

PUBLIC RECORDS OFFICE
OF HONG KONG
H.K.R.S. No. **28**

(121.)

Petition No. _____ of 19 _____



IN THE SUPREME COURT OF HONG KONG.
PROBATE JURISDICTION.

No. _____ of 193 _____

In the Goods of _____

*Ordinances for
1940
~~1939~~*

Sworn under \$.....
Court Fees\$.....
Folios at 50 Cents per folio \$.....
\$.....

Proctors, &c.

Deposit No. **8/1**



HONG KONG.

No. 1 of 1940.

I assent.



John Lubbock
Governor.

8th March, 1940.

An Ordinance to provide for the Registration of Dentists.

[8th March, 1940.]

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 Registration of Dentist Ordinance, 1940. Short title

2.—(1) In this Ordinance—

“dangerous drug” means any drug to which the Dangerous Drugs Ordinance, 1935, shall for the time being apply;

Interpretation.

Ordinance No. 35 of 1935.

“registered pharmacist” means a pharmacist registered under the Pharmacy and Poisons Ordinance, 1937;

Ordinance No. 8 of 1937.

“prescribed” means prescribed by regulations made under section 25;

“registered dentist” means a person whose name appears for the time being on the register of dentists;

“the Board” means the Dental Board appointed under section 4;

“the Medical Board” means the Medical Board of the Colony of Hong Kong.

(2) A person shall be deemed to practise dentistry within the meaning of this Ordinance, who, for the sake of gain or otherwise, holds himself out, whether directly or by implication, as practising or being prepared to practise dentistry, or treats or attempts to treat or professes to treat, cure, relieve or prevent lesions or pain of the human teeth or jaws, or performs or attempts to perform any operation thereon, or inserts or attempts to insert any artificial teeth or appliances for the restoration, regulation or improvement of the teeth or accessory structures.

3.—(1) No person shall, after the expiration of a period of six months from the commencement of this Ordinance (hereinafter referred to as “the interim period”), practise dentistry within the Colony unless he is registered under this Ordinance. Any person who acts in contravention of the provisions of this sub-section shall be guilty of an offence against this Ordinance.

Dentists to be registered



(2) Nothing in this section shall operate to prevent—

(a) the extraction of teeth for the relief of pain, or the application of remedies for such purposes, by registered medical practitioners; or

(b) the extraction of teeth by any registered pharmacist when the case is urgent and when no registered medical practitioner or registered dentist is available; or

(c) the practice of Chinese dentistry by persons practising tooth extraction only, provided that they do not make use of or administer or cause to be administered any dangerous drug or any anæsthetic or use or cause to be used any hypodermic or dental syringe.

Constitution of the Dental Board.

4.—(1) For the purposes of this Ordinance, there shall be established a Dental Board, (hereinafter referred to as "the Board"), consisting of the following persons—

(a) the Director of Medical Services;

(b) the Government Dental Surgeon;

(c) two medical practitioners to be appointed by the Governor; and

(d) two dental surgeons registrable under paragraph (a) or paragraph (b) of section 7 of this Ordinance, to be appointed by the Governor.

(2) Members of the Board appointed under paragraphs (c) and (d) of sub-section (1) shall hold office for three years but shall be eligible for re-appointment.

(3) If the place of a member of the Board appointed under paragraphs (c) and (d) of sub-section (1) becomes vacant before the expiration of his term of office, the vacancy shall be filled by appointment by the Governor and any person so appointed shall hold office so long only as the member in whose place he is appointed would have held office.

(4) The Director of Medical Services shall be President of the Dental Board. The President shall be Chairman of all meetings at which he shall attend, and in his absence the members present shall elect one of the members appointed under paragraph (d) of sub-section (1) to be Chairman.

(5) The Board shall meet at such places and times as the President may appoint, and at any meeting four members shall form a quorum. The Chairman of any meeting of the Board shall have a casting vote.

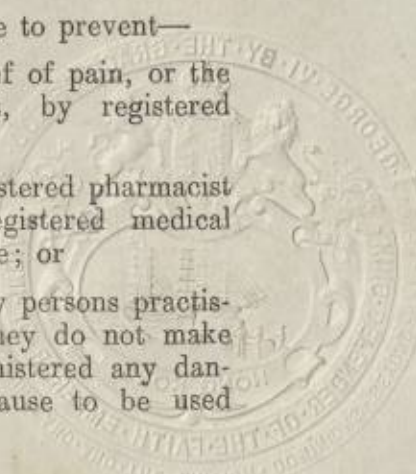
Dental Registrar.

5.—(1) For the purposes of this Ordinance, there shall be a Dental Registrar (hereinafter referred to as "the Registrar") who shall perform such duties in connexion with the register of dentists as may be prescribed.

(2) The Director of Medical Services shall be the Registrar.

Keeping of register.

6. A register of dentists (hereinafter referred to as "the register") shall be kept, in the form prescribed by the Registrar, who shall be responsible for the maintenance and custody thereof.



7. Subject to the provisions of this Ordinance, the following persons and no others shall be entitled to registration under this Ordinance—

Persons who are entitled to registration.

(a) any person who holds a degree, diploma or other document of any examining body in the British Empire or in any foreign country which is recognized by the General Council of Medical Education and Registration of the United Kingdom as registrable in the Dentists Register of the United Kingdom;

(b) any person who holds a degree, diploma or other document of any examining body which may from time to time be recognized by the Board as entitling the holder thereof to registration under this Ordinance;

(c) any person who at the commencement of this Ordinance is registered under the Dentistry Ordinance, 1914;

Ordinance No. 16 of 1914.

(d) any person who has been engaged as his principal means of livelihood in the practice of dentistry in the Colony up to the date of the commencement of this Ordinance;

Provided that every person applying for registration under this paragraph shall furnish evidence of good character which shall satisfy the Board and shall have made application for registration before the expiration of the interim period prescribed under section 3, or within such further period, not exceeding two years, as the Board may in special circumstances allow.

8.—(1) Any person entitled to be registered under this Ordinance may apply to the Registrar for registration. Every such application shall be made in such manner and shall be accompanied by such documents, photographs and particulars as may be prescribed.

Application for registration.

(2) Where such person has complied with the provisions of sub-section (1) and with any regulations relating thereto, and has paid the prescribed fee, he shall, subject to the provisions of sub-section (3), be admitted by the Board to the register.

(3) If any person applying for registration has been convicted of any heinous offence or after due inquiry by the Board is deemed by it to have been guilty of infamous or disgraceful conduct in any professional respect the Board may refuse to enter the name of such person upon the register. Upon such inquiry the person against whom such offence or conduct is alleged shall be entitled to appear and be heard by counsel or solicitor.

9. Where a person has been admitted to the register, the Board shall issue a certificate of registration, and such certificate shall entitle such person to practise dentistry in the Colony until the next succeeding thirty-first day of December. A photograph of such person shall be affixed to such certificate.

Certificate of registration.

10.—(1) A body corporate may carry on the business of dentistry if—

Dental companies.

(a) it carries on no business other than dentistry or some business ancillary to the business of dentistry; and

(b) a majority of the directors and all the operating staff thereof are registered dentists:

Provided that a body corporate which was carrying on the business of dentistry before the commencement of this Ordinance shall not be disqualified from carrying on the business of dentistry under this section by reason only that it carries on some business other than dentistry or a business ancillary to that business, if that other business is a business which the body was lawfully entitled at the commencement of this Ordinance to carry on.

(2) Save as aforesaid it shall not be lawful, after the expiration of the interim period prescribed under section 3, for any body corporate to carry on the business of dentistry, and if any body corporate carries on the business of dentistry in contravention of the provisions of this section every director and manager thereof shall, unless he proves that the offence was committed without his knowledge, be liable on conviction to a fine not exceeding one thousand dollars for each offence.

(3) Every body corporate carrying on the business of dentistry shall in every year at such time as is prescribed transmit to the Registrar a statement in the prescribed form containing the names and addresses of all persons who are directors or managers of the company, or who perform dental operations in connexion with the business of the company, and, if any such body corporate fails so to do, it shall be deemed to be carrying on the business of dentistry in contravention of the provisions of this section.

(4) Nothing in this section shall prevent the carrying on of the business of dentistry by the operating staff of any hospital of any description (including an institution for out-patients only), or of any dental school, which is approved for the purposes of this section by the Governor in Council.

Certificate to practise

11.—(1) Every registered dentist practising in the Colony who desires his name to be retained on the register shall, before the end of every year, make application in the prescribed form, and shall pay the prescribed fee, for retention of his name on the register during the ensuing year.

(2) Upon such application and payment, the applicant shall be entitled to a certificate (to be styled "annual practising certificate") authorizing him to practise dentistry during the year for which the certificate is issued.

(3) The certificate shall be issued by the Registrar, and shall, unless cancelled in the manner hereinafter provided, be in force from the date of issue to the end of the year.

(4) The name of any registered dentist who fails to obtain an annual practising certificate prior to the commencement of any year shall be removed from the register.

(5) If any person whose name has been removed from the register under sub-section (4) subsequently makes application in such manner and pays such additional fee as may be prescribed in such case, the Board may, after due consideration of the circumstances of the case, direct that the name of such person shall be re-entered on the register and that an annual practising certificate for the remainder of the year be issued.

(6) Whenever it appears to the satisfaction of the Board that any person to whom an annual practising certificate has been issued under this section is practising dentistry in such premises or under such conditions as are deemed by the Board to be unsuitable for such practice, the Board may direct that the name of such person shall be removed from the register and that such annual practising certificate be cancelled, and such certificate shall thereupon cease to be in force.

