deletion in paragraph (b) of subsection (1) of the words "*bona fide* made or effected three years before the death of the deceased, and *bona fide* possession" and the substitution therefor of the following—

"3 & 4 Geo. 6, c. 29, s. 43(2) & 9 & 10 Geo. 6, c. 64, s. 47. *bona fide* made or effected three years before the death, or if it was made or effected for such purposes as are recognized by the Commissioner as public or charitable, one year before the death, and *bona fide* possession";

(b) by the deletion from the first proviso to paragraph (b) of subsection (1) of the words "contract or otherwise, for a period of three years immediately preceding the death of deceased:" and the substitution therefor of the following—

"3 & 4 Geo. 6, c. 29, s. 43(2) & 9 & 10 Geo. 6, c. 64, s. 47. contract or otherwise, for a period of three years immediately preceding the death, or in the case of such purposes as are recognized by the Commissioner as public or charitable, one year immediately preceding the death:";

(c) by the deletion in paragraph (c) of subsection (1) of the words "have been *bona fide* made three years before his" and the substitution therefor of the following—

"3 & 4 Geo. 6, c. 29, s. 43(2) & 9 & 10 Geo. 6, c. 64, s. 47. have been *bona fide* made three years before the death or in the case of a gift *inter vivos* made or effected for such purposes as may be recognized by the Commissioner as public or charitable, one year before the";

(d) by the deletion from the first proviso to paragraph (c) of subsection (1) of the words "one thousand dollars" and substitute the following—

"five thousand dollars";

(e) by the deletion from the second proviso to paragraph (c) of subsection (1) of the words "a period of three years immediately preceding the death of the deceased;" and the substitution therefor of the following—

"9 & 10 Geo. 6, c. 64, s. 47. 2 & 3 Geo. 6, c. 41, s. 31(2). a period of three years immediately preceding the death or in the case of such purposes as are recognized by the Commissioner as public or charitable, one year before the death:

Provided also that money or money's worth paid or applied by the deceased in or towards satisfaction or discharge of a debt or incumbrance in the case of which subsection (1A) of section 10 would have had effect on his death if the debt or incumbrance had not been satisfied or discharged, or in reduction of a debt or incumbrance in the case of which that subsection has effect on his death, shall, unless so paid or applied three years before the death, be treated as property deemed to be included in the property passing on the death and estate duty shall, notwithstanding anything in paragraph (a) of section 7, be payable in respect thereof accordingly;"

(f) by the deletion at the end of paragraph (f) of subsection (1) of the semicolon and the word "and" and the substitution therefor of the following—

"2 & 3 Geo. 6, c. 41, s. 30, (1) & (3). , except that the foregoing provisions of this paragraph shall have effect in relation to an annuity or other interest purchased or provided wholly or in part by any person who was at any time entitled to, or amongst whose resources there was at any time included, any property derived from the deceased, as if that annuity or other interest had been provided by the deceased, or, if it is proved to the satisfaction of the Commissioner that the application of all the property derived from the deceased would have been insufficient to provide the whole of that annuity or other interest, as if a similar annuity or interest of

an amount reduced to an extent proportionate to the insufficiency proved had been provided by the deceased:

Provided that for the purpose of determining whether there would have been any such insufficiency as aforesaid, and the extent thereof, there shall be excluded from the property derived from the deceased any part thereof as to which it is proved to the satisfaction of the Commissioner that the disposition of which it, or the property which it represented, was the subject matter was not made with reference to, or with a view to enabling or facilitating, the purchase or provision of the annuity or other interest, or the recoupment in any manner of the cost thereof.

6 & 7 Geo. 6,
c. 28, s. 26.

In this paragraph the expressions—

“property derived from the deceased” shall include any property which was the subject matter of a disposition, made by the deceased, either by himself alone or in concert or by arrangement with any other person, notwithstanding that the disposition was made for full consideration in money or money's worth paid to the deceased for his own use or benefit, or which represented any of the subject matter of such disposition, whether directly or indirectly, and whether by virtue of one or more intermediate dispositions, and whether any such intermediate disposition was or was not for full or partial consideration:

Provided that where the first-mentioned disposition was for full consideration in money or money's worth paid to the deceased for his own use or benefit and it is proved to the satisfaction of the Commissioner that the disposition was not part of associated operation which included a disposition by the deceased, either by himself alone or in concert or by arrangement with any other person, otherwise than for full consideration in money or money's worth paid to the deceased for his own use or benefit; or a disposition by any other person operating to reduce the value of the property of the deceased, then, in

considering whether estate duty should be charged by virtue of this paragraph, paragraph (c) and subsection (1A) of section 10, the said first-mentioned disposition shall be left out of the account as if this subparagraph did not apply in relation to it; and

6 & 7 Geo. 6, “subject matter” includes, in relation to any disposition, any annual or periodical payment made or payable under or by virtue of the disposition;”;

(g) by the deletion of the full stop at the end of paragraph (g) of subsection (1) and the substitution therefor of a semicolon and the word “and”;

(h) by the addition after paragraph (g) of subsection (1) of the following new paragraph—

“3 & 4
Geo. 6, c. 29,
s. 43(1) &
(2) & 14
Geo. 6,
c. 15, s. 43.

(h) an interest limited to cease on the death which has been disposed of or has determined, whether wholly or partly, whether by surrender, assurance, divesting, forfeiture or in any other manner, except by the expiration of a fixed period at the expiration of which the interest was limited to cease, and whether for value or not, after becoming an interest in possession and the disposition or determination, or any of them if there are more than one, is not excepted by the proviso hereto, then—

(i) if, had there been no disposition or determination as aforesaid of that interest and no disposition of any interest expectant upon or subject to that interest, the property in which the interest subsisted would have passed on the death under section 5, that property shall be deemed by virtue of this paragraph to be included as to the whole thereof in the property passing on the death; or

(ii) if, had there been no disposition or determination as aforesaid of that interest and no disposition of any interest expectant upon or subject to that interest, the property in which the interest subsisted would have been deemed by virtue of paragraph (b) to be included to a

particular extent in the property passing on the death, then, the property in which the interest subsisted shall be deemed by virtue of this paragraph to be included to that extent in the property passing on the death:

Provided that where a disposition or determination of an interest limited to cease on the death was *bona fide* effected or suffered three years before the death, or, if it was effected or suffered for such purposes as are recognized by the Commissioner as public or charitable, one year before the death, the disposition or determination shall be excepted by this proviso—

- (a) if *bona fide* possession and enjoyment of the property in which the interest subsisted was assumed immediately thereafter by the person becoming entitled by virtue of or upon the disposition or determination and thence forward retained to the entire exclusion of the person who immediately before the disposition or determination had the interest and of any benefit to him by contract or otherwise; or
- (b) in the case of a partial determination, if the conditions specified in sub-paragraph (a) were not satisfied by reason only of the retention or enjoyment by the deceased of possession of some part of the property, or of some benefit, by virtue of the provisions of the instrument under which he had the interest.”;

- (i) by the addition after subsection (1) of the following new subsections—

“Interpretation of s. 6(1)(h).
3 & 4 Geo.
6, c. 29,
s. 43(3).

(1A) In the application of paragraph (h) of subsection (1) to a case in which an incumbrance on the property in which the interest in question subsisted has been created by associated operations which included a disposition of that interest, references to that property shall be construed as references to that property free from the incumbrance except in a case in which the incumbrance was created for consideration in money or money's worth which was applied for purposes calculated

to maintain or increase the value of that property, and, in that case, shall be construed as references to that property subject to the incumbrance to the extent to which the consideration was so applied.

3 & 4 Geo.
6, c. 29,
s. 43(6).

(1B) Paragraph (h) of subsection (1) shall have effect only in relation to a person dying after the commencement of the Estate Duty (Amendment) Ordinance, 1959, and paragraph (b) of that subsection shall not have effect in relation to such a person.”;

- (j) by the deletion in subsection (2) of the words “more than three years before his death where possession and” and the substitution therefor of the following—

“9 & 10
Geo. 6,
c. 64, s. 47.

more than three years before the death, or in the case of a disposition made for such purposes as are recognized by the Commissioner as public or charitable, one year before the death where possession and”;

- (k) by the deletion from the proviso to subsection (2) of the words “to him by contract or otherwise, for a period of three years immediately preceding the death of the deceased.” and the substitution therefor of the following—

“9 & 10
Geo. 6,
c. 64, s. 47.

to him by contract or otherwise, for a period of three years immediately preceding the death or in the case of a disposition made for such purposes as are recognized by the Commissioner as public or charitable, one year immediately preceding the death.”.

4. The principal Ordinance is amended by the addition after section 6 of the following new sections—

“Dispositions
in favour
of relatives.
14 Geo. 6,
c. 15, s. 46(1).

6A. (1) For the purposes of paragraph (c) of subsection (1) of section 6 any disposition made by the deceased in favour of a relative of his shall be treated as a gift unless—

- (a) the disposition was made on the part of the deceased for full consideration in money or money's worth paid to him for his own use or benefit; or
- (b) the deceased was concerned in a fiduciary capacity imposed on him otherwise than by a disposition made by him and in such a capacity only:

Provided that where the disposition was made on the part of the deceased for partial consideration in money or money's worth paid to him for his own use or benefit, the

Addition of
new sections
6A and 6B.

value of the consideration shall be allowed as a deduction from the value of the property for the purpose of estate duty.

(2) Where the deceased made a disposition of property in favour of a relative of his, the creation or disposition in favour of the deceased of an annuity or other interest limited to cease on the death of the deceased or of any other person shall not be treated for the purposes of this section or of subsection (1) of section 10 as consideration for the disposition made by the deceased, except as provided in section 6B.

3 & 4 Geo.
6, c. 29,
s. 44(5), & 14
Geo. 6, c. 15,
s. 46(2)(a).

(3) Where there have been associated operations effected with reference to the receiving by the deceased of any payment in respect of such an annuity or other interest as is mentioned in subsection (2), or effected with a view to enabling him to receive or to facilitating the receipt by him of any such payment, this section and section 42 shall have effect in relation to each of those associated operations as they have effect in relation to the creation or disposition in favour of the deceased of such an annuity or other interest.

3 & 4 Geo.
6, c. 29,
s. 44(2)
& (3).

(4) In this section, section 6B and section 42—
“annuity” includes any series of payments, whether interconnected or not, whether of the same or of varying amounts, and whether payable at regular intervals or otherwise, and payments of dividends or interest on shares in or debentures of a company shall be treated for the purposes of the said provisions as a series of payments constituting an annuity limited to cease on a death if the payments are liable to cease on the death, or the amounts thereof are liable to be reduced on the death, by reason directly or indirectly of the extinguishment or any alteration or rights attaching to, or of the issue of, any shares in or debentures of a company;

“relative” means—

- (a) wife or husband;
- (b) father and mother;
- (c) child, uncle and aunt;
- (d) any issue of a person falling within either (a), (b) or (c) above and the other party to a marriage with any such person or issue;
- (e) concubine recognized as such by the law appropriate to the marriage; and

- (f) references to “child” and “issue” include references to any illegitimate child and to any adopted child.

Exemptions.
7 & 8 Geo.
6, c. 23,
s. 40.

6B. (1) Subject to the provisions of this section, the relief specified herein shall be granted where, on the death of a person who has made a disposition of property in favour of a relative of his or a company, any estate duty becomes, or would but for this section become payable by virtue of subsection (2) of section 6A.

(2) The sum on which estate duty would be payable apart from this section on the death in respect of the property which was the subject matter of the disposition or in respect of the property liable to a debt or incumbrance created by the deceased which was the subject matter of the disposition, as the case may be, shall first be computed and, subject to the limitations provided for by subsection (4), there shall then be allowed as a deduction from that sum—

- (a) the amount, if any, by which the aggregate of the payments which have been made on account of the annuity or other interest for the period from the date when the annuity or other interest began to accrue in favour of the deceased until his death, exceeds the aggregate of the income derived from the deceased by virtue of the disposition for the period from the date of the disposition until his death; and
- (b) simple interest on so much, if any, of the amount aforesaid, and for such period, as, in the opinion of the Commissioner, is in all the circumstances just, at the rate of four per cent per annum.

(3) In subsection (2), the expression “the aggregate of the income derived from the deceased by virtue of the disposition” means—

- (a) in relation to so much of the property which was the subject matter of the disposition as did not consist of a debt or incumbrance created by the deceased, such amount as, in the opinion of the Commissioner, is in all the circumstances equal to a reasonable return from the property; and
- (b) in relation to so much of the property which was the subject matter of the disposition as did consist of a debt or incumbrance created by the deceased, the aggregate amount of the interest paid or payable by the deceased in respect of that debt or incumbrance.

(4) The amount to be allowed as a deduction under subsection (2) shall, in the circumstances specified in the provisions of subsections (5), (6) and (7) be limited to the extent specified in those subsections respectively.

7 & 8 Geo.
6, c. 23, 3rd
Schd. 1.

(5) If the annuity payments specified in paragraph (a) of subsection (2) had formed the consideration for a debt created by the deceased equal to the total amount of those payments, and if subsection (1) of section 10 were applied to that debt, the full amount of that debt would not having regard to the operation of subsection (1A) of the said section 10 have been allowable under subsection (1) of that section, the said annuity payments shall, for the purpose of ascertaining the amount to be allowed as a deduction under this section, be reduced so as not to exceed the amount, if any, which would have been allowable in the circumstances aforesaid under subsection (1) of that section:

Provided that in applying the said subsection (1A) for the purposes of this subsection, property which is the subject matter of the disposition shall not be treated as property derived from the deceased.

14 Geo. 6,
c. 15,
s. 46(2).

(6) Where under section 6A a deduction for partial consideration would have been allowable in respect of the annuity or other interest if subsection (2) of that section had not applied to the disposition and if any other consideration for the disposition had not been given, the amount to be allowed as a deduction under this section shall not exceed the amount of that deduction.

7 & 8 Geo.
6, c. 23, 3rd
Schd. 3.

(7) Where the amount to be allowed as a deduction under this section is allowed as a deduction from the value of the property liable to a debt or incumbrance created by the deceased, it shall not exceed the amount, if any, which would be allowed under subsection (1) of section 10 if sections 6A and 42 had not been passed.

Accretions to
gifts *inter*
vivos, 5 & 6
Eliz. 2,
c. 49, s. 38.

6C. (1) Where any shares in or debentures of a company are comprised in a gift *inter vivos* and the donee is, as the holder of those shares or debentures, issued with shares in or debentures of the same or any other company, or granted any right to acquire any such shares or debentures, then, unless the issue or grant is made by way of exchange for the first mentioned shares or debentures, the shares or debentures so issued, or the right granted, shall be treated for the purposes of this Ordinance as having been comprised in the gift in addition to any other property so comprised.

(2) In subsection (1) the reference to an issue being made or right being granted to the donee as the holder of shares or debentures shall be taken to include any case in which an issue or grant is made to him as having been the holder of those shares or debentures, or is made to him in pursuance of an offer or invitation made to him as being or having been the holder of those shares or debentures, or of an offer or invitation in connexion with which any preference is given to him as being or having been the holder thereof.

(3) Where subsection (1) applies to determine, for purposes of estate duty, the property comprised in a gift *inter vivos* made by the deceased, the value of any consideration in money or money's worth given by the donee for the issue or grant referred to in the said subsection (1) shall be allowed as a deduction in valuing the property comprised in the gift as property deemed to pass on the death by virtue of the gift; but if any part, not being a sum of money, of the said consideration consists of property comprised in the same or another gift from the donor and deemed for purposes of estate duty to pass on his death, no deduction shall be made in respect of it under this subsection.

(4) For the purposes of subsection (3) there shall be left out of account so much, if any, of the consideration for any shares in or debentures of a company or for the grant of any right to be issued with any such shares or debentures, as consists in the capitalization of reserves of that company, or in the retention by that company, by way of set-off or otherwise, of any property distributable by it, or is otherwise provided directly or indirectly out of the assets or at the expense of that or any associated company; and for this purpose two companies shall be deemed to be associated if one has a controlling interest in the other, or if some person has a controlling interest in both.

(5) In the case of a donee who dies before the donor, subsections (1) to (4) inclusive shall apply as if he had not died, and as if the acts of his personal representative were his acts, and property taken by any person under his testamentary dispositions or on his intestacy, or partial intestacy, were taken under a gift made by him at the time of his death.

(6) For purposes of aggregation, any property which is by virtue of subsections (1) to (5) inclusive to be treated as comprised in a gift *inter vivos* made by the deceased

shall be deemed to be property in which the deceased had an interest, except in so far as it is derived from property originally comprised in the gift in which the deceased never had an interest.

(7) For the purposes of estate duty, any question whether, possession and enjoyment of any property comprised in a gift *inter vivos* was at a particular time assumed or had by any person to the exclusion of any other person shall, so far as the question depends on the identity of the property, be determined by reference to the property which would for the time being be treated, in relation to the death if it occurred at that time, as property comprised in the gift.

(8) For the purpose of this section the principal value of any property at a time before the death of the deceased shall be ascertained as it would be for the purposes of estate duty chargeable on his death if he had died immediately before that time."

Amendment
of section 8.

5. Section 8 of the principal Ordinance is amended—

- (a) by being renumbered subsection (1) of section 8;
- (b) by the substitution of a comma for the full stop at the end thereof and the addition thereto of the following—

"57 & 58
Vict. c. 30,
s. 4. and the duty shall be paid at the proper graduated rate on the principal value thereof:

Provided that any property so passing, in which the deceased never had an interest, shall not be aggregated with any other property but shall be an estate by itself, and the duty shall be paid at the proper graduated rate on the principal value thereof."

- (c) by the addition after subsection (1) of the following new subsections—

"2 & 3 Geo.
6, c. 41,
s. 30(2). (2) For the purposes of this section the deceased shall be deemed to have had an interest in any property included, or deemed to be included, by virtue of—

(a) paragraph (f) of subsection (1) of section 6; or

(b) section 32,
3 & 4 Geo. 6,
c. 29, s. 52. in the property passing on his death.

(3) The proviso to subsection (1) shall not have effect in relation to property consisting of a debt, or right, or benefit, passing on the death of

the deceased, that is treated as property by virtue of paragraph (d) or (e) of subsection (2) of section 3.

2 & 3 Eliz. 2,
c. 44, s. 33.

(4) Where the property which passes on a death, but in which the deceased never had an interest, includes any policies of assurance on his life, or moneys received under such a policy, or interests in such a policy or moneys, then the rate of estate duty to be paid on any such policy, money or interest so included (hereinafter referred to as "a life insurance") shall be determined as follows—

- (a) in respect of the value of any life insurance or interest in a life insurance to which immediately after the death any one person is absolutely and indefeasibly entitled for his own benefit otherwise than by virtue of a purchase for consideration in money or money's worth, whether of that life insurance or interest or of the policy or otherwise, the rate shall be that appropriate to the value or aggregate value of that life insurance or interest and of any other life insurance or interest in a life insurance to which he is so entitled;
- (b) subject to the foregoing paragraph the rate shall be that appropriate to the aggregate value of all the life insurance or, if there is only one, to the value of that life insurance:

Provided that for the purposes of this subsection—

- (i) where any life insurance or interest in a life insurance is immediately after the death subject to a mortgage or charge, the mortgage or charge shall be disregarded and the life insurance or interest shall be valued accordingly; and
- (ii) in relation to life insurances and interests therein which then form part of the unadministered estate of a deceased person this subsection shall have effect as if that person had been then living and entitled to those life insurances and interests.

(5) For the purposes of paragraph (a) of subsection (4) the value of any interest in a policy of assurance or moneys received under such a policy shall be arrived at by apportioning the total value of the policy or moneys according to the respective values of the interest in question and of the interest a person would have if, except for the interest in question, he were absolutely and indefeasibly entitled to the policy or moneys."

Amendment
of section 10.

6. Section 10 of the principal Ordinance is amended by the addition after subsection (1) of the following new subsection—

"2 & 3 Geo.
6, c. 41,
s. 31(1).

(1A) Any allowance which but for this subsection would be made under subsection (1) for a debt incurred by the deceased as mentioned in paragraph (a) of that subsection, or for an incumbrance created by a disposition made by the deceased, as therein mentioned shall be subject to abatement to an extent proportionate to the value of any of the consideration given therefor which consisted of—

- (a) property derived from the deceased; or
- (b) consideration not being such property as aforesaid, but given by any person who was at any time entitled to, or amongst whose resources there was at any time included, any property derived from the deceased:

Provided that if, where the whole or a part of the consideration given consisted of such consideration as is mentioned in paragraph (b) of this subsection, it is proved to the satisfaction of the Commissioner that the value of the consideration given, or of that part thereof, as the case may be, exceeded that which could have been rendered available by application of all the property derived from the deceased, other than such, if any, of that property as is included in the consideration given or as to which the like facts are proved in relation to the giving of the consideration as are mentioned in the first proviso to paragraph (f) of subsection (1) of section 6 in relation to the purchase or provision of an annuity or other interest, no abatement shall be made in respect of the excess, and in this subsection the expressions "property derived from the deceased" and "subject matter" have the meanings respectively attributed to them in paragraph (f) of subsection (1) of section 6."

6 & 7 Geo.
6, c. 28,
s. 26.

7. Section 11 of the principal Ordinance is amended—

Amendment
of section 11.

(a) by the addition after subsection (6) of the following new subsection—

"3 & 4 Geo.
6, c. 29,
s. 57(1).

(6A) Subsection (6) shall apply to any company on a death on which it appears to the Commissioner that section 32 or section 41 has effect in respect of that company, and to every person who is or was at any time an officer, or an auditor of that company, as it applies to a person whom the Commissioner believes to have taken possession of or administered any part of an estate in respect of which estate duty is leviable."

(b) by the addition in subsection (14) after the words "one thousand dollars" of the following—

"3 & 4 Geo.
6, c. 29,
s. 57(2). or in the case of such company as is referred to in subsection (6A), or the auditor or officer of such a company, five thousand dollars".

8. Section 12 of the principal Ordinance is amended by the deletion from subsection (1) of the words "that the estate duty payable in respect of the estate" and the substitution therefor of the following—

Amendment
of section 12.

"that the estate duty payable by the executor upon the estate in respect of which probate or letters of administration is sought".

9. Section 22 of the principal Ordinance is amended by the deletion from subsection (1) of the words "as defined by the Companies Ordinance, or a company, association or partnership formed under or in pursuance of some other Ordinance or Act, or of a charter of incorporation, or of letters patent".

Amendment
of section 22.

10. The principal Ordinance is amended by the addition after section 30 of the following new sections—

Addition of
new sections
31 to 42.

"Controlled
companies.
12 & 13 Geo.
5, c. 17,
s. 21(6).
26 Geo. 5,
and 1 Edw.
8, c. 34,
s. 19 and
3 & 4 Geo.
6, c. 29,
s. 58(1).

26 Geo. 5,
and 1 Edw.
8, c. 34,
s. 19(1)
(a) & (b).

31. (1) The companies to which sections 32, 38, 41 and 42 respectively apply are any company which, at any relevant time, is deemed to have been under the control of not more than five persons not being a company which, at any such time, is deemed to have been either a subsidiary company or a company in which the public were substantially interested.

(2) A company shall be deemed to be under the control of not more than five persons—

(a) if any five or fewer persons together exercise, or are able to exercise, or are entitled to acquire,

control, whether direct or indirect, over the company's affairs, and in particular, but without prejudice to the generality of the foregoing words, if any five or fewer persons together possess, or are entitled to acquire, the greater part of the share capital or voting power of the company; or

- (b) if any five or fewer persons together possess, or are entitled to acquire, either the greater part of the issued share capital of the company, or such part of that capital as would, if the whole of the profits of the company had been in fact distributed to the members, entitle them to receive the greater part of the amount so distributed; or

26 Geo. 5
and 1 Edw.
8, c. 34,
s. 19(1)(c).

- (c) if in any relevant accounting year, more than half of the profits of the company have been, or could have been, apportioned among not more than five persons; or

26 Geo. 5
and 1 Edw.
8, c. 34,
s. 20(3).

- (d) if any five or fewer persons would, if the company were wound up, be entitled as members or loan creditors of the company to receive more than half of the assets of the company which would be available for distribution to members and loan creditors.

26 Geo. 5
and 1 Edw.
8, c. 34,
s. 19(2).

(3) In determining for the purposes of subsection (2) whether a company is deemed to be under the control of not more than five persons, persons in any one of the following classes shall be treated as a single person with other persons of that same class, namely—

- (a) persons who are relatives of one another;
(b) nominees of another person together with that person;
(c) persons in a partnership within the meaning of section 3 of the Partnership Ordinance; and
(d) persons interested in any shares or obligations of the company which are subject to any trust or are part of the estate of a deceased person.

(Cap. 38).

(4) For the purposes of subsection (3) a person shall be deemed to be the nominee of another person if, whether directly or indirectly, he possesses on behalf of that other person, or may be required to exercise on the direction of or on behalf of that other person, any right or power which is material in determining whether a company is, or is not to be deemed to have been under the control of not more than five persons.

12 & 13 Geo.
5, c. 17,
s. 21(6).

(5) A company shall be deemed to be—

- (a) "a subsidiary company" if, by reason of the beneficial ownership of shares therein, the control of the company is in the hands of a company not being a company to which the provisions of this section apply, or of two or more companies none of which is a company to which the said provisions apply; and

12 & 13 Geo.
5, c. 17,
s. 21(6).

- (b) "a company in which the public were substantially interested" if shares of the company (not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) carrying not less than 25 per cent of the voting power were allotted unconditionally to, or acquired unconditionally by, and were at the end of the year or other period for which the accounts of the company were made up beneficially held by, the public (not including a company to which the provisions of this section apply), and any such shares were in the course of such year or other period the subject of dealings on the Hong Kong Stock Exchange and the shares were quoted in any list of such exchange.

26 Geo. 5,
and 1 Edw.
8, c. 34,
s. 19(3)
and 3 & 4
Geo. 6, c. 29,
s. 58(1)(b)(i).

(6) For the purpose of this section and in relation to any body corporate incorporated outside the Colony—

- (a) references to winding-up shall include references to the dissolution or cancellation of the registry of the body corporate in any manner authorized by any rules, regulations or other instrument constituting or regulating the body corporate or any enactment applying to the body corporate; and
(b) references to an order or resolution for winding-up shall include references to the signing of any instrument, the making of any application or the doing of any other act which is authorized as aforesaid with a view to dissolving, or cancelling the registry of, the body corporate; and
(c) references to the liquidator shall include references to any person in charge of the winding-up of the affairs of the body corporate.

26 Geo. 5
and 1 Edw.
8, c. 34,
s. 20(7).

(7) In this section the expressions—

"loan creditor" means a creditor in respect of any debt incurred by the company—

- (a) for any money borrowed or capital assets acquired by the company; or

- (b) for any right to receive income created in favour of the company; or
- (c) for consideration the value of which to the company was, at the time when the debt was incurred, substantially less than the amount of the debt including any premium thereon,

or in respect of any redeemable loan capital issued by the company:

(Cap. 155).

Provided that a bank licensed to carry on banking business under section 4 of the Banking Ordinance, shall not be deemed to be a loan creditor in respect of any loan capital or debt issued or incurred by the company for money lent by such bank to the company in the ordinary course of the bank's business;

12 & 13 Geo. 5, c. 17, s. 21(7). "member" includes any person having a share or interest in the capital or profits of a company;

"relative" has the meaning attributed thereto in section 6A; and

3 & 4 Geo. 6, c. 29, s. 58(1)(a). "relevant time" means any time during the period ending with the death of the deceased and beginning, as respects section 41, three years before his death, and, as respects sections 32, 38 and 42 at the date of the disposition transfer or other transaction or event relevant for the purposes of those sections, or if that disposition transfer or other transaction or event was one of associated operations, at the date of the earliest of those operations.

Charge on assets of controlled companies. 3 & 4 Geo. 6, c. 29, s. 46 and 9 & 10 Geo. 6, c. 64, s. 47.

32. (1) Where a person has made to a company to which this section applies a transfer of any property, other than an interest limited to cease on his death or property which he transferred in a fiduciary capacity, and any benefits accruing to the deceased from the company accrued to him in the three years ending with his death, the assets of the company shall be deemed for the purposes of estate duty to be included in the property passing on his death to an extent determined, in accordance with subsection (2), by reference to the proportion that the aggregate amount of the benefits accruing to the deceased from the company bore to the net profits of the company.

Proportion of assets accruing to deceased.

(2) The extent to which the assets of the company are to be deemed to be included as aforesaid shall be the proportion ascertained by comparing the aggregate amount

of the benefits accruing to the deceased from the company in the last three accounting years with the aggregate amount of the net profits of the company for the said years:

Provided that—

- (a) where, in any of the said accounting years, the company sustained a loss, the amount of that loss shall be deducted in ascertaining the said aggregate net profits of the company;
- (b) where the company came into existence in the last but one, or in the last, of the said accounting years, the references in this subsection to the said accounting years shall be construed as references to the last two or the last, of those years, as the case may be.

Ascertainment of total assets of controlled companies.

(3) The assets of the company which are deemed to be included in the property passing on the death of the deceased by virtue of this section shall include any assets thereof which have been disposed of or distributed by the company at any time between the beginning of the first of the accounting years aforesaid and the death of the deceased, either—

- (a) in or towards satisfaction of rights attaching to shares in or debentures of the company; or
- (b) otherwise howsoever except as follows, that is to say, by way of sale for full consideration in money or money's worth received by the company for its own use and benefit, or in or towards discharge of taxes or rates or other liability imposed by or under any enactment, or in or towards discharge of a fine or penalty or of a liability for tort incurred without collusion with the injured party,

including assets which have been so disposed of or distributed in a winding up, whether continuing at or completed before the death:

Provided that this subsection shall not apply to assets disposed of or distributed by way of payments of dividends of amounts not exceeding in the aggregate, as respects payments made in any accounting year or in the period between the end of the last accounting year and the death of the deceased, the amount of the profits of the company for that year or period.

Seventh Schedule.

(4) The provisions contained in the Seventh Schedule shall have effect for the purpose of supplementing and interpreting this section, section 31 and sections 33 to 42 inclusive.

Benefits from
company to
deceased.
3 & 4 Geo.
6, c. 29,
s. 47(1).

33. The following shall be treated as benefits accruing to the deceased from the company, that is to say—

- (a) any profits of the company, and any periodical payment out of the resources or at the expense of the company, which the deceased received for his own benefit whether directly or indirectly, and any enjoyment in specie of land or other property of the company or of a right thereover which the deceased had for his own benefit whether directly or indirectly;
- (b) any such profits or payment or enjoyment which the deceased was entitled to receive or have as aforesaid; and
- (c) any such profits or payment or enjoyment which the deceased could have become entitled to receive or have as aforesaid by an exercise in the three years ending with his death of any power exercisable by him or with his consent;

and where the deceased could, by an exercise in the said three years of any such power as aforesaid, have become entitled to receive as aforesaid any payment out of the resources or at the expense of the company not being a periodical payment, but did not in fact receive or become entitled to receive that payment, there shall be treated as a benefit accruing to the deceased from the company interest on that payment at the average rate from the earliest date on which he could have become entitled to receive it.

Surrender
of benefits.
3 & 4 Geo.
6, c. 29,
s. 48.

34. (1) Subject to the provisions of subsection (3), if the deceased has made, whether for value or not, a surrender of his title to receive any such profit or payment or enjoyment as is mentioned in section 33, or of any such power as is therein mentioned, section 33 shall have effect as if the surrender had not been made.

Benefits
deemed to be
surrendered.

(2) The deceased shall be deemed to have made such a surrender as aforesaid if a right which he had to receive any such profit or payment or enjoyment as aforesaid, or if any such power as aforesaid, has been extinguished or suspended by the effect solely or partly of any disposition made by him or with his consent of shares in or debentures of a company or of any other property or right, or of the exercise or the leaving unexercised by him or with his consent of any power or right, or of the extinguishment or suspension by him or with his consent of any power or right, otherwise than in a fiduciary capacity, or if apart from such a disposition or other act or omission he would

have become entitled to receive any such profit or payment or enjoyment as aforesaid but by the effect solely or partly thereof he did not become entitled to receive it.

Exemptions.

(3) This section shall not apply to a surrender *bona fide* made before the beginning of the three years ending with the death of the deceased, or, if it was made for such purposes as are recognized by the Commissioner as public or charitable, one year before the beginning of the year ending with his death, if the deceased was at all times during those three years, or during that year, as the case may be, entirely excluded from receiving, or being entitled to receive, or having any capacity by an exercise of any power exercisable by him or with his consent to receive, any periodical payment by virtue of the surrender or of any associated operations of which the surrender was one.

Determina-
tion of net
profits of a
company.
3 and 4
Geo. 6,
c. 29, s. 49.
(Cap. 112,
1956
Reprint).

35. (1) The profits of the company for any accounting year, or for the period between the end of the last accounting year and the death of the deceased, hereinafter referred to as the assessable profits, shall be determined by ascertaining the profits of the company from all sources, in accordance with the provisions of the Inland Revenue Ordinance relating to the ascertainment of assessable profits as if that Ordinance applied to profits not arising in or not derived from the Colony, in the same way as it does to profits arising in or derived from the Colony, subject to the modification that such assessable profits shall be computed by reference to the actual profits for that year or period, and not by reference to the profits for any other period:

Provided that—

- (a) there shall be excluded from the ascertainment of such assessable profits any profits which were not *bona fide* acquired in the ordinary course of business nor the produce of income yielding assets; and
- (b) in determining such assessable profits no account shall be taken of the provisions of sections 19 and 26 of the Inland Revenue Ordinance.

(2) The net profits of the company for the purpose of this Ordinance for any accounting year shall be determined by adding to the assessable profits for that year computed in accordance with subsection (1) the amount of any interest on debentures in the company deduction for which has already been made under the Inland Revenue Ordinance in assessing the assessable profits of the company.