(7) If any person whose annual practising certificate has been cancelled under sub-section (6) makes application in such manner and pays such fee as may be prescribed in such case, the Board may, after due consideration of the circumstances of the case, direct that the name of such person shall be re-entered in the register and that an annual practising certificate be issued.

(8) Any person who practises dentistry in the Colony who—

(a) has not a certificate in force authorizing him to practise; or

(b) is in partnership with a person not having such a certificate; or

(c) has in his employ any person practising dentistry not having such a certificate,

shall be guilty of an offence against this Ordinance.

12.—(1) The Registrar shall publish annually in the Gazette, as soon as practicable after the first day of January of each year, a list of all persons registered under this Ordinance to whom an annual practising certificate has been issued for that year, with their qualifications and their places of carrying on business.

Publication of register and presumptions.

(2) A copy of the Gazette in which such list is published or a certificate under the hand of the Registrar shall be *prima facie* evidence in any proceedings that the persons named therein are registered and authorized to practise under this Ordinance.

(3) The absence of the name of any person from such list or a certificate under the hand of the Registrar certifying the absence of the name of any person from such list shall be *prima facie* evidence that such person is not authorized to practise under this Ordinance.

13.—(1) Every registered dentist shall cause his certificate of registration issued under section 9, with a photograph of himself affixed thereto, to be exhibited in a conspicuous part of the premises in which he practises dentistry.

Certificate of registration to be exhibited.

(2) Any registered dentist who fails to comply with the provisions of this section shall be liable to a fine not exceeding two hundred dollars, and, in case of continued non-compliance, to a fine of five dollars for every day during which such non-compliance continues.

14.—(1) It shall be lawful for any officer thereunto authorized in writing by the Board to enter and inspect any premises used or proposed to be used for the practice of dentistry. Such officer shall produce, on demand, the written authority, signed by the President of the Board, authorizing such entry and inspection.

Inspection of premises used for the practice of dentistry.

(2) Any person or persons wilfully obstructing a duly authorized officer of the Board in the inspection of premises used or proposed to be used for the practice of dentistry shall be guilty of an offence against this Ordinance, and shall be liable on conviction therefor to a fine not exceeding one hundred dollars.

Recovery of fees.

15.—(1) No person shall be entitled to recover any fee or charge in any court for the performance of any dental operation or for dental attendance or advice unless, at the time of performing such operation or rendering such attendance or advice, he was registered under this Ordinance and had an annual practising certificate in force authorizing him to practise or was entitled to practise under the provisions of section 9.

(2) This section shall not apply to any person to whom the provisions of section 3 (2) or section 26 of this Ordinance apply.

Correction of register

16.—(1) The Registrar shall from time to time insert in the register any alteration which may come to his knowledge in the name or address of any person registered.

(2) The Board may remove from the register the name of any person who—

(a) is believed to be deceased; or

(b) has no address in the Colony at which he can be found or has ceased to reside in the Colony for a period of five years; or

(c) is no longer practising dentistry in the Colony.

Cancellation of certificate of registration.

17.—(1) The Board may cancel a certificate of registration and direct the removal from the register of the name of any person registered if after due inquiry the Board is satisfied that such person—

(a) has obtained registration by a fraudulent or incorrect statement; or

(b) has been convicted of any felony or misdemeanor or of any offence against this Ordinance; or

(c) has been guilty of infamous or disgraceful conduct in a professional sense; or

(d) has for any disciplinary reason been struck off the Dentists Register of the United Kingdom or of any other country or off the Roll of any Dental College or other licensing body.

(2) Upon any such inquiry the person against whom any offence under the preceding sub-section is alleged shall be entitled to appear and be heard by counsel or solicitor.

(3) The Registrar shall forthwith publish in the Gazette the name of any person removed from the register under the provisions of this section.

18.—(1) Any person aggrieved by the removal of his name from the register or by any refusal or failure to register or re-enter his name in the register may, within three months after the date of publication in the Gazette of the removal of his name, or within six months after the date of the refusal or failure to register or re-enter his name, as the case may be, at his option appeal, either to the Supreme Court or to the Governor in Council against the removal or the refusal or the failure, as the case may be, and on any such appeal the Supreme Court, or the Governor in Council, as the case may be, may make such order in the matter as seems proper, including any order as to the costs of the appeal.

Appeal against removal from register or refusal to register.

(2) Any person who appeals under sub-section (1) shall, after the commencement of proceedings, be deemed to have made a conclusive election and any order of the Supreme Court or the Governor in Council, as the case may be, made therein, shall be final and conclusive, and no appeal shall lie from such order.

(3)—(a) An appeal to the Supreme Court shall be made to a single judge by notice of motion, and supported by affidavit, or, if the court shall so direct on the hearing of the motion, by oral evidence, and, subject to the provisions of this Ordinance, the provisions of Part IV of the Code of Civil Procedure shall, so far as practicable, apply to and govern the appeal.

Ordinance No. 3 of 1901.

(b) an appeal to the Governor in Council shall be by petition.

19. Any person who fraudulently procures or attempts to procure himself or any other person to be registered under this Ordinance shall be guilty of an offence against this Ordinance.

Penalty for fraudulent registration.

20. Any person not registered as a dentist under this Ordinance who wilfully or falsely pretends to be or takes or uses the name or title of a dentist, dental surgeon, qualified dentist, doctor of dental surgery, professor of dentistry, surgeon dentist, or any name, title, addition or description implying, whether in itself or in the circumstances in which it is used, that such person is a dentist or that such person is qualified to heal or treat dental disorders or derangements, whether by dentistry or any other means of any kind or description whatsoever, shall be guilty of an offence against this Ordinance.

Penalty for falsely pretending to be or taking or using the name or title of a dentist.

21. A registered dentist not entitled to registration under paragraph (a) or (b) of section 7 shall not make use, in describing his vocation, of any term other than that of "registered dentist". Any such registered dentist who wilfully or falsely pretends to be or takes or uses the name or title or a dental surgeon, surgeon dentist, qualified dentist, doctor of dental surgery, professor of dentistry or any name, title or description implying in itself or in the circumstances in which it is used that such registered dentist possesses or holds any qualification to practise other than that he is registered as a dentist shall be guilty of an offence against this Ordinance.

Penalty for registered dentist falsely describing his vocation.

22. Any registered dentist who practises dentistry in premises in which an unregistered person practises dentistry shall be guilty of an offence against this Ordinance.

Covering

Prosecutions. 23. A prosecution for an offence against this Ordinance may be instituted by the Board.

General penalty. 24. Any person guilty of an offence against this Ordinance for which no specific penalty is provided shall, on summary conviction, be liable to a fine not exceeding five hundred dollars and to imprisonment for any term not exceeding six months.

Regulations. 25.—(1) The Governor in Council shall have power to make regulations for giving effect to the provisions of this Ordinance.

(2) Without prejudice to the generality of the power conferred by the last foregoing sub-section, regulations made under this section shall in particular prescribe—

(a) the procedure to be adopted at meetings of the Board;

(b) the duties of the Registrar;

(c) the form of the register and the mode in which it shall be kept;

(d) the fees to be paid in respect of proceedings, and in respect of certificates issued, under this Ordinance;

(e) the manner in which applications for registration shall be made;

(f) the procedure to be adopted at inquiries before the Board;

(g) the forms of any certificates or other documents required for carrying out the purposes of this Ordinance.

Exemptions from sections 8, 9, 11 and 13. 26. All dentists of His Majesty's Navy, Army or Air Force residing in the Colony and all dentists in the public service of the Colony who possess any of the qualifications mentioned in paragraph (a) or (b) of section 7 shall, while in the discharge of their duties, be registered under this Ordinance but shall be exempt from the provisions of sections 8, 9, 11 and 13.

Exemptions. 27.—(1) Nothing in this Ordinance shall operate to prevent the practice of medicine or surgery by a medical practitioner registered under the Medical Registration Ordinance, 1935.

Ordinance No. 41 of 1935.

(2) Nothing in this Ordinance shall operate to prevent the training of medical and dental students in the practice of dentistry under the supervision of a registered dentist in a hospital or dental school approved for the purposes of this sub-section by the Governor in Council.

Amendment of Ordinances Nos. 6 of 1887, s. 4 (5), 8 of 1921, s. 21 (1), 7 of 1935, s. 3 (4) (d) and 8 of 1937, ss. 2 (xi) (c) and 20 (1) (a).

28.—(1) Sub-section (5) of section 4 of the Jury Ordinance, 1887, is amended by the substitution of the words "duly registered as dentists under the Registration of Dentists Ordinance, 1939," for the words "duly registered as dental surgeons under the Dentistry Ordinance, 1914".

(2) Sub-section (1) of section 21 of the Stamp Ordinance, 1921, is amended by the substitution of the words "registered dentist" for the words "dentist (whether registered as a dental surgeon or an exempted person)".

(3) Paragraph (d) of sub-section (4) of section 3 of the Urban Council Ordinance, 1935, is amended by the substitution of the words "Registration of Dentists Ordinance, 1939," for the words "Dentistry Ordinance, 1914,".

(4) Paragraph (c) of sub-section (xi) of section 2 of the Pharmacy and Poisons Ordinance, 1937, is amended by the substitution of the words "dentist duly registered under the Registration of Dentists Ordinance, 1939," for the words "dental surgeon, registered or exempted from registration under the Dentistry Ordinance, 1914," and paragraph (a) of sub-section (1) of section 20 of the said Ordinance is amended by the substitution of the word "dentist" for "dental surgeon".

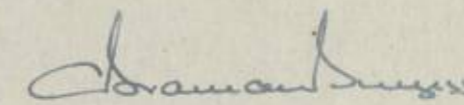
29. The Dentistry Ordinance, 1914, the Dentistry Amendment Ordinance, 1928, sub-section (2) of section 19 of the Medical Registration Ordinance, 1935, and the Dentistry Amendment Ordinance, 1938, are repealed.

Repeal of Ordinances Nos. 16 of 1914, 9 of 1928, 10 of 1938 and of s. 19 (2) of Ordinance No. 41 of 1935.

30. This Ordinance shall come into force on such date as the Governor by Proclamation shall appoint.

Commencement.

Passed the Legislative Council of Hong Kong, this 7th day of March, 1940.


Deputy Clerk of Councils.

HONG KONG.

No. 2 of 1940.

I assent.



[Signature]
Governor.

8th March, 1940.

An Ordinance to amend the Waterworks Ordinance, 1938.

[8th March, 1940.]

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 Waterworks Short title.
Amendment Ordinance, 1940.

2. Paragraph (a) of section 5 of the Waterworks Ordinance, 1938, is amended by the repeal of the words "annually, the amount due" in the sixth and seventh lines thereof. Amendment of Ordinance No. 20 of 1938, s. 5 (a).

3. This Ordinance shall be deemed to have come into force on the first day of January, 1940, and the Ordinance it amends shall be construed accordingly. Commencement.

Passed the Legislative Council of Hong Kong, this 7th day of March, 1940.

[Signature]
Deputy Clerk of Councils.

HONG KONG.

No. 3 of 1940.

I assent.



J. C. B. Hutchins
Governor.

15th March, 1940.

An Ordinance to amend the Incitement to Disaffection Ordinance, 1939.

[15th March, 1940.]

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 Incitement to Disaffection Amendment Ordinance, 1940. Short title.

2.—(1) Sub-section (2) of section 3 of the Incitement to Disaffection Ordinance, 1939, is amended— Amendment of Ordinance No. 9 of 1939, s. 3.

(a) by the substitution of the words “judge of the Supreme Court” for the word “magistrate” in the first line thereof;

(b) by the insertion of the words “of a rank not lower than that of inspector” after the words “police officer” in the sixth line thereof;

(c) by the insertion of the words “together with any other persons named in the warrant and any other police officers” after the words “the warrant” in the seventh line thereof;

(d) by the insertion of the words “at any time within one month from the date of the warrant” after the word “place” in the eighth line thereof;

(e) by the deletion of the words “with such assistance as may be necessary, and” after the word “place” in the eighth line thereof;

(f) by the addition of the following provisos at the end thereof—

: Provided that—

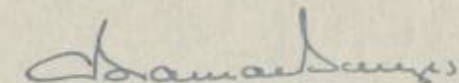
(a) a search warrant shall only be issued in respect of an offence suspected to have been committed within the three months prior to the laying of the information thereof; and

(b) if a search warrant under this Ordinance has been executed on any premises, it shall be the duty of the police officer who has conducted or directed the search to notify the occupier that the search has taken place, and to supply him on request with a list of any documents or other objects which have been removed from the premises, and where any documents have been removed from any other person, to supply that person with a list of such documents.

(2) Section 3 is amended by the addition of the following sub-section at the end thereof—

(4) Anything seized under this section may be retained for a period not exceeding one month, or if within that period proceedings are commenced for an offence under this Ordinance until the conclusion of those proceedings, and subject as aforesaid, and to the provisions of this Ordinance conferring powers on courts dealing with offences, section 43 of the Magistrates Ordinance, 1932, (which makes provision with respect to the disposal of property in the possession of the police) shall apply to property which has come into the possession of the police under this section as it applies to property which has come into the possession of the police in the circumstances mentioned in that section.

Passed the Legislative Council of Hong Kong, this
14th day of March, 1940.



Deputy Clerk of Councils.



HONG KONG.

No. 4 of 1940.

I assent.



J. A. L. ...
Governor.

15th March, 1940.

An Ordinance to amend the Merchant Shipping Ordinance, 1899.

[15th March, 1940.]

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 Merchant Shipping Amendment Ordinance, 1940. Short title.

2. Sub-section (6) of section 22 of the Merchant Shipping Ordinance, 1899, is amended:— Amendments of Ordinance No. 10 of 1899, s. 22 (6).

(a) by the repeal of the words "shall be liable to a fine not exceeding two hundred and fifty dollars" in the fourteenth and fifteenth lines thereof and by the substitution therefor of the words "shall be liable on summary conviction to a fine not exceeding two thousand five hundred dollars and to imprisonment for any term not exceeding six months".

(b) by the addition of the following paragraph at the end thereof:—

If the intended voyage is to any port in China which has not been opened at any time to foreign trade the Harbour Master may, at his absolute discretion, refuse to furnish a port clearance.

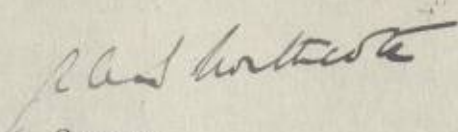
Passed the Legislative Council of Hong Kong, this 14th day of March, 1940.

Chamanbun...
Deputy Clerk of Councils.

HONG KONG.

No. 5 of 1940.

I assent.


Governor.

15th March, 1940.

An Ordinance to regulate the closing hours of retail shops.

[15th March, 1940.]

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 Shops (Hours of Closing) Ordinance, 1940. Short title.

2. In this Ordinance—

“shop” includes any premises where any retail trade or business is carried on, but does not include clubs, hotels, public houses, restaurants, eating houses, tea-rooms or premises open for the sale only of medicines, aerated waters, sweets, chocolates or other sugar confectionery or ice cream, tobacco or smokers requisites;

Interpretation.

cf. 2 Geo. 5, c. 5, s. 19, and 18 and 19 Geo. 5, c. 55, ss. 2 and 3.

“retail trade or business” includes the business of a barber or hairdresser, but does not include the sale of petrol or newspapers or the sale or distribution of milk, or the sale of programmes or refreshments at theatres and places of amusement.

3. Every shop shall, save as otherwise provided in this Ordinance, be closed for the serving of customers not later than eight o'clock in the evening on any day of the week.

Closing hours.

cf. 2 Geo. 5, c. 5, s. 4 (1).

4. It shall not be lawful to carry on in any place not being a shop retail trade or business at any time when it would be unlawful to keep a shop open for the purposes of such retail trade or business, and, if any person carries on any trade or business in contravention of this section, this Ordinance shall apply as if he were the occupier of a shop and the shop were being kept open in contravention of this Ordinance.

Provisions as to trading elsewhere than in shops.

cf. 2 Geo. 5, c. 5, s. 9.

5. The Governor may by order, signified by notification in the Gazette under the hand of the Colonial Secretary, suspend the operation of the provisions of this Ordinance in connexion with the Chinese New Year or any other special occasion.

Power to suspend operation of Ordinance on special occasions.

cf. 18 and 19 Geo. 5, c. 55, s. 7.



6.—(1) In the case of any contravention of, or failure to comply with, the provisions of this Ordinance, the occupier of the shop shall be guilty of an offence and liable on summary conviction to a fine not exceeding (a) in the case of a first offence, fifty dollars, (b) in the case of a second or subsequent offence, five hundred dollars.

Offences.
cf. 2 Geo. 5,
c. 3, s. 1 (4).

(2) Where the offence, for which the occupier of a shop is liable under this Ordinance, has, in fact, been committed by some manager, agent, servant or other person, the manager, agent, servant or other person shall be liable to the like penalty as if he were the occupier.

2 Geo. 5,
c. 3, s. 14
(2).

Passed the Legislative Council of Hong Kong, this 14th day of March, 1940.

A handwritten signature in cursive script, appearing to read "C. A. M. S. S.", is written in dark ink.

Deputy Clerk of Councils.



HONG KONG.

No. 6 OF 1940.

I assent.

James Hutchins
Governor.

15th March, 1940.

An Ordinance to provide for the establishment and regulation of the Hong Kong Corps of Air Raid Wardens.

[15th March, 1940.]

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 Hong Kong Corps of Air Raid Wardens Ordinance, 1940. Short title.

2. In this Ordinance—

(a) "Director of Air Raid Precautions" means the Officer who shall for the time being hold the office of Director of Air Raid Precautions. Interpretation.

(b) "Deputy Director of Air Raid Precautions" means the Officer who shall for the time being hold the Office of Deputy Director of Air Raid Precautions.

(c) "officers" means the Chief Air Raid Warden of Hong Kong and the Chief Air Raid Warden of Kowloon, New Kowloon, and the New Territories, the Deputy Chief Wardens, the Head Wardens, the Divisional Wardens and the Deputy Divisional Wardens.

(d) "subordinate officers" means all District Wardens, Deputy District Wardens, Senior Wardens who are duly registered as such in the Corps Records.

(e) "members" includes officers, subordinate officers, Air Raid Wardens, House Wardens and Honorary Air Raid Wardens.

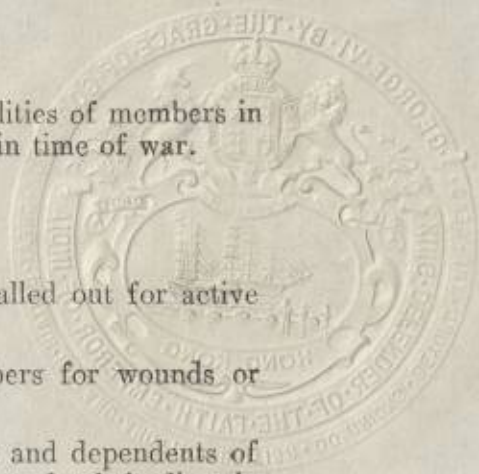
(f) "Corps" means the Hong Kong Corps of Air Raid Wardens.