7 & 8 Geo.
6, c. 23,
s. 37.

Allowances
in the
valuation
of assets.
3 & 4 Geo.
6, c. 29,
s. 50(1).

(3) The provisions of subsection (1) shall, for a like purpose and with any necessary adaptations, apply to the determination of any loss sustained by a company, as it applies to the determination of the assessable profits of a company.

36. (1) In determining the value of the estate for the purpose of estate duty the provisions of subsection (1) of section 10, as to making allowance for debts and incumbrances shall not have effect as respects any debt or incumbrance to which assets of the company passing on the death by virtue of section 32 were liable, but the Commissioner shall make an allowance from the principal value of those assets for all liabilities of the company (computed as regards liabilities which have not matured at the date of death, by reference to the value thereof, at that date, and, as regards contingent liabilities, by reference to such estimation as appears to the Commissioner to be reasonable) other than—

- (a) liabilities in respect of shares in or debentures of the company; and
- (b) liabilities incurred otherwise than for the purposes of the business of the company wholly and exclusively.

Basis of
valuation.
3 & 4 Geo.
6, c. 29,
s. 50(2).

(2) In estimating for the purpose of subsection (1), the principal value of the assets deemed to pass on the death by virtue of section 32, the Commissioner shall fix the price thereof on the basis of a sale of the business of the company as a going concern, and the proportion of that value upon which estate duty is payable by virtue of section 5 as modified by paragraph (b) of section 7, shall be ascertained by comparing—

- (a) the aggregate value at the date of death of the deceased of those items of property which together form the assets of the company other than those situate at that date outside the Colony; with
- (b) the aggregate value at that date of those items of property wheresoever situate, which together form the assets of the company.

Allowance for
partial con-
sideration for
distributed
assets.
3 & 4 Geo.
6, c. 29,
s. 50(3).

(3) Where the assets passing on the death by virtue of section 32 include any distributed assets, if partial consideration, other than the extinguishment, or an alteration of rights attaching to shares in or debentures of a company to which that section applies, was given for the distribution in money or money's worth received by the company for

its own use and benefit, a further allowance shall be made, in addition to the allowances specified in subsection (1), of an amount equal to the value of the consideration given.

Valuation
of distrib-
uted
assets.
3 & 4 Geo.
6, c. 29,
s. 50(4).

(4) For the purpose of the estimation of the principal value of any distributed assets, paragraph (a) of subsection (4) of section 10, shall have effect with the substitution for the reference therein to the time of the death of the deceased of a reference to the time of the distribution, and effect shall be given to the proviso to paragraph (b) of the said subsection as at the time of the distribution only, due regard being had to the expectation of life of the deceased at that time.

Limitation
on charge.
3 & 4 Geo.
6, c. 29,
s. 51(1).

37. (1) If it is shown to the satisfaction of the Commissioner that—

the value of all such property as is mentioned in subsection (1) of section 32 of which the deceased made a transfer to the company, together with an amount equal to any excess of interest at the average rate on the value thereof from the date or respective dates of transfer to the death of the deceased over the aggregate amount of the benefits received by the deceased by virtue of the transfer is less than the value on which estate duty would be chargeable on the death under section 32 if all benefits accruing to him from the company other than benefits received by him by virtue of the transfer were disregarded,

then, an amount equal to the deficiency shall be deducted from the proportion of the value of the company's assets that corresponds to the benefits received by him by virtue of the transfer.

Inter-
pretation.
3 & 4 Geo.
6, c. 29,
s. 51(1).

(2) References in subsection (1) to benefits received by the deceased by virtue of a transfer shall be construed as references to benefits accruing to him from the company which he received or had as consideration for the transfer, or in consequence of his having received as consideration therefor shares or debentures or other property which produced any of those benefits.

Limitation
of value
where
considera-
tion given.
14 Geo. 6,
c. 15, s. 47.
15 & 16

(3) Where the following conditions are satisfied, that is to say, that the deceased has, within three years before his death, disposed of any shares in or debentures of the company for consideration in money or money's worth paid to him for his own use or benefit, and that any benefits accrued to the deceased from the company by virtue of

Geo. 6 and
1 Eliz. 2,
c. 33, s. 72.

those shares or debentures or by virtue of a power's having been exercisable by him or with his consent in relation to those shares or debentures, then—

- (a) if the value of the said consideration or the aggregate value of the shares or debentures ascertained as if they passed on the death, whichever is the greater, is equal to or greater than the proportion of the value of the company's assets that corresponds to the benefits that so accrued to him, or if the Commissioner is satisfied that the said proportion would not, if fully ascertained, be found to be substantially in excess of that value, duty on the said proportion shall not be payable;
- (b) in any other case, the amount on which duty is to be charged in respect of the said proportion shall be reduced by the amount of the value of the said consideration or of the said aggregate value whichever is the greater:

Provided that—

- (i) if estate duty on the death is payable upon such shares or debentures on their value or any part thereof, or would be so payable but for an exemption from estate duty, that value, aggregated if necessary, shall be taken into account as aforesaid, and in such a case references in this subsection to the value of the consideration shall not apply; and
- (ii) in assessing the value of such shares or debentures for the purposes of this subsection if they have since the deceased disposed of them, been substantially increased in value by reason of a transfer of property to any company by any person, or by reason of the extinguishment of, or any alteration of the rights attaching to, shares in or debentures of any company, their principal value shall be reduced to such an extent as in the opinion of the Commissioner is necessary to offset the increase attributable to the transfer, extinguishment or alteration.

Prevention
of double
duty.
7 & 8 Geo.
6, c. 23,
s. 38.

(4) Where the following conditions are satisfied, that is to say, that any benefits accrued to the deceased from the company by virtue of any interest that he at any time had in shares or in debentures of the company, or by virtue of a power's having at any time been exercisable

by him or with his consent in relation to shares in or debentures of the company, and apart from this subsection estate duty would be payable on the death both on the value of those shares or debentures by virtue of any provision of this Ordinance other than section 32 and on the proportion of the value of the company's assets that corresponds to the benefits that so accrued to him by virtue of that section, then—

- (a) if the value of the shares or debentures is equal to, or greater than, the said proportion, or if the Commissioner is satisfied that the said proportion would not, if fully ascertained, be found to be substantially in excess of the value of the shares or debentures, duty on the said proportion shall not be payable;
- (b) in any other case, the amount on which duty is to be charged in respect of the said proportion shall be reduced by the amount of the value of the shares or debentures.

(5) Where the conditions set out in subsection (4) would be satisfied but for the fact that, by reason of an exemption from estate duty, not being an exemption on the ground that the deceased or other person having an interest in the shares or debentures ceasing on the death of the deceased had only an interest as the holder of an office, that duty is not payable on the value of the shares or debentures, paragraphs (a) and (b) of that subsection shall apply as if that exemption did not operate and as if the duty had been payable on the value of the shares and debentures accordingly:

Provided that where—

- (a) the exemption in question depends on a payment of any duty on an earlier death, or does not depend on such a payment but depends wholly or partly on any dispositions having been made; and
- (b) since the date of that death or disposition, as the case may be, the shares or debentures have been substantially increased in value by reason of a transfer of property to any company by any person or by reason of the extinguishment of, or any alteration of the rights attaching to, shares in or debentures of any company,

Effect of
exemptions from
duty.
7 & 8 Geo.
6, c. 23,
s. 38.

then, unless the exemption takes the form of a deduction from the value of the shares or debentures of a fixed amount which is independent of the value of the shares or debentures, the references in paragraphs (a) and (b) of subsection (4) to the value of the shares or debentures therein mentioned shall have effect as if they were references to the value thereof reduced to the extent to which, in the opinion of the Commissioner, that value is attributable to that transfer, extinguishment or alteration.

7 & 8 Geo.
6, c. 23,
s. 38.

(6) Where, by reason of an exemption from estate duty, that duty is payable on part only of the value of the shares or debentures, subsection (4) shall, with the necessary adaptations, be applied to the part of the value of the shares or debentures on which duty is payable and subsection (5) shall be applied to the part of the value of the shares or debentures affected by the exemption; and, where there are two or more exemptions from estate duty each of which operates on part only of the value of the shares or debentures and the exemptions are such that subsection (5) would operate differently in relation to them, then, whether or not there is any part of the value of the shares or debentures on which estate duty is payable, subsection (5) shall, with the necessary adaptations, be applied separately in relation to the parts of the value of the shares or debentures affected by each exemption.

Meaning
of exemp-
tion.

7 & 8 Geo.
6, c. 23,
s. 38.

(7) In this section the expression "exemption from estate duty" includes any exemption conferred by any provision of this or any other enactment which has the effect of exempting property, in whole or in part, from estate duty, whether that provision takes the form that the property is not to be deemed to pass, or the form that the duty is not to be payable, or the form that a deduction is to be made from the value of the property, or any other form; and the reference in paragraph (b) of the proviso to subsection (5) to an increase in the value of shares or debentures includes, where those shares or debentures have been acquired in substitution for any other property, any increase in the value of any property which those shares or debentures directly or indirectly represent.

Value of
assets
accruing to
deceased.

3 & 4 Geo.
6, c. 29,
s. 51(3).

(8) References in this section to the proportion of the value of the company's assets that corresponds to any particular benefits shall be construed as references to so much of the value on which estate duty is chargeable on the death by virtue of section 32 as is chargeable by reason of the bringing of those benefits into the computation made under subsection (2) of that section.

Allowance
for reason-
able re-
muneration.
3 & 4 Geo.
6, c. 29,
s. 51(4).

(9) So much of any profit or periodical payment or enjoyment of a kind mentioned in section 33 as is shown to the satisfaction of the Commissioner to have represented, or to have been such that it would if received have represented, reasonable remuneration to the deceased for any services rendered by him as the holder of an office under the company shall, notwithstanding anything in that section, not be treated for the purposes of sections 31 to 42 inclusive, as a benefit accruing to the deceased from the company; and any liability of the company in respect of the remuneration of any person as the holder of an office under the company shall be treated for the purposes of the aforesaid sections as incurred for the purposes of the business of the company wholly and exclusively to the extent to which it is shown to the satisfaction of the Commissioner that the amount thereof was reasonable, and that extent only.

Limitation
of excep-
tions.

3 & 4 Geo.
6, c. 29,
s. 56(1) &
14 Geo. 6,
c. 15, s. 47
(b)(ii).

38. (1) If a company to which section 32 applies was concerned in a transaction falling within the scope of that section, or in any one or more of associated operations of which that transaction formed one, the provisions of paragraph (a) of section 7, and of subsection (3) of section 37, shall have no effect as respects that transaction or operation.

3 & 4 Geo.
6, c. 29,
s. 56(2) &
14 Geo. 6,
c. 15,
s. 43(1).

(2) Where a disposition has been made or an interest determined or surrendered to which either the proviso to paragraph (h) of subsection (1) of section 6, or subsection (3) of section 34, applies and, that disposition, determination or surrender, or one or more associated operations of which that disposition or determination or surrender formed one, concerned—

- (a) a company to which section 32 applies, and
- (b) another person being the owner of the beneficial interest involved,

then the conditions as to the entire exclusion of the person referred to in paragraph (b) above, shall not be treated for the purpose of the aforesaid provisions as having been satisfied if it can be shown that at the time of the said disposition, determination or surrender, or at any time thereafter, the said person had any benefit by virtue of that disposition, determination or surrender.

Duty to
give in-
formation
on death.

39. (1) A company to which section 32 applies shall be under obligation to inform the Commissioner, within one month from the date of the death of the deceased, of

3 & 4 Geo.
6, c. 29,
s. 53.

the death, of the fact that the deceased made a transfer of property to the company, and of the fact that benefits accrued to the deceased from the company, and every person who was an officer of the company at that date, or, if the company has been wound up and dissolved before that date, who was an officer of the company at any time, shall be under the like obligation as respects such of the facts aforesaid as are within his knowledge, unless he knows, or has reasonable cause for believing, that the information in question has already been given to the Commissioner by the company or some other person.

Penalty.

(2) If such company or any such person as aforesaid who is under obligation by virtue of subsection (1) to give any information to the Commissioner makes default in the performance of that obligation, every such defaulter shall be liable to a penalty of ten thousand dollars and shall also be liable to a further penalty equal to three times the amount of the estate duty at the rate set out in the applicable Schedule payable upon the whole estate of the deceased.

Collection
and in-
cidence
of duty.

3 & 4 Geo.
6, c. 29,
s. 54.

40. (1) The following persons shall be accountable for the duty payable on the death of the deceased by virtue of section 32, that is to say—

- (a) the company;
- (b) any person, other than a *bona fide* purchaser for full consideration in money or money's worth received by the company for its own use and benefit, who receives, whether directly from the company or otherwise, or disposes of, any assets which the company had, whether as capital or as income, at the death or at any time thereafter;
- (c) any person who received any distributed assets of the company on their distribution:

Provided that a person shall not—

- (i) by virtue of paragraph (b), be accountable in respect of any assets for any duty in excess of the value of those assets, or
- (ii) by virtue of paragraph (c), be accountable in respect of any assets for more than a part of the duty bearing to the whole thereof the same proportion that the value of the distribution of those assets bears to the principal value of the assets of the company passing on the death by virtue of section 32 after making the allowances to be made under section 36.

Inter-
pretation.

(2) For the purposes of subsection (1) the expressions "distributed assets" and "assets of the company passing on the death" do not include any distributed assets of the company which the deceased received on their distribution; and a person who, having received any distributed assets of the company, has died before the deceased shall be deemed to have been a person accountable by virtue of paragraph (c) of that subsection.

Foreign
corpora-
tions.

(3) Where a company incorporated outside the Colony is accountable for any duty by virtue of subsection (1) or of this subsection, every person who is a member of that company at the death shall also be accountable for a rateable part of that duty in proportion to the value of his interest in that company.

Powers of
persons
account-
able.

(4) A person accountable for any duty by virtue of this section shall, for the purpose of raising and paying the duty, have all the powers conferred on accountable parties by this Ordinance.

Priority of
estate
duty on
winding-up.
(Cap. 32).

(5) On a winding up of the company subsection (1) of section 250 of the Companies Ordinance (which determines what debts shall have priority over other debts in a winding up) shall have effect as if there were included in paragraph (a) of that subsection a reference to any duty payable in respect of assets of the company passing on a death by virtue of section 32 of this Ordinance, and section 79 of the Companies Ordinance shall have effect accordingly.

Charge on
assets of
company.

(6) The duty payable on the death of the deceased by virtue of section 32 shall be a first charge by way of floating security on the assets which the company had at the death or has at any time thereafter, and any part of the duty for which by virtue of paragraph (c) of subsection (1) any person is accountable in respect of any distributed assets shall be a first charge also on those assets:

Provided that nothing in this subsection shall operate to make any property chargeable as against a *bona fide* purchaser thereof for valuable consideration without notice.

Rights
of person
paying
duty.

(7) Where any duty has been—

- (a) paid by a person accountable therefor by virtue only of paragraph (c) of subsection (1); or
- (b) raised by virtue of subsection (6) out of any distributed assets charged therewith,

that person, or, as the case may be, the person who was entitled to those assets subject to the charge, may, without prejudice to any right of contribution or indemnity

which he may have apart from this subsection, recover the amount of duty so paid or raised as aforesaid from any person who is accountable therefor otherwise than by virtue of paragraph (c) of subsection (1).

(8) No part of the duty paid by the company shall be recoverable by it from any person on the ground only that he is entitled to any interest in, or to any sum charged on, the assets which the company had at the death of the deceased.

Accounting
and
charging.

(9) The following provisions shall not have effect in relation to the duty payable by virtue of section 32, that is to say—

- (a) so much of subsection (2) of section 9 as relates to payment of estate duty on all property of which the deceased was competent to dispose at his death;
- (b) so much of subsection (4) of section 11 as relates to the accountability of the executor of the deceased in respect of all property of which the deceased was competent to dispose at his death, and subsection (5) of that section,

and subsection (1) of section 15 shall have effect in relation to the estate as if the property passing by virtue of section 32 had been property passing to the executor as such.

Value of
shares and
debentures of
controlled
companies.
3 & 4 Geo.
6, c. 29, s. 55
and 2 & 3
Eliz. 2, c. 44,
s. 29(1) (a).

41. (1) Where for the purposes of estate duty there pass shares in or debentures of a company to which by virtue of section 31 this section applies, then if the deceased had the control of the company at any time during the three years ending with his death, the principal value of the shares or debentures, in lieu of being estimated in accordance with the provisions of paragraph (a) of subsection (4) of section 10, shall be estimated by reference to the net value of the assets of the company in accordance with the provisions of subsection (2) of this section:

2, c. 44,
2 & 3 Eliz.
s. 30(3).

Provided that any liability of the company arising, or which may arise, after the death for corporation profits tax shall be taken into account as if it were an actual but contingent liability at the date of the death, in so far as the liability or its amount is referable to profits accruing before the death, whether then realized or not; and in estimating any such liability for taxation charged on profits arising after the death the Commissioner shall

take into account the extent, if any, to which the last-mentioned profits are likely to be insufficient to meet the liability.