(g) "Corps Equipment" includes all uniform clothing, protective clothing, boots, accoutrements, badges, demonstration models, respirators, tools, gear and other effects of any kind supplied by the Government and issued to a member of the Hong Kong Corps of Air Raid Wardens.

3. It shall be lawful for the Governor in Council to make regulations in respect of the following matters— Regulations.

(a) the conditions of admission as members or Honorary Members to the Corps.

- (b) uniform and equipment.
- (c) training.
- (d) duties, obligations and responsibilities of members in time of peace, in time of emergency and in time of war.
- (e) numerical strength of the Corps.
- (f) pay.
- (g) conditions of resignation when called out for active service.
- (h) gratuities and pensions to members for wounds or injuries received whilst on duty.
- (i) gratuities and pensions to widows and dependents of members who are killed on duty, or whose death is directly traceable to wounds or injuries received or exposure or illness contracted whilst on duty.
- (j) the general government, discipline and good order of the Corps.
- (k) such other things as may be necessary or desirable for the carrying into effect of the provisions of this Ordinance.



Constitution.

4. The Corps shall consist of a Director of Air Raid Precautions, and such members as the Governor in Council may from time to time direct.

Administration.

5. The Director of Air Raid Precautions, subject to the control of the Governor and the provisions of this Ordinance, shall be charged with the direction and administration of the Corps.

Enrolment.

6. The Director of Air Raid Precautions may enrol in the Corps such persons who qualify for enrolment in accordance with the regulations for the time being in force and who offer their services for such duties, either in general for the public interests or in particular for approved private interests, as may be allotted to them by Officers of the Corps, and every person so enrolled shall become a member of the Corps and subject to the provisions of this Ordinance provided that he or she signs the following declaration—

“I have read or had explained to me the Hong Kong Corps of Air Raid Wardens Ordinance 1940 and I agree to carry out such duties, general or particular, that may be allotted to me by duly authorized Officers of the Corps.”

Appointment, promotion and dismissal.

7.—(1) The Chief Air Raid Wardens shall be appointed by the Governor and they may be dismissed only by the Governor.

(2) All other Officers, Subordinate Officers and Wardens may be appointed, promoted, reduced or dismissed by the Director of Air Raid Precautions.

(3) Any of the powers conferred on the Director of Air Raid Precautions by this Ordinance may be exercised by any Officers deputed for that purpose by the Director of Air Raid Precautions.

Equipment to be supplied.

8. Every member of the Corps shall be supplied with such uniform and equipment as may be prescribed by the Director of Air Raid Precautions.

9.—(1) All Corps equipment shall be and remain the property of the Government.

Equipment to remain property of the Government.

(2) All Corps equipment shall, when required by the Director of Air Raid Precautions, be produced or delivered up as directed by him.

(3) On the death, resignation or discharge of any member of the Corps the person or persons into whose hands the Corps equipment of the deceased shall come shall forthwith return the same to the Director of Air Raid Precautions.

10.—(1) If any member of the Corps wilfully makes away with, sells, pawns, or wilfully damages, destroys or negligently loses or unlawfully refuses or neglects to produce or deliver up any Corps equipment issued to him the value thereof shall be recoverable from him summarily before a magistrate by the Director of Air Raid Precautions or his representative.

Equipment not to be wrongfully disposed of.

(2) If any person knowingly buys or takes in exchange or in pawn from any member of the Corps, or any person acting on his behalf, or solicits or entices any member of the Corps to sell or pawn, or has in his possession without lawful authority or excuse any Corps equipment, such persons shall upon summary conviction be liable to a fine not exceeding two hundred and fifty dollars and imprisonment for any term not exceeding six months.

11.—(1) In case of apprehended or actual attack on the Colony the Governor by proclamation may call out for active service all or any members of the Corps.

Calling out for active service.

(2) Every member of the Corps so called out shall attend at such place and perform such duties as the Director of Air Raid Precautions or his Officers shall direct.

(3) The period of such active service shall end only by proclamation of the Governor.

12. Every member of the Corps when called out on service shall be entitled to such pay and allowances, if any, as may be laid down by Regulations.

Pay when called out.

13. All members of the Corps who shall have received wounds or injuries when on active service, whether employed on general public duties, or as House Wardens on particular private duties, and the widows and families or dependents of all such members who have been killed or have died of wounds or injuries received during such active service, or have died from illness directly traceable to fatigue or exposure incident to such active service shall be eligible for such pensions or gratuities as the Governor in Council shall fix.

Pensions or gratuities to members disabled and widows and families of those killed on active service.

14. It shall be lawful for the Director of Air Raid Precautions—

Powers of the Director of Air Raid Precautions.

(i) to make departmental orders as he may think fit for the carrying out of the routine of the Corps and for regulating the internal economy thereof;

(ii) to issue such orders as he may deem necessary to make the Corps efficient and to maintain it as such and to see that such orders are duly obeyed;

(iii) to take full charge of the Corps when it is called out for active service and to issue all necessary orders for

the duties it will be called upon to perform and to take such steps as may be necessary to ensure that such duties are duly executed.

Duties of members of the Corps.

15. It shall be the duty of every member of the Corps—
- (i) to obey all lawful orders of his superior officer;
 - (ii) to attend such practices and to undergo such training as may be specified in orders issued by the Director of Air Raid Precautions;
 - (iii) to keep his equipment in good and serviceable order;
 - (iv) upon ceasing to be a member of the Corps to return forthwith his equipment in good order to the Director of Air Raid Precautions.

Penalty for refusal or neglect of duty when not on active service.

16. Any member of the Corps who, when the Corps is not on active service, wilfully refuses or neglects without reasonable excuse to carry out any duties assigned to him by a superior Officer shall be liable to summary dismissal.

Penalty for refusal or neglect of duty when on active service.

17. Any member of the Corps, who, when on active service wilfully refuses or neglects without reasonable excuse to carry out any duties assigned to him by a superior officer shall be liable on summary conviction to a fine not exceeding two hundred and fifty dollars and imprisonment for a term not exceeding six months.

Disciplinary penalties.

18.—(1) The Director of Air Raid Precautions is empowered to take the following disciplinary action—

- (a) reduction in rank or class;
- (b) a fine not exceeding ten dollars;
- (c) loss of pay during any period of absence from duty;
- (d) dismissal (except in the case of Chief Air Raid Wardens);
- (e) deprivation of A.R.P. badge.

(2) Chief Air Raid Wardens and Divisional Wardens are empowered to take the following disciplinary action—

- (a) caution;
- (b) reprimand;

(3) The offences to which the preceding sub-sections refer are as follows—

- (a) drunkenness on duty;
- (b) insubordination or disrespect to a superior officer;
- (c) soliciting or accepting any gratuity;
- (d) infringement of any regulation or departmental order made under this Ordinance;
- (e) refusal to obey lawful orders or carry out duties assigned.

Power to grant rewards, badges and medals for extraordinary services.

19. It shall be lawful for the Governor upon report made by the Director of Air Raid Precautions to grant rewards, distinctive badges or medals to members of the Corps who may distinguish themselves, by extraordinary diligence, zeal, gallantry or exertion in the execution of their duties.

20. Except when called out for active service a member may cease to be a member of the Corps by—

Cessation of membership of the Corps.

- (a) resignation by letter at any time;
- (b) dismissal by the Governor or the Director of Air Raid Precautions.

21. Any person, who, not being a member of the Corps, puts on the uniform, or wears the badge, or takes the name, designation, or character of a member of the Corps for the purpose of doing or procuring to be done any act which a member of the Corps would be entitled to do or procure to be done of his own authority, or for any other unlawful purpose, shall upon summary conviction be liable to a fine not exceeding two hundred and fifty dollars and to imprisonment for any term not exceeding six months.

Impersonation.

22. No person shall without lawful authority or excuse have in his possession any uniform, badge, identification document, equipment or other thing issued or usually issued to any member of the Corps, or that so closely resembles them as to mislead the public, and no person shall, without lawful authority or excuse make, copy or sell any such things as may lead to the belief that they are authorized issues by the Director of Air Raid Precautions, under penalty upon summary conviction of a fine not exceeding two hundred and fifty dollars and imprisonment for any term not exceeding six months.

Unauthorized possession manufacture or sale of uniform, badges, etc.

23. All members, except Honorary Wardens shall have authority when on active service or when called up for practice, to enter into premises in pursuance of their duties, to stop or direct traffic, to enforce the observance of Lighting Restrictions previously notified, and to exercise generally all such powers as are conferred on them under the Colonial Defence Regulations, and they shall have the same protection and immunities in this respect as a member of the Regular Police Force.

Powers of members when on active service.

24. The responsibility and powers vested by this Ordinance in the Director of Air Raid Precautions may be assumed and exercised, wholly or in part, by the Deputy Director of Air Raid Precautions on instructions in writing from the Director of Air Raid Precautions and with the assent of the Governor.

Powers of Deputy Director of Air Raid Precautions.

Passed the Legislative Council of Hong Kong, this 14th day of March, 1940.

Deputy Clerk of Councils.

HONG KONG.

No. 7 of 1940.

I assent.



J. A. B. K. H. S. T.
Governor.

15th March, 1940.

An Ordinance to make provision for the Administration of Estates by Consular Officers.

[15th March, 1940.]