3 & 4 Geo.
6, c. 29,
s. 55(2).

(2) The principal value of the shares and debentures mentioned in subsection (1) shall be estimated as follows—

- (a) the net value of the assets of the company shall be taken to be the principal value thereof estimated in accordance with the said paragraph (a) of subsection (4) of section 10, less the like allowance for liabilities of the company as is provided by subsection (1) of section 36 in relation to the assets of a company passing on a death by virtue of section 32, but subject to the modification that allowance shall be made for such a liability as is mentioned in paragraph (b) of subsection (1) of section 36 unless it also falls within paragraph (a) thereof;
- (b) the aggregate value of all the shares and debentures of the company issued and outstanding at the death of the deceased shall be taken to be the same as the net value of the assets of the company;
- (c) in a case in which there are both shares in and debentures of the company issued and outstanding at the death, or different classes of either, the net value of the assets of the company shall be apportioned between them with due regard to the rights attaching thereto respectively; and
- (d) the value of any share, or of any debenture, or of a share or debenture of any class, shall be a rateable proportion, ascertained by reference to nominal amount, of the net value of the assets of the company as determined under paragraph (a), or, in the case mentioned in paragraph (c), of the part thereof apportioned under that paragraph to the shares of the company, or to its debentures, or to that class thereof, as the case may be.

Person
deemed to
have control
of company
for purposes
of valuation.

(3) For the purposes of this section a person shall be deemed—

- (a) to have control of a company at any time if he then had the control of powers of voting on all questions, or on any particular question, affecting

3 & 4 Geo.
6, c. 29,
s. 55(3) and
2 & 3 Eliz.
2, c. 44,
s. 29(1)(b).

2 & 3 Eliz.
2, c. 44,
s. 31(1)(e).

Quoted
shares and
debentures.
3 & 4 Geo.
6, c. 29,
s. 55(4).

Interpretation
of control.
3 & 4 Geo.
6, c. 29,
s. 55(5), 2 &
3 Eliz. 2,
c. 44, ss.
29(1) & (5)
& 31(2).

the company as a whole, which if exercised would have yielded a majority of the votes capable of being exercised thereon, or if he could have obtained such control by an exercise at that time of a power exercisable by him or with his consent; or

- (b) to have powers equivalent to control of a company if he either has the capacity, or could by an exercise of a power exercisable by him or with his consent obtain the capacity, to exercise or to control the exercise of any of the following powers, that is to say, the powers of a board of directors or of a governing director of the company, power to nominate a majority of directors or a governing director thereof, power to veto the appointment of a director thereof, or powers of a like nature.

(4) This section shall not apply to the valuation of shares or debentures of a class which have been dealt with on the Hong Kong Stock Exchange in the ordinary course of business on that exchange and such dealings have been recorded during the year ending with the death of the deceased, and, in making an apportionment under paragraph (c) of subsection (2) in the case of a company having shares or debentures of such a class, the part of the value of the assets of the company to be apportioned to shares or debentures of that class shall be determined by reference to the prices recorded of such dealings.

(5) Control of a company which a person had in a fiduciary capacity shall be disregarded for the purposes of this section but in the cases dealt with in subsection (7), this section shall apply as if the deceased had, within three years of his death, had control of the company otherwise than in a fiduciary capacity, but only as to the valuation of the shares in or debentures of the company as respects which one of the conditions contained in paragraph (a) or (b) or the proviso hereto is satisfied, namely—

- (a) that immediately after the deceased's death a person having control or powers equivalent to control of the company, either alone or in conjunction with his relatives, has a beneficial interest in possession in the shares or debentures;
- (b) that immediately before and after the death the shares or debentures are held by the trustees of some trust who then have control of the company

2 & 3 Eliz.
2, c. 44,
s. 31(2).

by virtue of shares in or debentures of the company held by them as such trustees, notwithstanding the fact that such trustees had control in a fiduciary capacity.

Provided that, in the case of shares or debentures falling to be valued on the death by virtue of a gift *inter vivos* made by the deceased, or by virtue of a disposition or determination, in relation to which paragraph (h) of subsection (1) and subsection (1A) of section 6 have effect, of an interest limited to cease on the death, the above conditions shall not apply, and the conditions shall be that immediately after the death or at any previous time since the gift, or since the disposition or determination, as the case may be, the donee, or the person becoming entitled by virtue of or upon the disposition or determination, has or had control or powers equivalent to control of the company, either alone or in conjunction with his relatives.

2 & 3 Eliz.
2, c. 44,
s. 31(3).

(6) In determining for the purpose of subsection (5), whether a person at any time has or had control of a company either alone or in conjunction with his relatives, or a beneficial interest in possession in any shares in or debentures of a company—

- (a) where that person or a relative of his is or was at any time entitled under a trust, either alone or in conjunction with that person's relatives, to not less than nine-tenths of the income arising from any such shares or debentures, that person or the relative in question, as the case may be, shall be treated as being or having been able at that time to control the exercise by the trustees of the trust or other persons in whom those shares or debentures are or were vested of any powers attached to those shares or debentures;
- (b) any shares in or debentures of the company, or interests therein, which form part of a person's estate at his death shall be treated as vesting immediately on his death in the legatees or persons entitled on intestacy, without regard to the powers exercisable for the administration of the estate;
- (c) there shall, in so far as the Commissioner so directs, be disregarded—
- (i) any limited interest subsisting at the relevant time in any shares in or debentures of the company; and

- (ii) any voting rights exercisable by virtue of any preferences shares in the company, being voting rights which the Commissioner is satisfied do not materially affect the effective control of the company's affairs.

2 & 3 Eliz.
2, c. 44,
s. 29(2),
(3) & (4).

(7) The cases referred to in subsection (5) as being dealt with in this subsection are as follows—

- (a) if during a continuous period of two years falling wholly within the three years ending with his death, the deceased had powers equivalent to control of the company; or
- (b) if during any such period as aforesaid the dividends declared by the company and the interest accruing due on debentures of the company as defined in sub-paragraph (ii) of paragraph (c) are, as to amounts forming in the aggregate more than one half of the total amount of the dividends and interest, to be treated by virtue of sections 33 and 34 as benefits accruing to the deceased from the company, or would have fallen to be so treated if the deceased had made a transfer of property to the company; or
- (c) if at any time during the three years ending with the death of the deceased, not being a time when some other person had control or powers equivalent to control of the company, the deceased had a beneficial interest in possession in shares in or debentures of the company, or in both, of an aggregate nominal amount representing one half or more of the aggregate nominal amount of the shares in and debentures of the company then outstanding, but for this purpose—
 - (i) at any time when both the deceased and another person had such an interest in the same share or debenture, the deceased's interest in it shall be treated as extending only to the same fraction of it as that interest would have been deemed for purposes of estate duty to extend to if the share or debenture had passed on his death at that time; and
 - (ii) the expression "debenture" shall not include an obligation of the company in respect of a debt incurred by it for money borrowed by way of temporary loan, if the loan was not

one of a series of temporary loans by the same person and either was repaid within two years of being made or was made less than two years before the deceased's death.

Quick
succession
relief.
2 & 3 Eliz.
2, c. 44,
s. 30(4).

(8) Where any shares or debentures which fall to be valued in accordance with this section have also fallen to be so valued on a previous death within five years, then for the purposes of section 28 those shares and debentures shall, in relation to those deaths, be treated in the same way as an interest in land or in a business not carried on by a company, if on both deaths their value is wholly or partly attributable to the value of land of the company or any subsidiary of it or to the value of assets used by the company or any subsidiary of it in a business not consisting mainly in the holding of or dealing in investments other than land:

Provided that the amount on which the reduction under the said section 28 is to be calculated shall be limited, where necessary, to the duty on the part so attributable of the value, on which duty is payable, of the shares or debentures, and references to that part of the value shall, in the proviso to the said section 28, be substituted for the references to the whole value, whether in relation to the first or the second death.

2 & 3 Eliz.
2, c. 44,
s. 31(5).

(9) In determining for the purposes of subsection (8) what part of the value of any shares in or debentures of a company is attributable to the value of particular assets,—

- (a) the value of the shares or debentures shall be apportioned in proportion to the net value of the company's assets after allowing for liabilities other than liabilities in respect of shares in or debentures of the company; and
- (b) the value apportioned under this subsection to the value of any shares in or debentures of another company, being a subsidiary either of the first-mentioned company or of a company of which that company is a subsidiary, shall, where material, be similarly apportioned between the other company's assets.

2 & 3 Eliz.
2, c. 44,
s. 30(5).

(10) Where a company alters its share capital by subdividing any shares into shares of smaller amount, or by consolidating and dividing any shares into shares of larger amount, subsection (8) shall apply to shares derived by those means from shares of the same class which have fallen to be valued in accordance with this section on a

death occurring before the alteration of share capital, as if those shares and the equivalent amount of the shares from which they were so derived were the same shares; and if a company has issued to holders of any shares other shares as fully paid bonus shares, that subsection shall apply both to the shares in respect of which the issue was made and to the shares so issued as if they were derived from the former by sub-division.

Inter-
pretation.
3 & 4 Geo.
6, c. 29,
s. 55(6) and
2 & 3 Eliz.
2, c. 44,
s. 31(1) (c)
& (d).

(11) In this section—

- (a) references to the assets of a company shall be construed as references to the assets that it had at the death of the deceased;
- (b) references to a subsidiary company shall be construed in accordance with the interpretation attributed to that expression in paragraph (a) of subsection (5) of section 31; and
- (c) the expression "relative" has the meaning attributed to it in section 6A.

Limitation on
dispositions
through a
controlled
company in
favour of
relatives.
14 Geo. 6,
c. 15,
s. 46(1).

42. (1) If a company to which by virtue of section 31, this section applies, was concerned in a transaction in relation to which it is claimed that the provisions of paragraph (a) of or the proviso to subsection (1) of section 6A have effect, those provisions shall have effect in relation thereto if and only if, and to the extent only to which, the Commissioner is satisfied that those provisions would have had effect in the following circumstances, namely, if the assets of the company had been held by it on trust for the members thereof and any other person to whom it is under any liability incurred otherwise than for the purposes of the business of the company wholly and exclusively, in accordance with the rights attaching to the shares in and debentures of the company and the terms on which any such liability was incurred, and if the company had acted in the capacity of a trustee only with power to carry on the business of the company and to employ the assets of the company therein.

Gifts to
relatives by
controlled
companies.

(2) Any gifts made in favour of a relative of the deceased by a company of which the deceased at the time of the gift had control within the meaning of subsection (3) of section 41 shall be treated for the purposes of paragraph (c) of subsection (1) of section 6 as a gift made by the deceased, and the property taken under the gift shall be treated as included by virtue of that paragraph in the property passing on the death of the deceased, if and to

Gifts to
relatives
through
controlled
companies.
3 & 4 Geo.
6, c. 29,
s. 44(4).

the extent to which the Commissioner is satisfied that it would fall to be so treated in the circumstances mentioned in subsection (1).

(3) If the deceased has made in favour of a company to which, by virtue of section 31, this section applies, a disposition which, if it had been made in favour of a relative of his, would have fallen within subsection (1) of section 6A, this section shall have effect in like manner as if the disposition had been made in favour of a relative of his, unless it is shown to the satisfaction of the Commissioner that no relative of the deceased was, at the time of the disposition or subsequently during the life of the deceased, a member of the company and for the purposes of this subsection a person who is, or is deemed by virtue of this provision to be, a member of a company to which this section applies and which is a member of another such company shall be deemed to be a member of that other company.

(4) In this section the expressions "annuity" and "relative" shall have the meaning attributed to them respectively in section 6A."

11. The Fifth Schedule to the principal Ordinance is amended by the deletion of the words "until the Schedule is superseded." and the substitution therefor of the following—

Amendment
of Fifth
Schedule.

"before the 1st day of February, 1959."

12. The principal Ordinance is amended by the addition after the Fifth Schedule of the following new Schedules—

Addition
of new
Sixth and
Seventh
Schedules.

"SIXTH SCHEDULE.

[ss. 3, 5, 11, 13,
14, 20, 21, & 24.]

Persons dying on or after the 1st day
of February 1959, and until this
Schedule is superseded.

Where the principal value of the estate					Estate duty shall be payable at the rate per cent of
	\$			\$	
Exceeds	50,000	and	does not exceed	100,000	2
"	100,000	"	" " "	200,000	3
"	200,000	"	" " "	300,000	5
"	300,000	"	" " "	350,000	7
"	350,000	"	" " "	400,000	8
"	400,000	"	" " "	450,000	9
"	450,000	"	" " "	500,000	10
"	500,000	"	" " "	550,000	11
"	550,000	"	" " "	600,000	12

Where the principal value of the estate					Estate duty shall be payable at the rate per cent of
	\$			\$	
Exceeds	600,000	and does not exceed		700,000	14
"	700,000	"	"	800,000	15
"	800,000	"	"	900,000	16
"	900,000	"	"	1,000,000	17
"	1,000,000	"	"	1,500,000	18
"	1,500,000	"	"	2,000,000	19
"	2,000,000	"	"	3,000,000	20
"	3,000,000	"	"	4,000,000	23
"	4,000,000	"	"	5,000,000	27
"	5,000,000	"	"	7,000,000	30
"	7,000,000	"	"	10,000,000	33
"	10,000,000	"	"	15,000,000	35
"	15,000,000				40

SEVENTH SCHEDULE.

[s. 32(4).]

3 & 4 Geo. 6,
c. 29,
7th Schedule.

Provisions supplementary to sections 31 to 42 inclusive.

*Amounts to be taken into account in respect of benefits, and
time when benefits are to be treated as accruing.*

1. (1) The provisions of this paragraph shall have effect for the purpose of determining the amounts to be taken into account, for the purposes of subsection (2) of section 32, as the amounts of benefits accruing to the deceased from the company.

(2) No amount shall be taken into account more than once.

(3) Where an amount is taken into account by reference to the deceased's having been entitled to a benefit which he did not in fact receive, or by reference to a power which was not in fact exercised or was surrendered, due regard shall be had to the effect that his receiving the benefit, or the power's being exercised, would have had in relation to other benefits.

(4) The amounts that are to be taken into account by reference to the deceased's having been entitled to a benefit which he did not in fact receive, or by reference to a power which was not in fact exercised or was surrendered, shall be such as would have fallen to be taken into account as benefits received by the deceased if he had acted in relation to the claiming to benefits and the exercise of powers during the three years ending with his death to his greatest financial advantage, due regard being had to any consideration which he would have had to give in respect of a claim to any benefit or the exercise of any power.

(5) In making for the purposes of sub-paragraph (4) a computation of any diminution of income which the deceased would have sustained by giving any such consideration as is therein mentioned, or of any increase of income which the company would have obtained from any such consideration to be given to the company, it shall be assumed that the consideration would have yielded income equal to interest at the average rate on the amount or value thereof.

(6) The amounts to be taken into account shall include any tax charged under the Inland Revenue Ordinance, in respect of the benefits in question.

(Cap. 112;
1956 Reprint).

(7) The amount to be taken into account in respect of a benefit consisting of any enjoyment in specie of land or buildings or land and buildings or other property of the company or of a right thereover shall be the value of the enjoyment thereof for the period during which the benefit subsisted, and that value shall be calculated in the case of leasehold property situate in the Colony by reference to the annual assessment as ascertained for the purposes of section 5 of the Inland Revenue Ordinance, and in the case of other land or buildings or land and buildings by such method as the Commissioner may consider just and reasonable.

(Cap. 112;
1956 Reprint).

2. (1) The provisions of this paragraph shall have effect for the purpose of determining—

(a) whether a benefit accruing to the deceased from the company is to be treated as having accrued to him during the three years ending with his death, or during a particular accounting year, or at any other relevant time; and

(b) the period during which a benefit consisting of any enjoyment in specie of land or buildings or land and buildings or other property of the company or of a right thereover is to be treated as having subsisted.

(2) A benefit consisting of profits of the company or a periodical payment which the deceased received, or became entitled to, but did not in fact receive, shall be treated as having accrued to him at the earliest time at which he could have obtained receipt thereof.

(3) A benefit consisting of profits of the company or a periodical payment which the deceased could have become entitled to receive by an exercise in the three years ending with his death of a power which was not in fact exercised or was surrendered shall be treated as having accrued to him at the earliest time at which he could have obtained receipt thereof if he had acted as mentioned in sub-paragraph (4) of paragraph 1.

(4) A benefit consisting of interest on such a payment other than a periodical payment as is mentioned in section 33 which the deceased could have become entitled to receive shall be treated as having accrued to him in any accounting year to the extent to which the period during which the interest is to be treated as accruing fell within that year.

(5) A benefit consisting of any such enjoyment in specie as aforesaid shall be treated as having accrued to the deceased in the said three years if any part of the period during which it subsisted fell within those years, and shall be treated as having accrued to him in any accounting year to the extent to which the period during which it subsisted fell within that year.