WHEREAS it is expedient that effect should be given in the Colony to the provisions of certain Treaties of Commerce and Navigation mentioned in the Schedule hereto:—

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 Administration of Estates by Consular Officers Ordinance, 1940. Short title.

2. Whenever any subject or citizen of any State mentioned in the first column of the Schedule hereto— Administra-
tion of
estates by
Consular
Officers.

(a) dies within the Colony, or

(b) dies outside the Colony, leaving property within the Colony,

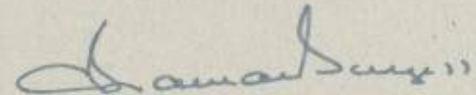
and no person is present in the Colony at the time of his death who is rightfully entitled to administer the estate of such deceased person, the Consul, Vice-Consul, or Consular Agent of such State within the Colony may take possession and have the custody of the property of such deceased person, and may apply the same in payment of his debts and funeral expenses, and may retain the surplus for the benefit of the persons entitled thereto; but such Consul, Vice-Consul, or Consular Agent shall immediately apply for, and shall be entitled to obtain from the Court, Letters of Administration of the property of such deceased person, limited in such manner and for such time as to the Court shall seem fit.

3. It shall be lawful for the Governor by order notified in the Gazette under the hand of the Colonial Secretary to vary the Schedule— Variation of
Schedule.

(a) by deleting therefrom any State when the provision of the Treaty with that State mentioned in the Schedule shall have ceased to have effect;

(b) by adding thereto any State with whom His Majesty shall make a Treaty of Commerce and Navigation containing provision similar to any of the provisions mentioned in the Schedule.

Passed the Legislative Council of Hong Kong, this 14th day of March, 1940.


Deputy Clerk of Councils.



SCHEDULE.

Name of State.	Title of Treaty.	Date of Treaty.	Provision.
Estonia.	Treaty of Commerce and Navigation between the United Kingdom and Estonia.	18.1.26.	Article 22.
Finland.	Treaty of Commerce and Navigation between the United Kingdom and Finland.	14.12.23.	Article 19 (3rd para.).
Greece.	Treaty of Commerce and Navigation between the United Kingdom and Greece.	16.7.26.	Article 23.
Hungary.	Treaty of Commerce and Navigation between the United Kingdom and Hungary.	23.7.26.	Article 14.
Japan.	Treaty of Commerce and Navigation between the United Kingdom and Japan.	3.4.11.	Article 5.
Thailand.	Treaty of Commerce and Navigation between the United Kingdom and Siam (Thailand).	23.11.37.	Article 19.
Turkey.	Treaty of Commerce and Navigation between the United Kingdom and Turkey.	1.3.30.	Article 28.
Yugoslavia.	Treaty of Commerce and Navigation between the United Kingdom and the Kingdom of the Serbs, Croats and Slovenes.	12.5.27.	Article 24.

HONG KONG.

No. 8 of 1940.

I assent.



J. A. S. ...
Governor.

15th March, 1940.

An Ordinance to make such special provision with respect to trade marks as is expedient to meet any emergency which may arise as a result of war.

[15th March, 1940.]

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 Trade Marks (Emergency) Ordinance, 1940. Short title.

2.—(1) In this Ordinance, unless the context otherwise requires—
“enemy” and “enemy subject” have the meanings respectively assigned to them by the Trading with the Enemy Ordinance, 1914; Interpretation.
2 & 3 Geo. 6,
c. 107,
s. 10 (1).
Ordinance
No. 25 of
1914.

“the Registrar” means the Registrar of Trade Marks within the meaning of the Trade Marks Ordinance, 1909. Ordinance
No. 40 of
1909.

(2) References in this Ordinance to any enactment shall be construed as references to that enactment as amended by any subsequent enactment, including, except where the context otherwise requires, this Ordinance.

3.—(1) Where it is made to appear to the Registrar that it is difficult or impracticable to describe or refer to an article or substance without the use of a trade mark registered in respect of that article or substance, being a trade mark which is, or has at any time since the beginning of the third day of September nineteen hundred and thirty-nine been, registered in the name of an enemy or an enemy subject, whether alone or jointly with another, or which is, or has at any such time as aforesaid been, in the proprietorship of an enemy or an enemy subject, whether alone or jointly with another, the following provisions of this section shall have effect. Power of
Registrar
to suspend
trade mark
rights of an
enemy or an
enemy
subject.
2 & 3 Geo. 6,
c. 107, s. 3.

(2) On the application of any person who proposes to deal in the course of trade in Hong Kong with an article or substance which is or is intended to be the same as, or equivalent to or a substitute for, the article or substance in respect of which the trade mark is registered, the Registrar may order that the right to the use of the trade mark given by the registration thereof shall be suspended—

(a) so far as regards use thereof by the applicant and any such use thereof by the other person in relation to goods connected in the course of trade with the applicant as would not be an infringement of the said right if the applicant were the proprietor of the trade mark;

(b) to such extent and for such period as the Registrar may consider necessary for enabling the applicant to render well-known and established some description of, or means of reference to, the article or substance with which he proposes to deal in the course of trade, being a description or means of reference which does not involve the use of the trade mark.

(3) Where an order has been made under the last foregoing sub-section, no action for passing off shall lie on the part of any person interested in the trade mark in respect of any use thereof which, by virtue of the order, is not an infringement of the right to the use thereof given by the registration thereof.

(4) An order under this section may be varied or revoked by a subsequent order made by the Registrar.

4.—(1) Notwithstanding the provisions of section 4 of the Trading with the Enemy Ordinance, 1914, or any rule of law relating to intercourse or dealings with or for the benefit of enemies, it shall be lawful, subject to the provisions of this Ordinance, for a trade mark to be registered under the Trade Marks Ordinance, 1909, on the application of an enemy:

Provided that, where such a registration as aforesaid is effected on the application of an enemy—

(i) the person registered shall not be entitled to require the issue of the certificate of registration; and

(ii) the rights conferred by the registration shall be subject to any relevant provisions of any enactment for the time being in force relating to the property of an enemy.

(2) The Registrar may, in any case in which in his opinion it is desirable in the public interest so to do, refuse to take, or suspend the taking of, any proceedings on or in relation to an application of an enemy for the registration of a trade mark.

(3) No act requisite for enabling such a registration as aforesaid to be effected, in so far as it is done for that purpose and for that purpose only, shall, whether the registration is effected or not, be treated as a contravention of any of the provisions of section 4 of the Trading with the Enemy Ordinance, 1914, or of any rule of law relating to intercourse or dealings with or for the benefit of enemies.

Effect of war on registration of trade marks. 2 & 3 Geo. 6, c. 107, s. 4.

Ordinance No. 40 of 1909.

(4) References in this section to an application of an enemy shall be construed as including references to an application of an enemy jointly with any other person, whether an enemy or not.

5.—(1) The Registrar may, subject to such conditions, if any, as he thinks fit to impose, extend the time limited by or under the Trade Marks Ordinance, 1909, or this Act, for doing any act, where he is satisfied—

Power of Registrar to extend time limits having regard to war circumstances.

2 & 3 Geo. 6, c. 107, s. 6.

(a) that the doing of the act within the time so limited was prevented by a person's being on active service or by any other circumstances arising from the existence of a state of war which, in the opinion of the Registrar, justify an extension of the time so limited; or

(b) that, by reason of circumstances arising from the existence of a state of war, the doing of the act within the time so limited would have been or would be injurious to the rights or interests of the person by or on whose behalf the act is or was to be done or to the public interest.

(2) An extension under this section of the time for doing any act—

(a) may be for any period that the Registrar thinks fit, notwithstanding that by or under any Ordinance power is conferred to extend the time for doing that act for a specified period only; and

(b) may be granted notwithstanding that that time expired before any application or request for extension was made, or that, by reason of that act not having been done within that time, the relevant application, registration or proceeding has ceased or expired, or become void or invalid, or been treated as abandoned.

(3) The powers conferred by this section may be exercised notwithstanding that the exercise thereof benefits, whether directly or indirectly, an enemy or an enemy subject.

6.—(1) For the purposes of this Ordinance—

(a) the fact that the address of any person registered in the register of trade marks kept under the Trade Marks Ordinance, 1909, is an address in enemy territory within the meaning of the Trading with the Enemy Ordinance, 1914, shall be *prima facie* evidence that that person is resident in that territory; and

Evidence relating to nationality and place of residence, and decisions relating to enemy character.

2 & 3 Geo. 6, c. 107, s. 7.

(b) the fact that in any such register a person is stated to be of a particular nationality shall be *prima facie* evidence that he is of that nationality.

(2) No order made by the Registrar under this Ordinance shall be held to be invalid by reason only that any decision made for the purposes of the order that a particular person is an enemy or an enemy subject is wrong.

7. Before deciding as to the making of any order under this Ordinance, the Registrar shall, unless having regard to the circumstances he considers it inexpedient or impossible so to do, give to any person who appears to the Registrar to be interested such opportunity of being heard as appears to him to be just.

Persons to be heard before making of orders.

2 & 3 Geo. 6, c. 107, s. 8.

Rules and
fees.
2 & 3 Geo. 6,
c. 107, s. 9.

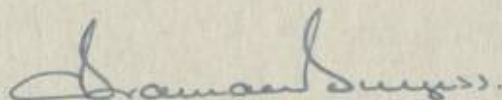
8.—(1) The Chief Justice with the approval of the Legislative Council may make rules for regulating the practice under this Ordinance, including rules providing for oppositions and rules regulating the service of documents and the time within which any act authorized or required by this Ordinance or the rules may or must be done.

(2) There shall be paid in respect of applications and other matters under this Ordinance such fees as may be prescribed by the Chief Justice with the concurrence of the Legislative Council.

Commence-
ment.
2 & 3 Geo. 6,
c. 107,
s. 11 (2).

9. This Ordinance shall be deemed to have come into operation on the third day of September nineteen hundred and thirty-nine.

Passed the Legislative Council of Hong Kong, this
14th day of March, 1940.



Deputy Clerk of Councils.

HONG KONG.

No. 9 OF 1940.

I assent.



J. A. S. K. H. S.

Governor.

5th April, 1940.

An Ordinance to amend the Telephone Ordinance, 1925, as amended by the Telephone Amendment Ordinance, 1930, and the Telephone Amendment Ordinance, 1933.

[5th April, 1940.]

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 Telephone Amendment Ordinance, 1940. Short title.

2. Section 5 of the Telephone Ordinance, 1925, is repealed and the following section is substituted therefor— Substitution for section 5 of Ordinance No. 9 of 1925.

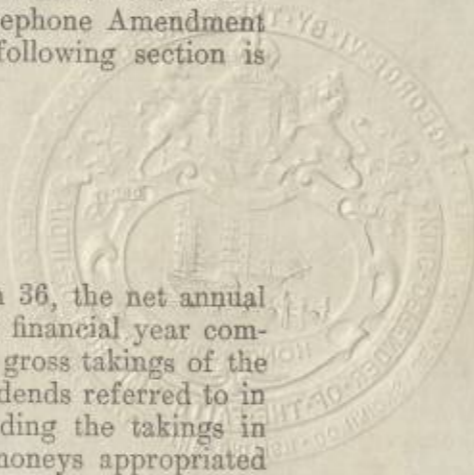
5. The Directors of the Company shall not be less than six and not more than ten in number and all the Directors shall be *bonâ fide* resident in Hong Kong. Number and residence of Directors.

3. Section 7 of the Telephone Ordinance, 1925, is repealed and the following section is substituted therefor— Substitution for section 7 of Ordinance No. 9 of 1925.

7. The Company shall pay to the Accountant General, as a Royalty for the concession, on the 1st day of March in every year during the remainder of the term of the concession, commencing the 1st day of March, 1940, the sum of \$4 in respect of each direct exchange line telephone which has been used and paid for during the whole preceding financial year of the Company by a subscriber. In cases where direct exchange line telephones have been used and paid for by subscribers for less than twelve months prior to the last day of such financial year, the amount of Royalty to be paid by the Company shall be \$1 for each direct exchange line telephone for each period of three months or less during which such telephone has been used and paid for by a subscriber: Provided that the payment to be made on the 1st day of March, 1940, will be solely in respect of the second six months of the preceding financial year of the Company. Payment to Government.

Substitution for section 35 of Ordinance No. 9 of 1925 as amended by section 7 of Ordinance No. 9 of 1930, and section 2 of Ordinance No. 27 of 1935.

4. Section 35 of the Telephone Ordinance, 1925, as amended by section 7 of the Telephone Amendment Ordinance, 1930, and by section 2 of the Telephone Amendment Ordinance, 1933, is repealed and the following section is substituted therefor—



Computation of net profits.

35.—(1) For the purposes of section 36, the net annual profits of the Company in respect of any financial year commencing with the year 1939 shall be the gross takings of the Company, excluding the interest and dividends referred to in sub-section (3) of this section but including the takings in respect of trunk line services, less the moneys appropriated for the following purposes, namely—

- (i) interest on moneys borrowed by the Company including interest on Debentures;
- (ii) the sums payable yearly to the Accountant-General in accordance with section (7);
- (iii) working costs;
- (iv) reasonable management expenses;
- (v) superannuation and provident funds;
- (vi) maintenance and removal of works, apparatus and other property of the Company;
- (vii) depreciation of buildings, plant and other property of the Company, including investments and other assets of whatever nature with the exception of investments made on account of the Capital Reserve Fund;
- (viii) the appropriation of authorized sums to Reserve.

(2)—(a) The amount to be written off or provided annually for depreciation shall be—

- (i) in the case of land and buildings, a sum or sums to be fixed by an architect approved by the Director and the Company;
- (ii) in the case of plant and equipment other than buildings, a sum not exceeding ten per cent. of the cost of such plant and equipment;
- (iii) in the case of investments, a sum not exceeding the amount by which the book value of the investments exceeds their current market value at the date of making up the accounts.

(b) In the event of investments, other than investments held on account of the Capital Reserve Fund, being sold or otherwise disposed of for a sum, whether received in cash or otherwise, in excess of the current book value of such investments, such excess shall be included in the gross takings of the Company for the purposes of sub-section (1).

(3) The Company shall be entitled to make annual appropriations to Capital Reserve. Commencing with the year 1939 no such annual appropriation shall exceed the sum of ninety-two thousand five hundred and seventy-seven dollars plus the total amount of interest and dividends received during the year from the investments made on account of this Reserve.

(4) The cost of making provision for the maintenance of an efficient service shall not include any sums expended on works where such expenditure is in the nature of capital outlay.

(5) Notwithstanding that in any year or other accounting period no allowance or a less allowance than that hereinbefore authorized shall have been made for depreciation or appropriation to Reserve, it shall not be lawful for the Company to make in any succeeding year or accounting period any greater allowance for those purposes than that hereinbefore authorized.

5. Section 36 of the Telephone Ordinance, 1925, is repealed and the following section is substituted therefor—

Substitution for section 36 of Ordinance No. 9 of 1925.

36.—(1) If after deducting the amount (if any) payable to the Government, by way of taxation on profits, from the net annual profits of the Company, as defined in section 35, and commencing with the financial year 1939, there shall remain a sum greater than 12 per cent. on the paid-up capital for the time being of the Company then there shall be paid to the Accountant-General, as an additional royalty to the royalty laid down in section 7, one half of the surplus of such remaining sum over and above the amount of such 12 per cent.

Payment to Government of additional royalty.

(2) Any dispute which may arise under section 35 as to the amount of the net annual profits of the Company shall be referred to arbitration under the provisions of section 49.

6. Section 37 of the Telephone Ordinance, 1925, as amended by section 8 of the Telephone Amendment Ordinance, 1930, is further amended by the repeal of the third paragraph thereof.

Amendment of section 37 of Ordinance No. 9 of 1925, as amended by section 8 of Ordinance No. 9 of 1930.

7. Section 38 of the Telephone Ordinance, 1925, is repealed and the following section is substituted therefor—

Substitution for section 38 of Ordinance No. 9 of 1925.

38. The Company shall provide the Government, free of charge, with a telephone service for Government purposes up to 500 lines and shall arrange for the necessary branch exchange to be constructed in a place approved by the Government as sufficiently protected from possible air raid damage. Any telephones or connexions in excess of 500 lines will be paid for by the Government at standard rates of subscription in accordance with the provisions of section 34 less a discount of twenty-five per cent.

Provision for a service for Government purposes.

8. Section 39 of the Telephone Ordinance, 1925, is repealed and the following section is substituted therefor—

Substitution for section 39 of Ordinance No. 9 of 1925.

39.—(1) The Company shall keep true and particular accounts of and concerning all matters connected with the concession and shall, on the first day of March in every year deliver to the Accountant-General a statement in writing showing the number of subscribers connected with each exchange and the number of persons who have requested

Company to keep and allow inspection of accounts.

to be supplied with lines during the Company's preceding financial year and also the names and addresses of all persons who have requested to be supplied with lines during the second six months thereof and with whose request the Company has not complied. The Company shall permit the Accountant-General to inspect and take copies of or extracts from the books of account, receipts, papers and documents in the possession or under the control of the Company and relating wholly or in part to the subject matter of this Ordinance.

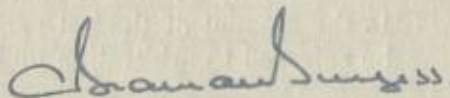
(2) The Company shall cause all its books of account to be kept in Hong Kong at its registered office.

(3) The annual statement of accounts of the undertaking shall be examined and audited by such person or persons as the Governor in Council may approve in this behalf.

Saving of
rights of
Crown and
certain
other rights.

9. Nothing in this Ordinance shall affect or be deemed to affect the rights of His Majesty the King, His Heirs or Successors, or of any bodies politic or corporate or other persons except such as are mentioned in this Ordinance and those claiming by, from or under them.

Passed the Legislative Council of Hong Kong, this
5th day of April, 1940.



Deputy Clerk of Councils.

HONG KONG.

No. 10 of 1940.

I assent.



J. G. Hartman
Governor.

26th April, 1940.

An Ordinance to amend the Summary Offences Ordinance,
1932.

[26th April, 1940.]

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 Summary Offences Short title.
Amendment Ordinance, 1940.

2. Section 3 of the Summary Offences Ordinance, 1932, New
paragraph
3 (1A) for
Ordinance
No. 40 of
1932.
is amended by the insertion immediately after paragraph (1)
thereof of the following paragraph—

(1A) in or into a public place or vehicle or ferry or any
building to which the public have access, spits except into a
receptacle or channel for sewage, sullage or waste water;

Passed the Legislative Council of Hong Kong, this
25th day of April, 1940.

S. J. ...
Deputy Clerk of Councils.

HONG KONG.

No. 11 of 1940.

I assent.



P. A. S. Northcott
Governor.

26th April, 1940.

An Ordinance to amend the Interpretation Ordinance, 1911.

[26th April, 1940.]

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 Interpretation Amendment Ordinance, 1940. Short title.