(6) A benefit consisting of any such enjoyment in specie as aforesaid shall be treated as having subsisted during the following period, that is to say—

(a) in the case of enjoyment that the deceased had, during the period for which he had it;

(b) in the case of enjoyment which he became entitled to, but did not in fact have, during the period for which he could have had it;

(c) in the case of enjoyment which he could have become entitled to have by an exercise in the three years ending with his death of a power was not in fact exercised or was surrendered, during the period for which he could have had it if he had acted as mentioned in sub-paragraph (4) of paragraph 1.

Adjustments as to Distributed Assets and Additions to Assets.

3. (1) Where the assets of the company passing on the death of the deceased by virtue of section 32 include any distributed assets, or by reason of the company's having been wound up or dissolved before the death consist of distributed assets, the following provisions of this paragraph shall have effect.

(2) The net profits of the company shall be determined as if the income of the company had included, or the company had had income equal to, interest on a sum equal to the value of each distribution at the average rate from the date thereof.

(3) If on any distribution the deceased received beneficially an interest in any of the distributed assets, the benefits accruing to the deceased from the company shall be ascertained as if the amount brought into the income of the company under sub-paragraph (2) by reference to the value of the distribution of those assets had been income of the company which the deceased was entitled to receive immediately on its accrual to the company, or, where the interest in those assets which the deceased received was less than an absolute interest, had been such income to an extent corresponding to the proportion which the value of the interest in those assets received by him bore to the value of those assets.

(4) Where sub-paragraph (3) has effect—

- (a) the value on which, apart from this provision, estate duty would be payable on the death of the deceased by virtue of section 32 shall be reduced by an amount equal to the value of the distribution of the assets in question, or, where the interest in those assets which the deceased received was less than an absolute interest, by an amount equal to the proportion aforesaid of that value; and
- (b) any amount which is treated as a benefit accruing to the deceased from the company by virtue of that sub-paragraph shall be treated for the purposes of subsections (1) and (2) of section 37 as a benefit received by him.

4. (1) Where the principal value of the assets of the company passing on the death of the deceased by virtue of section 32 is increased by reason of an addition's having been made to the assets of the company, otherwise than by way of profits in respect of which the company was chargeable to tax under the Inland Revenue Ordinance, between the beginning of the first of the relevant accounting years and the death of the deceased, either—

- (a) in consideration of an issue of shares in or debentures of the company; or
- (b) otherwise howsoever, except by way of purchase for full consideration in money or money's worth given by the company,

the following provisions of this paragraph shall have effect in relation to the added assets.

(2) The net profits of the company shall be determined as if the income of the company had included interest on a sum equal to the value of the addition at the average rate from the beginning of the first of the relevant accounting years to the date of the addition.

(3) If a transfer of any of the added assets or of any interest in any of them was made to the company by the deceased, the benefits accruing to the deceased from the company shall be ascertained as if the amount brought into the income of the company under sub-paragraph (2) by reference to the value of the addition of those assets had been income of the company which the deceased was entitled to receive immediately on its accrual to the company, or had been such income to an extent corresponding to the proportion which the value of the interest transferred bore to the value of those assets, as the case may be.

(4) Where sub-paragraph (3) has effect, if the deceased received as consideration for the addition of the assets in question an interest in any shares in or debentures of the company in respect of which estate duty would be payable on his death apart from anything in subsection (3) of section 37, any amount which is treated as a benefit accruing to him from the company by virtue of that sub-paragraph shall be treated for the purposes of subsection (3) of section 37 as a benefit accruing to him by virtue of his interest in those shares or debentures.

(5) In this paragraph the expression "value of the addition" means, in relation to any added assets, the value thereof or, if partial consideration, other than an issue of, or an alteration of rights attaching to, shares in or debentures

(Cap. 112;
1956 Reprint).

of the company, was given therefor in money or money's worth out of the resources or at the expense of the company, the value thereof less the value of the consideration given.

Prevention of duplication of charge in respect of benefits and charge in respect of shares.

5. For the purposes of subsection (3) of section 37, where the benefits that accrued to the deceased from the company in the relevant accounting years included benefits that accrued to him otherwise than as mentioned in that subsection, but the deceased had at any time an interest in, or a power was at any time exercisable in relation to, shares in or debentures of the company in respect of which estate duty would be payable on his death apart from anything in that subsection, and by virtue of that interest or power benefits accrued to the deceased from the company in those years, or would so have accrued to him if any payments had been made by virtue of rights attached to those shares or debentures, then—

- (a) if the first-mentioned benefits consisted to any extent of payments made out of moneys which, if not so applied, could have been applied in increasing the last-mentioned benefits, or as payments which would have constituted such benefits; or
- (b) if the first-mentioned benefits are brought into the computation made subsection (2) of section 32 to the exclusion to any extent of the last-mentioned benefits,

the first-mentioned benefits shall to that extent be treated as if they had accrued to the deceased by virtue of his interest in, or of the power exercisable in relation to, the said shares or debentures.

Accounting Year.

6. (1) The expression "accounting year" means in relation to a company, if the company has, before the death of the deceased, made up accounts for a period of twelve months ending in the last year of his life, that period and each previous period of twelve months ending on the date corresponding to that to which the accounts were made up, or, if not, a period of twelve months ending on such date in the last year of his life as the Commissioner may determine and each previous period of twelve months ending on the date corresponding to the date determined.

(2) The expression "relevant accounting years" means the accounting years by reference to which the extent of the passing of the assets of the company is to be determined under section 32.

(3) Where an accounting year does not coincide with a period for which accounts of the company were made up, the Commissioner may, for the purpose of determining the profits or net profits of the company for that accounting year, divide any such period and make such apportionments and aggregations of the profits of the company as may be necessary, so, however, that any apportionments so made shall be made in proportion to the number of months or fractions of months in the respective periods for which the apportionment is made.

Grant of prior assurances.

7. Where at any time a transfer of property has been made by any person to a company to which section 32 applies the company may apply to the Commissioner for an assurance that the provisions of that section will not be applied on the death of such person by reason only of such transfer and the Commissioner may if he is satisfied that the transfer and any associated operations were effected *bona fide* for commercial reasons and such transfer and any associated operations have not been effected with the purpose of avoiding estate duty payable upon such death, give such an assurance."

Provision
for a re-
print of the
principal
Ordinance
as amended
and of this
section.

13. (1) The Government Printer shall, if directed by the Governor, cause to be prepared and published a reprint of the principal Ordinance incorporating therein all additions, omissions, substitutions and amendments effected by this Ordinance.

(2) The Government Printer shall, if so directed, print this section as part of such reprint and as an appendix thereto.

(3) For avoidance of doubt, any reprint published as aforesaid shall not be deemed to affect the continued application of the principal Ordinance, unamended by this Ordinance, to the estate of any person dying before the commencement of this Ordinance.

(4) The publication of such reprint and appendix shall be notified by the Colonial Secretary in the *Gazette* and, with effect from the date of such notification, such reprint and appendix shall be deemed authentic copies of the principal Ordinance as amended and of this section and shall be judicially noticed as such, and further shall be deemed to be official copies for the purposes of subsection (3) of section 7 of the Interpretation Ordinance.

(Cap. 1).

(5) If any inconsistency is shown to exist between a provision of any enactment authorized to be published in such reprint and appendix and that provision as published in such reprint and appendix, the provision as enacted shall prevail.

Amendment
of section 9.

14. Section 9 of the principal Ordinance is amended by the insertion after subsection (7) of the following new subsection—

“(7A) A rateable part of the estate duty on an estate in proportion to the value of any leasehold property held solely by the deceased may at the option of the person delivering the account be paid by eight equal yearly instalments, or sixteen half-yearly instalments, with interest at the rate of eight per cent per annum from the date at which the first instalment is due, and the first instalment shall be due at the expiration of six months from the death, and the interest on the unpaid portion of the duty shall be added to each instalment and paid accordingly; but the duty for the time being unpaid, with such interest to the date of payment, may be paid at any time, and in case the property is sold shall be paid on completion of the sale, and if not so paid shall be duty in arrear.”.

Amendment
of section
15

15. Section 15 of the principal Ordinance is amended by the deletion of subsection (1) and the substitution therefor of the following—

“(1) Subject to subsection (1A)—

(a) a rateable part of the estate duty on an estate, in proportion to the value of any property which does not pass to the executor as such, shall be a first charge on the property in respect of which estate duty is leviable;

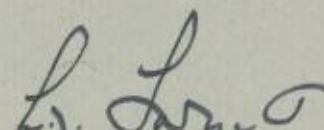
(b) a rateable part of the estate duty on an estate paid by instalments under subsection (7A) of section 9, in proportion to the value of any leasehold property held solely by the deceased, shall be a first charge on the property:

Provided that the property shall not be chargeable as against a *bona fide* purchaser thereof for valuable consideration without notice.

(1A) Notice of any charge on any leasehold property constituted by subsection (1) may be given by the Commissioner registering in the Land Office against the property affected thereby a Memorial signed by him specifying the subsection under which the charge is constituted, the name, description, and date of death of the deceased in respect of whose estate the claim to estate duty arises, and particulars of the property charged.

(1B) A notice in writing of any charge under subsection (1) or (1A) may be entered in the Land Office as an instrument affecting land.”.

Passed the Legislative Council of Hong Kong, this 7th day of January, 1959.


Deputy Clerk of Councils.

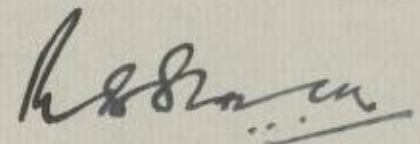
(Secretariat CR10/2524/45)

HONG KONG

No. 2 OF 1959.



I assent.


Governor.

22nd January, 1959.

An Ordinance to provide for the establishment and regulation of the
Hong Kong Auxiliary Police Force.

[]

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 Hong Kong Auxiliary Police Force Ordinance, 1959, and shall come into operation on a day to be appointed by the Governor by Proclamation in the *Gazette*.

Short title
and com-
mencement.

2. In this Ordinance, unless the context otherwise requires—
“active service” means service pursuant to an order of the Commis-
sioner made under subsection (1) of section 16;

Interpreta-
tion.

"Board of Discipline" means a board convened under section 13;

"Commandant" means the Commandant and the Deputy Commandant of the Force;

"Commissioner" means the Commissioner of Police;

"constable" means a member holding any rank below the rank of corporal;

"day" means a period of twenty four hours from the time that a member parades for duty;

"duty" includes active service, training, instruction and any voluntary duty performed under section 18;

"Force" means the Hong Kong Auxiliary Police Force established under section 3;

"gazetted officer" means a member holding any rank between the rank of auxiliary assistant commissioner and the rank of auxiliary assistant superintendent of police both inclusive;

"inspector" means a member holding the rank of auxiliary inspector of police of whatever grade or rank;

"member" means a member of the Force;

"non-commissioned officer" means a member holding any rank below the rank of inspector and above the rank of constable;

"Police Force" means the Hong Kong Police Force;

"regular gazetted police officer" means an officer of the Police Force holding any rank between the rank of Commissioner and the rank of assistant superintendent both inclusive.

PART II.

Establishment, composition and control of Force.

Establishment and composition of Force.

3. There is hereby established an auxiliary police force, which shall be known as the Hong Kong Auxiliary Police Force, and which shall consist of such gazetted officers, inspectors, non-commissioned officers and constables as shall by annual vote or otherwise be from time to time provided for by the Governor and the Legislative Council.

Payment and maintenance of Force.

4. Provision for the payment and maintenance of the Force shall be by charges on the general revenue of the Colony to such amounts as may from time to time by annual vote or otherwise be voted by the Legislative Council.

5. (1) The following persons shall be members—

Members.

(a) all persons who, at the commencement of this Ordinance, are either—

(i) members of the Hong Kong Police Reserve established under the Police Reserve Ordinance; or

(Cap. 233).

(ii) members of the Special Constabulary established under the Emergency (Special Constabulary) Regulations, 1950; and

(G.N.A. 270/50).

(b) all persons enrolled in the Force under the provisions of this Ordinance or any regulations made thereunder.

(2) Notwithstanding anything contained in this Ordinance, the Commissioner shall enrol in the Force any person upon whom a liability to enrol therein has been imposed by section 15 of the Compulsory Service Ordinance, 1951, and shall appoint such person to the rank for which he considers him suitable. (24 of 1951).

(3) Service in the said Hong Kong Police Reserve or in the said Special Constabulary shall for all purposes be deemed to have been service in the Force.

6. (1) Any member holding the rank of auxiliary superintendent of police or above who, in the opinion of the Governor, has rendered distinguished service in the Force may, on retirement from the Force and on the recommendation of the Commissioner, be granted by the Governor honorary membership of the Force with honorary rank equivalent to the substantive rank held by such member at the date of his retirement.

Honorary membership.

(2) The Commissioner may, either generally or in any particular case, permit any such honorary member to wear the mess dress uniform of a gazetted officer of the rank held by such member at the date of his retirement.

(3) Save as provided in subsection (2), no such honorary member may exercise any of the powers or perform any of the duties or enjoy any of the privileges conferred by this Ordinance upon a member.

7. The Force shall be commanded by the Commissioner, and its recruitment, training and employment shall, subject to the provisions of this Ordinance and any regulations made thereunder, be under his direction.

Command and recruitment.

8. There shall be a Commandant and a Deputy Commandant of the Force, each of whom shall be appointed by the Governor.

Appointment of Commandant and Deputy Commandant.

Appointment,
promotion,
dismissal and
compulsory
retirement
of members.

9. (1) Gazetted officers may be appointed, promoted or dismissed by the Governor.

(2) Inspectors and non-commissioned officers may be appointed, promoted, reduced in rank or dismissed by the Commissioner.

(3) Constables may be recruited, promoted or dismissed by the Commissioner.

(4) The Governor may require any gazetted officer to retire from the Force if it appears to him that such officer is unable to discharge efficiently the duties which he is or may be called upon to perform as a member.

(5) The Commissioner may require any inspector, non-commissioned officer or constable to retire from the Force if it appears to him that such member is unable to discharge efficiently the duties which he is or may be called upon to perform as a member.

Ranks.

10. The ranks of the gazetted officers and inspectors shall be prefixed by the letters "H.K.A.P." and those of the non-commissioned officers and constables by the letter "A", and such ranks shall be deemed junior to equivalent ranks in the Police Force.

Enrolment.

11. Enrolment to the Force shall be effected by entering the name of the person to be enrolled upon a register of members and by such person taking an oath or making a declaration in the form prescribed in the First Schedule before a magistrate or a justice of the peace.

First
Schedule.

Departmental
and Standing
Orders.

12. (1) Subject to the provisions of subsection (3), the Commissioner may from time to time issue orders of a departmental nature (to be known as the Hong Kong Auxiliary Police Force Departmental Orders) for the control, direction and information of the Force.

(2) Subject to the provisions of subsection (3), the Commandant may from time to time issue orders of a routine nature (to be known as the Hong Kong Auxiliary Police Force Standing Orders) for the control, direction and information of members.

(3) No order issued under this section by the Commissioner shall be inconsistent with any of the provisions of this Ordinance or any regulations made thereunder and no order so issued by the Commandant shall be inconsistent with any of the provisions of this Ordinance or any regulations made thereunder or with any order so issued by the Commissioner.

Boards of
Discipline.

13. For the purpose of inquiring into disciplinary offences, the Commandant may convene a Board of Discipline consisting of the regular gazetted police officer for the time being appointed by the Commissioner as the Staff Officer of the Force and two gazetted officers.

14. Any member, other than a gazetted officer, who is found guilty by a Board of Discipline of having committed any of the following disciplinary offences—

Disciplinary
offences and
penalties.

- (a) absence from duty without leave or good cause;
- (b) sleeping on duty;
- (c) conduct, in the course of duty, to the prejudice of good order and discipline;
- (d) cowardice in the performance of duty;
- (e) contravention of any of the provisions of any regulation made under section 28;
- (f) neglect of duty or refusal or failure to obey any lawful order whether issued in writing or verbally and whether of general application or issued in any particular case;
- (g) insubordination;
- (h) being unfit for duty by reason of intoxication;
- (i) malingering;
- (j) in the course of duty, making a statement which is false in a material particular;
- (k) unlawful or unnecessary exercise of authority which results in loss or injury to any person or to the Government;
- (l) wilfully or negligently damaging or destroying or negligently losing any Government property; or
- (m) conduct calculated to bring the Force into disrepute,

shall be liable to be punished by such Board with any or all of the following penalties—

- (i) reduction in rank;
- (ii) loss of pay during any period of absence from duty;
- (iii) caution, warning, reprimand or severe reprimand; and
- (iv) subject to confirmation by the Commissioner, dismissal from the Force.

15. (1) If a member considers himself aggrieved by any finding of or punishment imposed by a Board of Discipline, he may, within seven days of the communication to him of such finding or the imposition of such punishment, appeal by way of petition to the Commissioner, and, if such member is a non-commissioned officer or a constable, the decision of the Commissioner shall be final.

Appeal from
Boards of
Discipline.

(2) If such member is an inspector and he considers himself aggrieved by the decision of the Commissioner, he may, within seven days of the communication to him of such decision, appeal by way of petition to the Governor whose decision shall be final.