2. Section 45 of the Interpretation Ordinance, 1911, is hereby repealed and replaced as follows:— Repeal and replacement of s. 45 of Ordinance No. 31 of 1911.

45. Where under any Ordinance the Governor is given power to make any appointment, give any directions, issue any order, authorize any thing or matter to be done, grant any exemption, remit any fee or penalty, or exercise any other power, it shall be sufficient if the exercise of such power by the Governor be signified under the hand of the Colonial Secretary or of the Principal Assistant Colonial Secretary: Signification of orders, etc., of the Governor.

Provided always that the foregoing provision shall not apply to the power of the Governor to make any rules, or issue any warrants or proclamations which shall be made or issued only under the hand of the Governor himself.

3. The following new section shall be inserted in the Interpretation Ordinance, 1911, to follow section 45 thereof:— Addition of new section to follow s. 45 of Ordinance No. 31 of 1911.

45A. When by any Ordinance the Governor is empowered to exercise any powers or perform any duties, he may, unless by law expressly prohibited from so doing, depute any person by name or the person for the time being holding the office Power of Governor to delegate authority.

designated by him to exercise such powers or perform such duties on his behalf, subject to such conditions, exceptions and qualifications as the Governor may prescribe, and thereupon or from the date specified by the Governor the person so deputed shall have and exercise such powers and perform such duties subject as aforesaid :

Provided that, subject to the provisions of any Royal Instructions relating to the appointment of a Deputy to the Governor, nothing herein contained shall authorize the Governor to depute any person to make rules, issue warrants or proclamations or to hear any appeal.

Passed the Legislative Council of Hong Kong, this 25th day of April, 1940.

Chaman Buxss
Deputy Clerk of Councils.



HONG KONG.

No. 12 of 1940.

I assent.



J. A. S. Matthews
Governor.

26th April, 1940.

An Ordinance to amend the Fire Investigation Ordinance,
1895.

[26th April, 1940.]

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 Fire Investiga- Short title.
tion Amendment Ordinance, 1940.

2. Section 2 of the Fire Investigation Ordinance, 1895, Amendment
of Ordinance
No. 8 of
1895, s. 2.
is amended by the repeal of the words "either personally or
by some officer of police of grade not lower than inspector"
and by the substitution therefor of the words "by the police
officer in charge of the district or by such police officer as
shall be deputed by the Superintendent in charge of the
Division".

3. Section 4 of the Fire Investigation Ordinance, 1895, Amendment
of Ordinance
No. 8 of
1895, s. 4.
is amended by the insertion of the words "or the police
officer in charge of the district or such police officer as shall
be deputed by the Superintendent in charge of the Division"
after the words "rank of inspector".

Passed the Legislative Council of Hong Kong, this
25th day of April, 1940.

Samuel Baynes

Deputy Clerk of Councils.

HONG KONG.

No. 13 of 1940.

I assent.



J. A. G. K. H. C. O. T. E.
Governor.

26th April, 1940.

An Ordinance to impose war taxes and to regulate the Collection thereof.

[26th April, 1940.]

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

CHAPTER I.

PRELIMINARY.

1. This Ordinance may be cited as the War Revenue Ordinance, 1940. Short title.

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

“active partner”, in relation to a partnership, means a partner who takes an active part in the control, management, or conduct of the trade or business of such partnership;

“agent”, in relation to a non-resident person or to a partnership in which any partner is a non-resident person, includes—

(a) the agent, attorney, factor, receiver, or manager in the Colony of such person or partnership, and

(b) any person in the Colony through whom such person or partnership is in receipt of any profits or income arising in or derived from the Colony;

“Assistant Commissioner” means an Assistant Commissioner of War Taxation appointed under this Ordinance;

“authorized representative” means an individual authorized in writing by any person to act on his behalf for the purposes of this Ordinance who is—

(a) in any case—

(i) an accountant approved by the Commissioner,

(ii) a solicitor, or counsel instructed by a solicitor,

(iii) an employee regularly employed by the person concerned, or

(iv) any other person approved by the Commissioner;

(b) in the case of an individual, a relative;

(c) in the case of a company, a director or the secretary;

(d) in the case of a partnership, a partner;

(e) in the case of a body of persons, a member;

“business” includes agricultural undertaking and poultry and pig rearing;

“Commissioner” includes the Commissioner of War Taxation appointed under this Ordinance, and the Deputy Commissioner, and an Assistant Commissioner specially authorized by the Commissioner either generally or for some specific purpose to act on behalf of the Commissioner;

“corporation” means any company which is either incorporated or registered under any enactment or charter in force in the Colony or elsewhere;

“Deputy Commissioner” means the Deputy Commissioner of War Taxation appointed under this Ordinance;

“Examiner” means an Examiner appointed under this Ordinance;

“executor” means any executor, administrator, or other person administering the estate of a deceased person, and includes a trustee acting under a trust created by the last will of the author of the trust;

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

“Ordinance” includes any Ordinance amending or substituted for the Ordinance referred to, and any rules, regulations, or by-laws under any of such Ordinances;

“owner,” in relation to land and/or improvements thereon, includes a person who holds such land and/or improvements subject to a ground rent or other annual charge;

“person” includes a company or body of persons;

“precedent partner” means the partner who, of the active partners resident in the Colony—

(a) is first named in the agreement of partnership; or

(b) if there is no agreement, is specified by name or initials singly or with precedence to the other partners in the usual name of the partnership; or

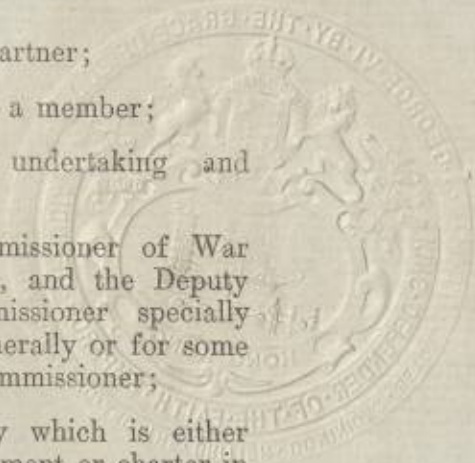
(c) is first named in any statutory statement of the names of the partners;

“prescribed” means prescribed by or in pursuance of this Ordinance;

“profits” means the net profits for any period calculated in accordance with the provisions of Chapter IV of this Ordinance;

“profits made from transactions in the Colony” means the whole profits except such portion thereof as is properly attributable to the transactions of an office situated outside the Colony;

“receiver” includes any receiver or liquidator, and any assignee, trustee, or other person having the possession or control of the property of any person by reason of insolvency or bankruptcy;



“tax” means any tax imposed by this Ordinance;

“trade” includes every trade and manufacture, and every adventure and concern in the nature of trade;

“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;

“United Kingdom” means the United Kingdom of Great Britain and Northern Ireland;

“Written-down value” means the residue of the cost to the owner thereof of any plant, machinery or fixtures after deducting a sum representing the total depreciation which has occurred in such plant, machinery or fixtures since the date of purchase by him;

“year of assessment” means the period of twelve months commencing on the first day of April, nineteen hundred and forty, and each subsequent period of twelve months commencing on the first day of April;

“year preceding a year of assessment” means the period of twelve months ending on the thirty-first day of March immediately prior to such year of assessment;

3.—(1) (a) There shall be a Board of War Taxation composed of the Financial Secretary and four other members appointed by the Governor, of whom not more than one shall be an official in the employment of the Government. A member so appointed shall hold office until he shall resign or be removed from office by the Governor.

Board of War Taxation.

(b) Three members of the Board of War Taxation shall form a quorum for the transaction of business and when the Financial Secretary is present he shall be the Chairman.

(c) All matters coming before the Board of War Taxation shall be decided by a majority of votes, and in the case of an equality of votes the Chairman or presiding member shall have a second or a casting vote.

(2) For the purposes of this Ordinance, the Governor may appoint a Commissioner, a Deputy Commissioner, Assistant Commissioners, and Examiners.

(3) An assistant Commissioner exercising or performing any power, duty, or function of the Commissioner under this Ordinance shall be deemed for all purposes to be authorized to exercise or perform the same until the contrary is proved.

(4) All powers conferred upon an Examiner by this Ordinance may be exercised by an Assistant Commissioner.

4.—(1) Except in the performance of his duties under this Ordinance, every person who has been appointed under or who is or has been employed in carrying out or in assisting any person to carry out the provisions of this Ordinance 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

Official secrecy.

person other than the person to whom such matter relates or his authorized representative, nor suffer or permit any person to have access to any records in the possession, custody or control of the Commissioner.

(2) Every person appointed under or employed in carrying out the provisions of this Ordinance, shall before acting under this Ordinance take and subscribe before a Justice of the Peace an oath of secrecy in the prescribed form.

(3) No person appointed under or employed in carrying out the provisions of this Ordinance shall be required to produce in any court any return, document, or assessment, or to divulge or communicate to any court any matter or thing coming under his notice in the performance of his duties under this Ordinance, except as may be necessary for the purpose of carrying into effect the provisions of this Ordinance.

(4) Notwithstanding anything contained in this section, the Commissioner or any officer of the War Taxation Department authorized by the Commissioner in that behalf may communicate any matter which comes to his knowledge, including a copy of any return, accounts or other document submitted to him in connexion with this Ordinance,—

(a) to the Assessor, to the Collector of Stamp Revenue, or to the Estate Duty Commissioner, or

(b) to the Income Tax Authority of any part of His Majesty's dominions or of any place under His Majesty's protection or suzerainty to such an extent as the Commissioner may deem necessary to enable the correct relief to be given from income tax in that part or place in respect of the payment of tax under this Ordinance.