(3) Where an appeal is made under subsection (1) or (2) and any punishment has been imposed upon the appellant, such punishment shall be suspended pending the determination of such appeal.

Calling out
of the Force.

16. (1) For any purpose connected with the peace and good order of the Colony, the Commissioner may, with the prior approval of the Governor, by order call out the Force or any member for active service, and such service shall continue until an order is made by the Commissioner, with the prior approval of the Governor, cancelling such first mentioned order.

(2) For the purpose of training or of assisting the Police Force, the Commissioner may by departmental order call out the Force or any member for duty for a period to be specified in such order.

(3) Every member called out for duty shall be liable to serve as directed by any lawful order at any place in the Colony or on board any vessel or in any aircraft in the service of the Government.

(4) Any member called out under subsection (2) for the purpose of assisting the Police Force shall be deemed, for the purpose of any regulations relating to pay or allowances, to have been called out for the purpose of training.

Powers, etc.
of members
when called
out for duty.
(Cap. 232).

17. Every member, when called out for duty, shall assemble at such place as the Commissioner may direct, and, under the direction of the Commissioner, may be employed in carrying out any of the duties prescribed by section 9 of the Police Force Ordinance as the duties of the Police Force, and, while so employed and while proceeding to and returning from duty, shall have the same powers as are conferred by sections 45 to 54 inclusive of the Police Force Ordinance upon an officer of the Police Force of equivalent rank and shall have the same protection as is conferred by section 55 of the said Ordinance upon such a police officer.

Employment
of members
when police
services are
hired, etc.

18. When police services are hired by any person, it shall be lawful for the Commissioner to employ, without pay, any member who volunteers for duty, and every member so employed shall, while so employed and while proceeding to and returning from duty, have the same powers and protection as are conferred by section 17 upon a member who has been called out for duty.

19. If any member—

Recovery of
cost of
property
issued to
members.

- (a) wilfully or negligently damages or destroys any property issued to him or placed under his control by reason of his being a member;
- (b) negligently loses any such property; or
- (c) fails to produce or deliver up any such property when requested to do so,

the value thereof shall be recoverable from him by the Commissioner upon complaint before a magistrate.

PART III.

Offences.

20. (1) Any member who—

Offences in
relation to
training and
discipline,
etc.

- (a) fails without reasonable cause—
 - (i) to comply with such requirements as to efficiency as may from time to time be prescribed by regulations within such time as may be prescribed thereby; or
 - (ii) to complete one quarter of such total number of periods of instruction as may be prescribed by regulations within one quarter of such time as may be prescribed thereby for the completion of such total number of periods; or
- (b) conducts himself in a manner prejudicial to good order and discipline or fails to carry out any order lawfully issued to him in the course of duty; or
- (c) fails, without reasonable excuse, to assemble as directed by the Commissioner when called out for duty under section 16,

shall be guilty of an offence and shall be liable, in the case of an offence against paragraph (a) or (b), to a fine of one thousand dollars and, in the case of an offence against paragraph (c), to a fine of one thousand dollars and to imprisonment for six months.

(2) No proceedings shall be instituted in respect of an offence against any of the provisions of this section without the prior consent of the Commissioner.

(3) Nothing in subsection (2) shall be deemed to derogate from the powers of the Attorney General in relation to the prosecution of criminal offences.

Wrongful acquisition of Government property.

21. If any person knowingly buys or takes in exchange or in pawn from any member, or any person acting on his behalf, or solicits or entices any member to sell or pawn, or has in his possession without lawful authority or excuse, any property issued to or available for issue to or placed under the control of any member by reason of his being a member, such person shall be guilty of an offence and shall be liable to a fine of one thousand dollars and to imprisonment for six months.

False pretence of membership for unlawful purpose.

22. Any person who, not being a member, puts on the dress or takes the name, designation or character of a member for the purpose of obtaining admission into any house or other place, or of doing or procuring to be done any act which a member would be entitled to do or procure to be done of his own authority, or for any other unlawful purpose, shall be guilty of an offence and, notwithstanding any other penalty to which he may be liable, shall be liable to a fine of one thousand dollars and to imprisonment for six months.

Unlawful possession, manufacture or sale of badges and equipment, etc.

23. (1) No person shall, without lawful authority or excuse, have in his possession—

- (a) any badge, identification document, equipment or clothing which has been issued to any member or which is usually issued to members; or
- (b) any badge, identification document, equipment or clothing which so closely resembles any badge, identification document, equipment or clothing usually issued to members as to be likely to lead to the belief that it is such badge, identification document, equipment or clothing, as the case may be.

(2) No person shall, without lawful authority or excuse, make or sell any badge or document which so closely resembles any badge or identification document usually issued to a member as to be likely to lead to the belief that it is such a badge or identification document.

(3) Any person who contravenes any of the provisions of this section shall be guilty of an offence and shall be liable to a fine of one thousand dollars and to imprisonment for six months.

Incitement to disobedience.

24. If any person incites or persuades or otherwise endeavours to prevent any member from obeying any lawful order calling out the Force or any member for duty, such person shall be guilty of an offence and shall be liable to a fine of two thousand dollars and to imprisonment for two years.

Assaulting member in execution of duty, etc.

25. Any person who assaults or resists any member in the execution of his duty, or aids or incites any person so to assault or resist any member, or refuses to assist any member in the execution of his duty when called upon to do so, or who, by the giving of false information with intent to defeat or delay the ends of justice, wilfully misleads or

attempts to mislead any member shall be guilty of an offence and shall be liable upon summary conviction to a fine of two hundred and fifty dollars and to imprisonment for six months.

PART IV.

Supplemental and miscellaneous.

26. Any member who feels that he has just cause for complaint in any matter relative to the Force may present his complaint in writing to the Commissioner, and, from any decision of the Commissioner upon any such petition, there shall be a right of appeal by way of petition to the Governor, whose decision shall be final. Complaints.

27. The Commissioner may delegate all or any of the powers conferred upon him by this Ordinance or by any regulations made thereunder to any regular gazetted police officer or to any gazetted officer. Delegation of powers.

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

- (a) the conditions and method of enrolment in and resignation from the Force;
- (b) the requirements as to efficiency, training and instruction;
- (c) the payment of pay, allowances and bounty;
- (d) medical treatment for members;
- (e) the payment of gratuities and pensions to members in respect of wounds or injuries received in the course of and arising out of the discharge of duty or which are specifically attributable to the nature of such duty;
- (f) the payment of gratuities and pensions to widows and other dependants of members who are killed in the course of and in circumstances arising out of the discharge of duty or whose death is specifically attributable to the nature of such duty;
- (g) the provision of uniforms, equipment and weapons to members, and the recovery of the cost thereof in certain cases;
- (h) the invaliding of members;
- (i) the granting of awards;
- (j) the general government and discipline of the Force.

(2) Regulations made under this section may provide that contravention of specified provisions of such regulations shall be an offence and may provide penalties therefor:

Provided that no penalty so provided shall exceed a fine of two thousand dollars and imprisonment for twelve months.

Enactments
amended.
Second
Schedule.

29. The enactments set out in the Second Schedule to this Ordinance are amended in the manner specified in the third column of that Schedule.

Saving of
prerogative
rights of
the Crown.

30. Nothing contained in this Ordinance shall be construed to limit the right of the Crown to dismiss or terminate the appointment of members and without compensation.

Repeal and
rescission.
(Cap. 233).
(G.N.A.
270/50).

31. The Police Reserve Ordinance is repealed and the Emergency (Special Constabulary) Regulations, 1950, are rescinded.

FIRST SCHEDULE.

[s. 11.]

Oath or Declaration of Office.

I
swear by Almighty God, (or solemnly and sincerely affirm and declare) that I will obey, uphold and maintain the laws of the Colony of Hong Kong, and I will at all times execute the powers and duties of my office as a member of the Hong Kong Auxiliary Police Force, honestly, faithfully and diligently, without fear or favour to any person and with malice or ill will towards none.

And I do further swear (or solemnly and sincerely affirm and declare) that I will at all times obey without question the lawful orders of those set in authority over me.

Sworn (or declared) before
me this day of
 , 19 }

Magistrate/Justice of the Peace.

SECOND SCHEDULE.

[s. 29.]

Enactments Amended.

<i>Chapter or Ordinance No. & year.</i>	<i>Short title.</i>	<i>Extent of amendment.</i>
3	Jury Ordinance.	Section 5 is amended by— (a) the deletion from paragraph (b) of the words "Police Reserve" and the substitution therefor of the words "Auxiliary Police Force"; and (b) the deletion of paragraph (n) and the substitution therefor of the following— "(n) members of the Hong Kong Auxiliary Police Force and persons summoned to act or enrolled or appointed as special constables under any enactment: Provided that any person claiming exemption under this paragraph may be required by the Registrar to produce a certificate from the Commissioner of Police in proof of such exemption;"

*Chapter or
Ordinance
No. & year.*

Short title.

Extent of amendment.

89	Pensions Ordinance.	Section 17A is amended by— (a) the deletion from subsection (1) of the words "Police Reserve Force under the provisions of the Police Reserve Ordinance, or as a special constable under the provisions of the Emergency (Special Constabulary) Regulations, 1950" and the substitution therefor of the words "Hong Kong Auxiliary Police Force"; (b) the deletion from subsection (1) of the words "or Regulations as the case may be"; (c) the deletion from subsection (2) of the words "Police Reserve Force, the Special Constabulary" and the substitution therefor of the words "Hong Kong Auxiliary Police Force"; and (d) the deletion from subsection (2) of the comma and word "Constabulary".
232	Police Force Ordinance.	Section 22 is amended by the deletion from subsection (2) of the words "police reserve constituted under the Police Reserve Ordinance" and the substitution therefor of the words "Hong Kong Auxiliary Police Force".
238	Arms and Ammunition Ordinance.	Section 2 is amended by the deletion from paragraph (a) of the definition of "exempted person" of the words "police reserve" and the substitution therefor of the words "Hong Kong Auxiliary Police Force".
24 of 1951	Compulsory Service Ordinance, 1951.	1. The Long Title is amended by the deletion therefrom of the words "Special Constabulary" and the substitution therefor of the words "Hong Kong Auxiliary Police Force". 2. Section 2 is amended by— (a) the deletion from the definition of the words "appellant" and "objector" of the words "Special Constabulary" and the substitution therefor in each case of the words "Hong Kong Auxiliary Police Force"; (b) the deletion from the definition of the expression "the Hong Kong Police Force" of the comma and words ", and also includes members of the Hong Kong Police Reserve Force constituted under the Hong Kong Police Reserve Force Ordinance, 1927"; (c) the deletion of the definition of the expression "the Special Constabulary"; and

<i>Chapter or Ordinance No. & year.</i>	<i>Short title.</i>	<i>Extent of amendment.</i>
		(d) the insertion therein, after the definition of the expression "the Hong Kong Police Force" of the following new definition— "the Hong Kong Auxiliary Police Force" means the Hong Kong Auxiliary Police Force established under the Hong Kong Auxiliary Police Force Ordinance, 1959;"
		3. Section 5 is amended by the deletion from paragraph (e) of the words "Special Constabulary" and the substitution therefor of the words "Hong Kong Auxiliary Police Force".
		4. Section 6 is amended by the deletion of the words "Special Constabulary" wherever they appear and the substitution therefor of the words "Hong Kong Auxiliary Police Force".
		5. Section 8 is amended by the deletion of the words "Special Constabulary" and the substitution therefor of the words "Hong Kong Auxiliary Police Force".
		6. Section 9 is amended by the deletion of the words "Special Constabulary" and the substitution therefor of the words "Hong Kong Auxiliary Police Force".
		7. Section 15 is amended by— (a) the deletion from subsections (1) and (2) of the words "Special Constabulary" and the substitution therefor of the words "Hong Kong Auxiliary Police Force"; and (b) the deletion from subsections (1) and (2), wherever they appear, of the comma and word ", Constabulary".
		8. The marginal note to section 15 is amended by the deletion therefrom of the words "Special Constabulary" and the substitution therefor of the words "Hong Kong Auxiliary Police Force".
		9. Section 16 is amended by— (a) the deletion from subsections (1) and (2) of the words "Special Constabulary" and the substitution therefor of the words "Hong Kong Auxiliary Police Force"; and (b) the deletion from subsection (1), wherever they appear, of the comma and word ", Constabulary".

<i>Chapter or Ordinance No. & year.</i>	<i>Short title.</i>	<i>Extent of amendment.</i>
		10. Section 18 is amended by the deletion of the words "Special Constabulary" and the substitution therefor of the words "Hong Kong Auxiliary Police Force".
		11. Section 19 is amended by— (a) the deletion from paragraph (a) of the words "Special Constabulary" and the substitution therefor of the words "Hong Kong Auxiliary Police Force"; (b) the deletion from paragraph (b) of the words "Special Constabulary" and the substitution therefor of the words "Hong Kong Auxiliary Police Force"; (c) the deletion from paragraph (b) of the word "Constabulary" and the substitution therefor of the word "Force"; (d) the deletion from paragraph (c) of the words "Special Constabulary" and the substitution therefor of the words "Hong Kong Auxiliary Police Force".
		12. Section 20 is amended by— (a) the deletion of the words "Special Constabulary" and the substitution therefor of the words "Hong Kong Auxiliary Police Force"; (b) the deletion from paragraph (b) of the comma and word ", Constabulary".
		13. Section 21 is amended by the deletion from subsection (1) of the words "Special Constabulary" and the substitution therefor of the words "Hong Kong Auxiliary Police Force".
28 of 1953	Workmen's Compensation Ordinance, 1953.	Section 4 is amended by the deletion from paragraph (c) of the words and comma "Special Constabulary, the Hong Kong Police Reserve" and the substitution therefor of the words "Hong Kong Auxiliary Police Force".
14 of 1955	Urban Council Ordinance, 1955.	1. Section 6 is amended by the deletion from paragraph (a) of the words "Police Reserve Force" and the substitution therefor of the words "Auxiliary Police Force". 2. Section 13 is amended by the deletion from the proviso thereto of the words "Police Reserve Force" and the substitution therefor of the words "Auxiliary Police Force". 3. Section 15 is amended by the deletion from paragraph (i) of the proviso thereto of the words "Police Reserve or the Special Constabulary" and the substitution therefor of the words "Hong Kong Auxiliary Police Force".

Passed the Legislative Council of Hong Kong, this 21st day of January, 1959.

L. Laro
Deputy Clerk of Councils.

(Secretariat D/PSC)

HONG KONG

No. 3 of 1959.

I assent.

A. S. H. H. H.
Governor.

22nd January, 1959.

An Ordinance to amend the Commissioners Powers Ordinance, Chapter 86.

[23rd January, 1959.]

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 Commissioners Powers Short title. (Amendment) Ordinance, 1959.

2. Section 2 of the Commissioners Powers Ordinance is amended—

Amendment
of section 2.
(Cap. 86).

(a) by the deletion of the full stop at the end thereof and the substitution therefor of the following—

“, and”;

(b) by the addition after paragraph (b) of the following new paragraph—

“(c) to fix the quorum at meetings of commissioners where more than two are appointed.”

Passed the Legislative Council of Hong Kong, this 21st day of January, 1959.

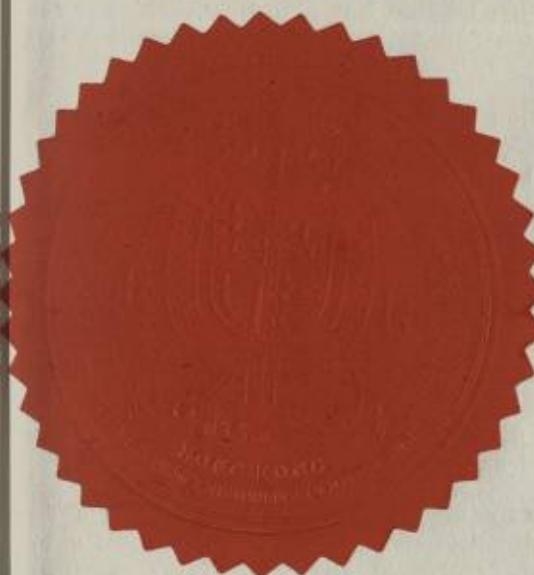
L. L. - 9
Deputy Clerk of Councils.

(Secretariat GR15/3231/58)



HONG KONG

NO. 4 OF 1959.



I assent.

R. S. - 1

Governor.

5th February, 1959.

An Ordinance to provide for the incorporation of the Director of Social Welfare, and for matters connected therewith.

[6th February, 1959.]

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 Director of Social Welfare Short title.
Incorporation Ordinance, 1959.

2. The person for the time being performing the duties of the office of Director of Social Welfare shall be a corporation sole (hereinafter referred to as the corporation) and shall have the name of the Director of Social Welfare Incorporated and in that name shall have perpetual succession. Director of Social Welfare constituted a corporation sole.

3. (1) The corporation shall have a common seal and the affixing of the seal shall be authenticated by the signature of the occupant of the corporation for the time being. Seal of corporation and authentication thereof, and instruments executed thereunder.

(2) Any instrument purporting to be an instrument duly executed under the seal of the corporation shall be received in evidence and shall, unless the contrary is proved, be deemed to be an instrument so executed.

Power of
corporation
to act as
trustee, etc.

4. The corporation may act as trustee of any trust created for the benefit of persons in the care of the Social Welfare Department or of any trust created in connexion with the work of the said Department and may acquire, take on lease, purchase, hold, hire and enjoy any movable or immovable property and may dispose of the same.

Power to
invest trust
funds.
(Cap. 29).

5. (1) The corporation may invest, in accordance with the provisions of the Trustee Ordinance, any trust funds in the hands of the corporation whether at the time in a state of investment or not:

Provided that where the occupant of the corporation for the time being considers it impracticable for any reason whatsoever for any such trust funds to be so invested, the corporation may deposit such trust funds in any bank or savings bank approved by the Governor either generally or in any particular case.

(2) The powers conferred on the corporation by subsection (1) are in addition to the powers (if any) conferred by any trust but shall apply only if and so far as a contrary intention is not expressed in any term of any trust, and shall have effect subject to any such term.

Property of
corporation
to pass to its
successors.

6. Where any property or interest therein is vested in the corporation, the same shall, unless and until otherwise disposed of by the corporation, pass and devolve to and vest in the successors from time to time of the corporation.

Certificate
as to
occupant of
corporation.

7. If any question arises as to who is or was at any time the occupant of the corporation for the time being, a certificate under the hand of the Colonial Secretary shall be conclusive evidence for all purposes as to the person who is or was such occupant.

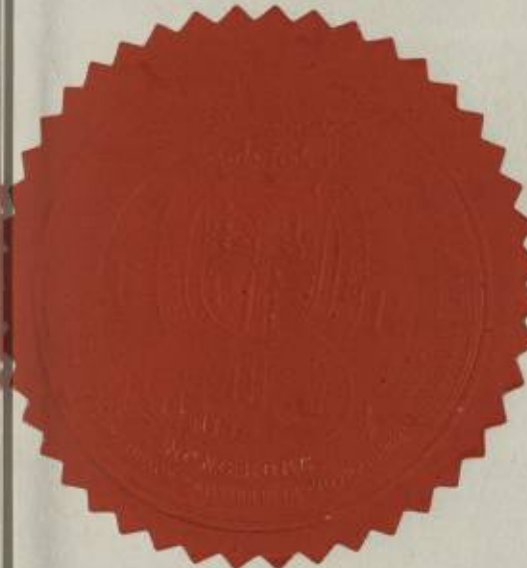
Passed the Legislative Council of Hong Kong, this 4th day of February, 1959.

H. L. S.
Deputy Clerk of Councils.

(Secretariat GR1/1806/57)

HONG KONG

No. 5 OF 1959.



I assent.

[Signature]

Governor.

5th February, 1959.

An Ordinance to amend the Registrar General (Establishment) Ordinance, Chapter 100.

[6th February, 1959.]

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 Registrar General Short title. (Establishment) (Amendment) Ordinance, 1959.

2. Section 4 of the Registrar General (Establishment) Ordinance is amended by the insertion after subsection (2) of the following new subsection—

Amendment
of section 4.
(Cap. 100).

“(3) The Registrar General and any Deputy Registrar General, Legal Assistant or Assistant Registrar appointed under this Ordinance may take any affidavit, affirmation or statutory or other declaration required by or to be made before or produced or delivered to or filed with the Registrar General in any of his capacities specified in the Schedule, notwithstanding any enactment requiring the taking of such affidavit, affirmation or statutory or other declaration by or before any other person.”.

Passed the Legislative Council of Hong Kong, this 4th day of February, 1959.

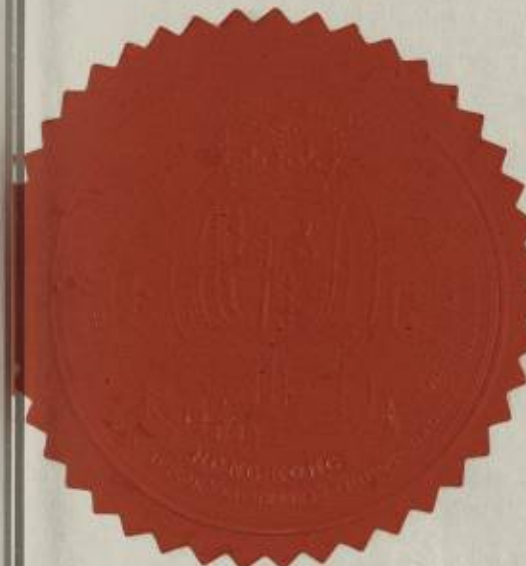
H. L. S.
Deputy Clerk of Councils.

(Secretariat GR16/3231/49)



HONG KONG

No. 6 OF 1959.



I assent.

[Signature]

Governor.

5th February, 1959.

An Ordinance to amend the law relating to the registration of businesses in the Colony.

[6th February, 1959.]

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 Business Registration Ordinance, 1959.

2. (1) In this Ordinance, unless the context otherwise requires—
“business” means any form of trade, commerce, craftsmanship, profession, calling or other activity carried on for the purpose of gain;

“Commissioner” means the Commissioner of Inland Revenue appointed under the Inland Revenue Ordinance;

“prescribed fee” means the fee prescribed in item 1 of the Schedule;

Interpretation.

(Cap. 112,
1956 Reprint).

"register" means the register of businesses kept by the Commissioner;

(14 of 1952). "valid business registration certificate" means a certificate which is issued by the Commissioner under section 6 or had been issued under the Business Regulation Ordinance, 1952, or any duplicate certificate, and which bears a date of commencement which falls within the period of twelve months immediately preceding.

(2) The duties imposed on and the powers granted to the Commissioner under this Ordinance may be carried out and exercised by any officer of the Inland Revenue Department authorized by the Commissioner either generally or particularly and subject to his instructions.

Persons answerable for doing all acts, etc. required to be done.

3. (1) The expression in this Ordinance "person carrying on business" means—

- (a) in the case of a single person or corporate body, such person or corporate body;
- (b) in the case of a business carried on by a partnership, all partners; and
- (c) in the case of a business carried on by any other body of persons, the principal officers of such body;

(Cap. 112, 1956 Reprint). Provided that no person who, for the purposes of section 8 of the Inland Revenue Ordinance, is deemed to have an office or employment of profit shall by reason solely thereof be deemed to be carrying on business for the purposes of this Ordinance.

- (2) (a) Any act or thing required by or under this Ordinance to be done by any person carrying on business shall, if such person is an incapacitated person or is absent, be deemed to be required to be done by the trustee of such incapacitated person or by the agent of such absent person, as the case may be.
- (b) For the purposes of this subsection a person shall be deemed to be absent where, the Commissioner having posted a registered letter to such person's place of business, he fails to attend during ordinary office hours the place specified therein within seven days of the posting of such letter.

(3) Where the person carrying on business who is required under this Ordinance to do any act or thing is a company, the secretary, manager, or any director of such company shall be answerable for the doing of such act or thing.

(4) Where the Commissioner serves notice on any person to the effect that he will be deemed to be a person carrying on business, he shall be so deemed unless within one month from the date of service of such notice he proves to the satisfaction of the Commissioner that he is not carrying on business:

Provided that where such person fails to satisfy the Commissioner within such period of one month he may appeal in the manner provided by section 17 within a further period of fourteen days immediately following.

(5) For the purposes of this section—

"agent" in relation to an absent person includes—

- (a) the agent, attorney, factor, receiver, or manager in the Colony of such person; and
- (b) any person in the Colony through whom such person is in receipt of any profits or income arising in or derived from the business;

"incapacitated person" means any minor, lunatic, idiot, or person of unsound mind;

"trustee" includes any trustee, guardian, curator, manager or other person having the direction, control, or management of any property on behalf of any person, but does not include an executor.

4. (1) Except in the performance of his duties under the Inland Revenue Ordinance or under this Ordinance, every officer of the Inland Revenue Department shall preserve and aid in preserving secrecy with regard to all matters relating to the affairs of any person that may come to his knowledge in the performance of his duties under this Ordinance, and shall not communicate any such matter to any person other than the person to whom such matter relates or his executor or the authorized representative of such person or such executor, nor suffer or permit any person to have access to any records in the possession, custody or control of the Commissioner.

Official secrecy.
(Cap. 112, 1956 Reprint).

(2) Every officer of the Inland Revenue Department shall, before acting under this Ordinance, take and subscribe before a Justice of the Peace an oath or affirmation of secrecy in the prescribed form.

(3) Except as may be necessary for the purpose of carrying into effect the provisions of the Inland Revenue Ordinance or of this Ordinance, no officer of the Inland Revenue Department shall be required to divulge or communicate to any court any matter or thing

coming to his notice in the performance of his duties under this Ordinance, or to produce in any court any document pertaining to such matter or thing other than a document required to be kept by the Commissioner under this Ordinance.

(4) Information given to the Commissioner under subsection (4) of section 3 or under subsection (4) of section 8 shall not be receivable in evidence against the person giving such information in any criminal proceeding save in a prosecution for an offence under paragraph (i) of subsection (1) of section 15.

(5) Notwithstanding the provisions of this section information received by officers of the Inland Revenue Department for the purposes of this Ordinance may, together with copies of returns, accounts or other documents used for such purposes be communicated to the Commissioner of Rating and Valuation, to the Collector of Stamp Revenue or to the Estate Duty Commissioner.

(6) Notwithstanding anything contained in this section, the Commissioner may permit the Director of Audit or any officer of that department duly authorized by the Director of Audit in that behalf to have such access to any records or documents as may be necessary for the performance of his official duties. The Director of Audit or any officer so authorized shall be deemed to be an officer of the Inland Revenue Department for the purpose of subsection (2).

5. (1) Every person carrying on any business not registered under the provisions of the Business Regulation Ordinance, 1952 or commencing to carry on any new business shall make application to the Commissioner in the manner prescribed for the registration of that business.

(2) Such application shall be made within one month of the coming into operation of this Ordinance or of the commencement of such new business whichever is the later:

Provided that the Commissioner may extend such period if he sees fit.

(3) Notwithstanding the provisions of this section only one application for the registration of the business is required to be made in respect of any one business.

6. (1) Upon application being made under section 5 the Commissioner shall register each business in the manner prescribed.

(2) Businesses registered under the Business Regulation Ordinance, 1952, shall for the purposes of this Ordinance be deemed to have been registered under this section.

Application
for
registration.
(14 of 1952).

Registration
of business
and issue of
business
registration
certificate.
(14 of 1952).

(3) Upon payment of the prescribed fee under section 7 or under an order of a magistrate under section 15 or upon the granting of an exemption under section 9 the Commissioner shall issue a business registration certificate in respect of each business:

Provided that where one fee is payable in respect of several businesses the Commissioner shall issue one such certificate in respect of all such businesses.

(4) The Commissioner shall not be required to make any entry in his register or to issue any business registration certificate in respect of any business which is unlawful.

(5) A business registration certificate shall be valid for the period of twelve months from the date of commencement endorsed thereon, and no such certificate shall be valid unless it bears an endorsement to the effect that—

(a) the prescribed fee has been paid, or

(b) no fee is payable.

(6) The issue of a business registration certificate in respect of any business shall not be deemed to imply that the requirements of any law in relation to such business or to the persons carrying on the same or employed therein has been complied with.

7. (1) The Commissioner may by registered letter addressed to his place of business call upon any person carrying on business and not in possession of a valid business registration certificate in respect of such business to pay the fee prescribed in item 1 of the Schedule.

Payment of
fees.

Schedule,
item 1.

(2) Every person carrying on business shall pay the prescribed fee on or before the date specified in the notice calling upon him to do so, and where no such notice is received within one month of the expiry of the business registration certificate issued in respect of such business every person carrying on such business shall so notify the Commissioner:

Provided that only one notification is required to be made in respect of any one business.

(3) Notwithstanding the provisions of this section, only one prescribed fee shall be required to be paid in respect of any one business.

(4) No person shall be entitled to any refund of fees paid under the Business Regulation Ordinance, 1952.

(14 of 1952).

Information
to be
furnished.

8. (1) Where there occurs any change in the particulars of a business as set out in the form of application for registration (whether such form was submitted under this Ordinance or under the Business Regulation Ordinance, 1952), any person carrying on such business shall within one month of such change notify the Commissioner in writing thereof.

(2) Where a business ceases to be carried on, any person who was carrying on such business shall, within one month of the cessation, notify the Commissioner in writing thereof.

(3) Where a business ceases and is thereafter recommenced, every person carrying on such business shall within one month of such recommencement notify the Commissioner in writing thereof.

(4) To obtain full information for the purposes of this Ordinance the Commissioner may give notice in writing to any person, appearing to him to be a person able to furnish information, requiring him—

- (a) to supply such particulars as the Commissioner may deem necessary; or
- (b) to attend at a time and place to be named by the Commissioner for the purpose of being examined respecting such information.

Exemption
from pay-
ments of fees
for small
businesses.

9. (1) Upon application being made to the Commissioner in the manner prescribed he shall exempt from the payment of the prescribed fee any person carrying on a business which is shown to his satisfaction—

- (a) in the case of any business except a new business or any business whose profits are derived primarily from the sale of services to have total sales not exceeding an average of the sum specified in item 2 in the Schedule; or
- (b) in the case of any business whose profits are derived primarily from the sale of services except a new business, to have total sales or receipts not exceeding an average of the sum specified in item 3 of the Schedule; or
- (c) in the case of a new business is unlikely to have total sales or receipts, as the case may be, exceeding the averages referred to in paragraphs (a) or (b) respectively.

Schedule,
item 2.

Schedule,
item 3.

The average in each case shall be based on the sales or receipts for the period of six months immediately preceding the making of the application or on such other information as the Commissioner may see fit to accept.

- (2) An application under this section shall be made not later than—
- (a) one month before the date of expiry of a current business registration certificate; or

- (b) in the case of a new business one month after application for the registration of such business under section 5; or
- (c) in any other case three months after the coming into operation of this Ordinance:

Provided that the Commissioner may extend such period if he sees fit.

(3) Where an exemption is granted under subsection (1) the Commissioner shall issue a business registration certificate endorsed to that effect, and such exemption shall apply to the period of twelve months immediately following the date of commencement endorsed thereon or to such further period or periods not exceeding three years as the Commissioner may direct.

(4) The liability to pay the prescribed fee shall not be affected by the making of any application under subsection (1) unless the Commissioner shall otherwise direct, and where an exemption is granted after the fee has been paid such fee shall be refunded.

(5) Where an exemption is not granted the Commissioner shall so notify the person making the application therefor, and such person may appeal in the manner provided by section 17 within a period of fourteen days from the date of such notification.

10. (1) Where two or more businesses are carried on by the same person or persons the following provisions shall have effect—

Businesses
carried on
by same
persons.

- (a) an application to register any such businesses under section 5 shall include all such businesses;
- (b) only one fee shall be required to be paid under section 7 in respect of all such businesses;
- (c) no such business shall be entitled to exemption from payment of fees under section 9.

(2) For the purposes of this section two or more businesses shall be deemed to be carried on by the same persons only where all such persons carrying on each of such businesses are identical and no other person carries on any of them.

11. (1) Where any prescribed fee has not been paid within the time specified for its payment under section 7 the Commissioner may by notice in writing to any person liable therefor order that the sum specified in item 4 in the Schedule be added to the fee and recovered therewith.

Penalty for
non-payment
of fees.

Schedule,
item 4.

(2) If the prescribed fee together with any sum ordered to be added thereto under subsection (1) is not paid within one month of the giving of notice the Commissioner may in the same manner order

Schedule,
item 5.

that the sum specified in item 5 of the Schedule be added also to the fee at that time and at the end of the next and each succeeding month and shall be recovered with such fee.

(3) The Commissioner may in his absolute discretion—

- (a) extend the time specified for the payment of any fee; and
- (b) remit any sums that he has ordered to be added to any fee under subsections (1) or (2).

Business
registration
certificate to
be displayed.

12. A valid business registration certificate shall be displayed at the address of every place of business to which such certificate relates.

Inspection.

13. (1) The Commissioner may authorize in writing any public officer to be an Inspector.

(2) Any Business Registration Inspector and any Inspector appointed under subsection (1) shall, for the purpose of ascertaining whether the provisions of this Ordinance are being complied with, have power at all reasonable times to enter any premises at which he has reason to believe any business is being carried on and there to make such examination and inquiry as may be necessary for such purpose.

Regulations.

14. (1) The Governor in Council may by regulation prescribe or provide for—

- (a) the manner in which application for registration of business shall be made;
- (b) the manner in which application for exemption from the payment of fees shall be made;
- (c) the information to be furnished to the Commissioner;
- (d) the form of and the particulars to be entered in the register;
- (e) the forms of business registration certificates;
- (f) the issue of duplicate business registration certificates, and the fee therefor;
- (g) the exemption of any person or category of persons or business either wholly or in part from the provisions of this Ordinance;
- (h) fees for certification and issue of documents, and issue of duplicate business registration certificates;
- (i) generally the carrying into effect of the provisions of this Ordinance in relation to any matter, whether similar or not to those in this subsection mentioned.

(2) Any regulation made under this Ordinance may provide that a contravention thereof shall be an offence and may provide penalties for such offences not exceeding a fine of one thousand dollars and imprisonment for six months.

Offences.

15. (1) Any person who—

- (a) acts under this Ordinance without taking an oath of secrecy as required by subsection (2) of section 4;
- (b) acts contrary to the provisions of subsection (1) of section 4 or to an oath taken under subsection (2) thereof;
- (c) fails to make any application required under section 5;
- (d) fails to pay any prescribed fee required under section 7, and any sum added thereto under section 11;
- (e) fails to notify the Commissioner of the non-receipt of a notice by the Commissioner under subsection (2) of section 7;
- (f) fails to furnish any information required under section 8 or to comply with any notice or requirement of the Commissioner under such section;
- (g) fails to display a valid business registration certificate as required under section 12;
- (h) commits forgery of any document provision for which is made in this Ordinance;
- (i) makes any statement or furnishes any information to the Commissioner under the provisions of this Ordinance whether such statement or information is verbal or in writing, which is false in any material particular or by reason of the omission of any material particular and which he either knows or has reason to believe to be false; or
- (j) resists or obstructs an inspector in the performance of his duties under this Ordinance,

shall be guilty of an offence, and shall be liable to a fine of two thousand dollars and to imprisonment for one year.

- (2) (a) Where any person is convicted of any of the acts or omissions set out in paragraph (c), (d), (e), (h) or (i) of subsection (1) the magistrate shall, in addition to any penalty that may be imposed, make an order that such person shall pay to the Commissioner the fees and any sums added thereto by the Commissioner, which would have been payable by him over the period of the preceding six years had the provisions of this Ordinance been complied with and had he committed no offence thereunder.

- (b) In making an order for payment under paragraph (a) the magistrate—

(i) shall require that the amount payable in respect of the two years immediately preceding the date of conviction be paid forthwith to the Commissioner; and

(ii) may allow time for the payment of the remainder of the amount specified in the order in accordance with the provisions of section 40 of the Magistrates Ordinance; and

(iii) may impose a period of imprisonment for non-payment of the amount specified in the order calculated in accordance with the provisions of section 67 of the Magistrates Ordinance.

- (c) For the purposes of this subsection the Commissioner shall be deemed to have—

(i) called upon the person making application to pay the prescribed fee in accordance with subsection (1) of section 7, and

(ii) imposed the sums to be added to the prescribed fee for the non-payment thereof in accordance with section 11.

(3) No prosecution under this section shall be commenced save within six years from the date of the commission of the offence.

(4) For the purposes of subsection (1) "forgery" has the meaning attributed to it by section 3 of the Forgery Ordinance, the whole of which section shall apply for such purposes.

Exemptions.

16. The provisions of this Ordinance shall not apply to

- (a) any charitable, ecclesiastical, or educational institution of a public character where—

(i) any profits derived from any trade or business of such institution are applied solely for its charitable, ecclesiastical or educational purposes and not expended substantially outside the Colony; and

(ii) either such trade or business is exercised in the course of the actual carrying out of the expressed object of such institution, or the work in connexion with such trade or business is mainly carried out by persons for whose benefit such institution is established;

- (b) any club or similar institution which receives from its members not less than half of its gross receipts on revenue account (including entrance fees and subscriptions);

- (c) the business of—

(i) agriculture including market gardening;

(ii) breeding or rearing livestock including dairy farming, poultry including the production of eggs, bees including the production of honey, or fish including crustaceans and oysters;

(iii) fishing;

- (d) such other businesses as the Governor in Council may from time to time exempt by regulation made under section 14.

17. (1) Any person wishing to appeal under subsection (4) of section 3 or subsection (5) of section 9 may, upon payment of the prescribed fee, unless already paid, appeal to the District Court, and where such appeal is determined in his favour the prescribed fee shall be refunded.

(2) The Chief Justice may by rules provide for all matters necessary for determining such appeals and in particular may so provide for the manner in which such appeals shall be notified to the Commissioner, the form in which such appeals shall be referred to the Court, the evidence which shall be adduced before and considered by the Court, and the sums which may be awarded by way of costs.

(3) The determination of the Court shall be final.

18. The provisions of the Schedule may from time to time be amended by the Legislative Council by resolution.

Amendment
of Schedule
by Legislative
Council
Resolution.

19. (1) Any person may on payment of the prescribed fees require the Commissioner to certify a copy or extract of any document required to be kept by the Commissioner under this Ordinance or under the Business Regulation Ordinance, 1952, or of any valid business registration certificate and issue him therewith and the Commissioner shall certify and issue accordingly.

Certification
and issue of
documents.
(14 of 1952).

(2) A copy or extract of any such document certified by the Commissioner to be a true copy or extract thereof shall be, in all legal proceedings civil or criminal, prima facie evidence as to the facts stated therein. Any such copy or extract purporting to be certified by the Commissioner shall be deemed, until the contrary is proved, to be certified by him.

20. Any notice to be served under this Ordinance may be served by delivering a copy—

Service of
notices.

(a) personally; or

(b) by registered post addressed to the last known place of business or residence of the person to be served.

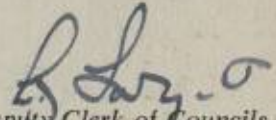
21. The Business Regulation Ordinance, 1952, is hereby repealed.

Repeal.
(14 of 1952).

SCHEDULE.

<i>Item.</i>	<i>Sum.</i>	<i>Section.</i>
1. Prescribed fee payable annually for a business.	\$25	7
2. Average of total sales to exempt a business other than a new business, or a business whose profits derive primarily from the sale of services.	\$1,000 per month	9(1)(a)
3. Average of total sales or receipts to exempt business whose profits derive primarily from the sale of services.	\$300 per month	9(1)(b)
4. Penalty to be added to prescribed fee for non-payment thereof.	\$2	11(1)
5. Further penalty to be added monthly to the prescribed fee for the non-payment thereof.	\$3	11(2)

Passed the Legislative Council of Hong Kong, this 4th day of February, 1959.

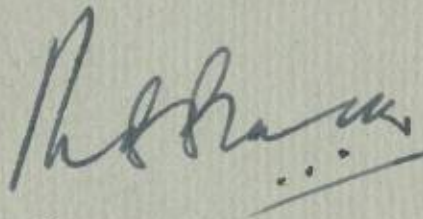

Deputy Clerk of Councils.

(Secretariat CR9/3231/58)

HONG KONG

No. 7 OF 1959.

I assent.


Governor.

5th February, 1959.

An Ordinance to amend the Factories and Industrial Undertakings Ordinance, 1955.

[6th February, 1959.]

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 Factories and Industrial Undertakings (Amendment) Ordinance, 1959.

2. Section 5 of the Factories and Industrial Undertakings Ordinance, 1955 (hereinafter referred to as the principal Ordinance), is amended by the insertion in subsection (4), after the word "may" where it first occurs, of the following—

"for such period and subject to such conditions as he may specify."

3. Section 8 of the principal Ordinance is amended by the insertion in subsection (2), after the word and number "section 5", of the following—

"or who fails to comply with any condition imposed by the Commissioner of Labour on the granting thereunder of any exemption".

Passed the Legislative Council of Hong Kong, this 4th day of February, 1959.

L. L. S.
Deputy Clerk of Councils.

(Secretariat GR16/2961/46II)



HONG KONG

No. 8 OF 1959.

I assent.

R. G. Brown

Governor.

26th February, 1959.

An Ordinance to amend the Dangerous Goods Ordinance, 1956.

[27th February, 1959.]

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 Dangerous Goods (Amendment) Ordinance, 1959. Short title.
2. Section 2 of the Dangerous Goods Ordinance, 1956, (hereinafter referred to as the principal Ordinance) is amended by the insertion after the definition of "petroleum" of the following definition— Amendment of section 2. (38 of 1956).

"prohibited goods" means any dangerous goods declared by any regulation made under section 4 to be prohibited goods for the purposes of this Ordinance;"
3. Subsection (1) of section 4 of the principal Ordinance is amended by— Amendment of section 4.
 - (a) the insertion after paragraph (b) of the following paragraph—

"(bb) the declaration of any dangerous goods to be prohibited goods for the purposes of this Ordinance;"

- (b) the insertion in paragraph (g) after the word "vessel" of the following—

" , aircraft".

Amendment
of section 5.

4. Section 5 of the principal Ordinance is amended by the deletion from subsection (1) of the words "or in" in the first place where they occur and the substitution therefor of the following—

" , aircraft or".

Addition of
new section
5A.

5. The principal Ordinance is amended by the addition after section 5 of the following new section—

"Prohibited
goods.

5A. No person shall manufacture or cause to be manufactured any prohibited goods or have any prohibited goods in his possession, custody or control or in the possession, custody or control of any servant, agent or warehouse owner."

Amendment
of section 10.

6. Section 10 of the principal Ordinance is amended—

- (a) in subsection (1) by the deletion of the words "authorized in that behalf by the Chief Officer of the Fire Brigade" and the substitution therefor of the following—

"not below the rank of sub-officer"; and

- (b) by the deletion of subsection (3) and the substitution therefor of the following—

"(3) Without prejudice to any power of entry or search conferred by any other enactment, no officer referred to in subsection (1) shall enter or search any part of any premises used solely for dwelling purposes except—

- (a) by virtue of a warrant issued by a magistrate, where such magistrate is satisfied by information on oath that there is reasonable ground for suspecting that an offence against this Ordinance has been, is being or is about to be committed in such part of the premises or there is in such part of the premises anything likely to be or to contain evidence of such offence; or

- (b) without warrant, where such officer is of opinion having regard to the circumstances that the purpose of the entry or the search would be defeated by application for such warrant."

Amendment
of section 12.

7. Subsection (1) of section 12 of the principal Ordinance is amended by the insertion after the number "5." of the following—

"5A.",

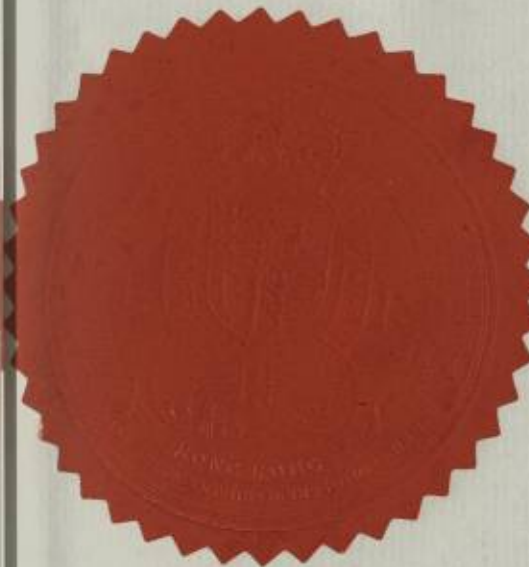
Passed the Legislative Council of Hong Kong, this 25th day of February, 1959.

Deputy Clerk of Councils.

(Secretariat GR11/3231/51)

HONG KONG

No. 9 OF 1959.



I assent.

Governor.

25th March, 1959.

An Ordinance to apply a sum not exceeding six hundred and ninety-three million, forty-three thousand, two hundred and ten dollars to the Public Service of the financial year ending the 31st day of March, 1960.

[26th March, 1959.]

WHEREAS the expenditure required for the service of this Colony for the financial year ending on the 31st day of March, 1960, has been estimated at the sum of six hundred and ninety-three million, forty-three thousand, two hundred and ten dollars:

Preamble.

NOW, THEREFORE, 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 Appropriation (1959-60) Ordinance, 1959.

Short title.

2. A sum not exceeding six hundred and ninety-three million, forty-three thousand, two hundred and ten dollars shall be and the same is hereby charged upon the revenue and other funds of the Colony for the service of the financial year commencing on the 1st day of April, 1959, and ending on the 31st day of March, 1960, and the said sum so charged may be expended in the manner expressed in the Schedule.

Appropriation from the general revenues and other funds.

Schedule.

SCHEDULE.

[s. 2.]

<i>Number of vote.</i>	<i>Head of Expenditure.</i>	<i>Amount of vote.</i>
		\$
1.	His Excellency the Governor's Establishment	524,900
2.	Agriculture, Fisheries and Forestry Department	5,333,700
3.	Audit Department	856,200
4.	Civil Aviation Department	4,645,200
5.	Colonial Secretariat and Legislature	4,004,900
6.	Commerce and Industry Department	6,705,300
7.	Co-operative Development Department	598,900
	Defence	
8A.	R.H.K.D.F. Headquarters and Hong Kong Regiment.	2,122,700
8B.	Hong Kong Royal Naval Reserve	873,000
8C.	Hong Kong Auxiliary Air Force	1,029,800
8D.	Essential Services Corps	96,100
8E.	Auxiliary Fire Service	295,300
8F.	Auxiliary Medical Service	854,800
8G.	Civil Aid Services	1,927,000
8H.	Registration of Persons Office	470,500
8I.	Directorate of Manpower	66,900
8J.	Miscellaneous Measures	26,025,000
9.	Education Department	33,922,700
10.	Fire Brigade	6,343,900
11.	Inland Revenue Department	3,644,000
12.	Judiciary	3,429,700
13.	Kowloon-Canton Railway	4,442,100
	Labour Department	
14A.	Labour Division	1,655,600
14B.	Mines Division	100,600
15.	Legal Department	1,017,900
16.	Marine Department	12,191,400
17.	Medical and Health Department	47,806,000
18.	Miscellaneous Services	15,233,600
19.	New Territories Administration	5,074,700
20.	Pensions	15,783,000
	Police Force	
21A.	Hong Kong Police	58,118,200
21B.	Hong Kong Police (Auxiliaries)	1,411,700
22.	Post Office	21,101,000
23.	Printing Department	3,242,900
24.	Prisons Department	9,122,100

SCHEDULE,—Contd.

<i>Number of vote.</i>	<i>Head of Expenditure.</i>	<i>Amount of vote.</i>
		\$
25.	Public Debt	3,025,610
26.	Public Relations Office	733,600
27.	Public Services Commission	37,700
28.	Public Works Department	34,458,800
29.	Public Works Recurrent	30,970,000
30.	Public Works Non-Recurrent	181,822,300
31.	Quartering Office	3,138,600
32.	Radio Hong Kong	2,662,700
33.	Rating and Valuation Department	774,400
34.	Registrar General's Department	1,366,500
35.	Registry of Trade Unions	233,500
36.	Resettlement Department	8,482,400
37.	Royal Observatory	2,028,500
	Secretariat for Chinese Affairs	
38A.	Secretariat for Chinese Affairs	846,100
38B.	District Watch Force	301,500
39.	Social Welfare Department	4,324,100
40.	Stores Department	3,694,100
41.	Subventions	80,144,800
42.	Treasury	2,311,700
	Urban Services Department and Urban Council	
43A.	Urban Services Department and Urban Council	28,610,500
43B.	Housing Division	1,159,800
44.	Colonial Development and Welfare Schemes	1,844,700
	TOTAL	\$693,043,210

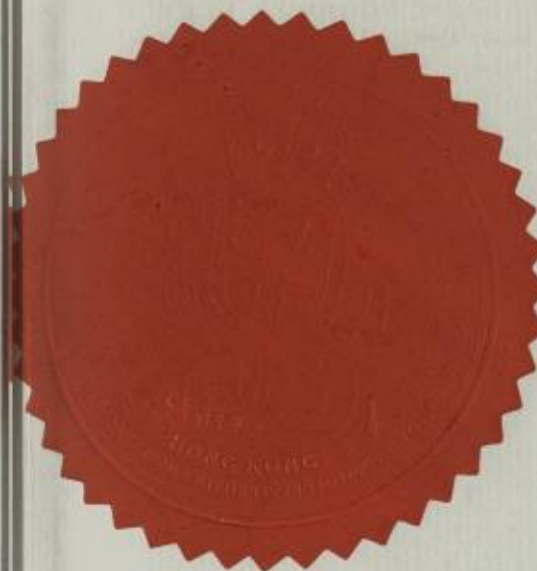
Passed the Legislative Council of Hong Kong, this 25th day of March, 1959.


Deputy Clerk of Councils.

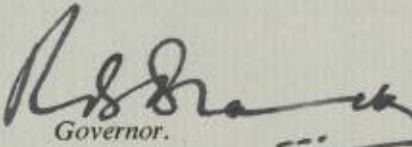
(Secretariat GR1/2291/59)

HONG KONG

No. 10 OF 1959.



I assent.


Governor.

23rd April, 1959.

An Ordinance to amend the Resettlement Ordinance, 1958.

[24th April, 1959.]

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 Resettlement (Amendment) Ordinance, 1959. Short title.

2. Part VI of the Resettlement Ordinance, 1958, (hereinafter referred to as the principal Ordinance) is amended by the deletion of the sub-heading "Regulations" and the substitution therefor of the following—

"Miscellaneous".

Amendment
of Part VI.
(16 of 1958).