(5) Notwithstanding anything contained in this section, the Commissioner may permit the Auditor or any officer of the Department of the Auditor duly authorized by him in that behalf to have such access to any records or documents as may be necessary for the performance of his official duties. The Auditor or any other authorized by him under this subsection shall be deemed to be a person employed in carrying out the provisions of this Ordinance for the purpose of subsection (2).

CHAPTER II.

PROPERTY TAX.

5. Property tax shall be charged on and borne by the owner of any land and/or buildings wherever situate in the Colony at the rate of five per cent. per annum on the rateable value of such land and/or buildings as assessed for rating purposes under the Rating Ordinance, 1901: Provided that where no assessment has been made under that Ordinance, the rateable value shall be determined by the Assessor: and provided also that in the case of the New Territories other than New Kowloon the rateable value for the purpose of property tax shall be taken at one-fourteenth of the value of the buildings as assessed under that Ordinance: Provided further that where the owner of the land is not the owner of the buildings thereon a separate assessment shall be made for the land and for the buildings.

Imposition of Property Tax.

Ordinance No. 6 of 1901.

6. Property tax shall be payable in the first place by the person, whether owner, agent or occupier, who pays the assessed rates in respect of the land and/or buildings taxed. Where such payment is made by any person other than the owner of the property then the amount so paid by way of property tax shall be a debt due from the owner and recoverable as such from any rent or other moneys due to him. Where such payment is made by any person other than the owner of the land and buildings then the amount so paid by way of Property Tax shall be a debt due from the person assessed under section 5.

Property Tax by whom payable.

7. A proportionate refund of property tax may be made whenever any land and/or buildings is proved to the satisfaction of the Commissioner to have been unoccupied during one or more entire months of any year of assessment.

Refund in case of unoccupied property.

CHAPTER III.

SALARIES TAX.

8. Salaries tax shall be charged at the rates provided for in section 12 and subject to the allowances provided for in section 11 on all income received from—

Imposition of Salaries Tax.

(a) any office or employment of profit held or exercised within the Colony; and

(b) any pension or annuity payable in respect of any such office or employment:

Provided that the following shall be exempt—

(i) the official emoluments of the Governor;

(ii) the official emoluments of consuls, vice-consuls and persons employed on the staff of any consulate, who are subjects or citizens of the States which they represent;

(iii) the income of any individual whose total income from the sources referred to in this Section does not exceed four thousand eight hundred dollars;

(iv) any income which is liable to Income Tax in the United Kingdom or in any other part of the British Empire.

9.—(1) Income from any office or employment includes—

Definition of income from employment.

(i) any wages, salary, leave pay, fee, pension, commission, bonus, gratuity, or perquisite, whether derived from the employer or others, except the value of any holiday warrant, passage, or other form of free conveyance granted by an employer to an employee, or any allowance for the purchase of any such conveyance in so far as it is expended for such purpose;

(ii) the rental value of any place of residence provided rent-free by the employer;

(iii) where a place of residence is provided by an employer at a rent less than the rental value, the excess of the rental value over such rent.

(2) The rental value of any place of residence shall be the rateable value arrived at in accordance with section 5: Provided that for the purposes of sub-section 1 (ii) and (iii), any excess of rental value over one-sixth of the income described in sub-section (1) (i) shall be disregarded.

Ascertainment of assessable income.

10. The assessable income chargeable to salaries tax in any year of assessment shall be the income of the recipient as defined in section 9 for the year preceding that year of assessment.

Allowances.

11.—(1) There shall be deducted from the assessable income chargeable to salaries tax of any individual before arriving at the net chargeable income—

- (a) an allowance of three thousand dollars;
- (b) an allowance of two thousand dollars, if, at any time during the year preceding the year of assessment, he had a wife;
- (c) an allowance of one thousand dollars, if he had living at any time during the year preceding the year of assessment an unmarried child who was either under the age of eighteen years or who, if over the age of eighteen years and under the age of twenty-five years, was receiving full time instruction at a university, college, school, or other educational establishment, and where he had more than one such child an allowance of one thousand dollars for each such child in excess of one:

Provided that—

- (i) no such allowance shall be made in respect of a child whose income from any source for the year preceding the year of assessment exceeded one thousand dollars;
- (ii) no such allowance shall be made in respect of a child who carried on or exercised during the year preceding the year of assessment a trade, business, profession, vocation, or employment;
- (iii) the total allowances under paragraphs (b) and (c) shall not exceed six thousand dollars; and
- (iv) in the case of a married woman no allowance shall be made for a child in respect of whom such allowance has been made in favour of her husband.

(2) For the purposes of this section—

(a) "wife," means the lawful wife of any person married to him by a Christian marriage or its civil equivalent, or in the case of Chinese or any other Asiatic the principal spouse, but it does not include a wife who is living apart from her husband under the decree of a competent court or a duly executed deed of separation.

(b) "child" of an individual includes a child by his wife or by a former wife and a step-child. It includes also an adopted child and, in the case of Asiatics, a child by his concubine if such child is recognized by him and his family as a member of his family.

Proportionate allowances.

(3) An individual who is liable to tax under this Chapter for a part only of a year of assessment shall be entitled for that year to the same proportion only of the allowances under this section as the number of days during which he is liable bears to the number of days in that year of assessment.

Proof of claims.

(4) Every individual who claims an allowance under this Section shall make his claim on the prescribed form. Such allowance shall be granted if the claim contains such particulars and is supported by such proof as the Commissioner may require.

12.—(1) Salaries tax shall be charged for each year of assessment upon the net chargeable income for that year calculated as provided by sections 9, 10 and 11 at the following rates:—

Rates of Salaries Tax.

- (a) upon the first five thousand dollars at four per cent.
- (b) upon the remainder at ten per cent.

Provided that where an individual is liable to tax under this Chapter for a part only of any year of assessment, the said sum of five thousand dollars shall be reduced in the proportion which the number of days during which he is so liable bears to the number of days in that year of assessment.

(2) Notwithstanding the provisions of sub-section (1) the tax payable for any year of assessment by an individual who is liable to tax throughout such year shall not be more than the amount by which his assessable income for that year exceeds four thousand eight hundred dollars.

Provided that where an individual is liable to tax under this Chapter for a part only of any year of assessment the tax payable shall not be more than the amount by which his assessable income exceeds \$4,800 reduced in the proportion which the number of days during which he is so liable bear to the number of days in that year of assessment.

CHAPTER IV.

PROFITS TAX.

13. Corporation Profits Tax shall be charged on every corporation carrying on trade or business in the Colony on the full amount of the profits of such trade or business which are made from transactions in the Colony of such trade or business, ascertained in accordance with the provisions of this Chapter, at the rate of ten per cent.

Imposition of Corporation Profits Tax.

14. Business Profits Tax shall be charged on every person or firm other than a corporation carrying on trade, profession or business in the Colony on the full amount of the profits of such trade, profession or business made from transactions in the Colony, ascertained in accordance with the provisions of this Chapter, at the following rates:—

Imposition of Business Profits Tax.

On profits exceeding \$10,000 and not exceeding \$100,000—five per cent. of the profits in excess of \$10,000.

On profits in excess of \$100,000—ten per cent. on the excess.

Provided that no tax shall be paid on any profits not exceeding \$10,000.

15. The profits of any person shall be exempt from Hong Kong Profits Tax if the whole income of such person is liable to Income Tax in the United Kingdom or in any other part of the British Empire.

Exemption of profits liable to Empire Income Tax.

16. There shall be deducted, for the purpose of ascertaining profits under this Chapter, all outgoings and expenses incurred in the production thereof including—

Deductions allowed in ascertaining profits.

(a) an allowance for reasonable depreciation.

(b) where any plant, machinery, or fixtures used in producing the profits of any trade or business have been sold or discarded without the said trade or business ceasing, the loss attributable to the excess of the written-down value over the sum, if any, realized or likely to be realized by the sale thereof.

Provided that—

(i) any corresponding profit shall be treated as a receipt of the trade or business, and

(ii) where such plant, machinery or fixtures were only partly used or employed in such trade or business the deduction or addition under this sub-section shall be proportionately reduced;

(c) any sum expended for the repair (but not renewal) of plant, machinery, or fixtures employed in producing the profits or for the renewal or repair of any premises, implements, utensils, or article so employed:

Provided that any person may claim as regards his plant, machinery, or fixtures that the cost of renewal be deducted in place of the depreciation and loss mentioned in paragraphs (a) and (b) of this sub-section, and his claim shall be allowed on such conditions as the Commissioner may prescribe;

(d) such sum as the Commissioner in his discretion considers reasonable for bad debts incurred in any trade or business, which have become bad during the period of which the profits are being ascertained, and for doubtful debts to the extent that they are estimated to have become bad during the said period, notwithstanding that such bad or doubtful debts were due and payable prior to the commencement of the said period:

Provided that all sums recovered during the said period on account of amounts previously written off or allowed in respect of bad or doubtful debts shall for the purposes of this Ordinance be treated as receipts of the trade or business for that period,

(e) interest paid or payable for the purpose of producing the profits.

Deductions not allowed.

17.—(1) For the purpose of ascertaining profits no deduction shall be allowed in respect of—

(a) domestic or private expenses, including the cost of travelling between residence and place of business;

(b) any disbursements or expenses not being money expended for the purpose of producing the profits;

(c) any expenditure of a capital nature or any loss of capital;

(d) the cost of any improvements;

(e) any sum recoverable under an insurance or contract of indemnity;

(f) rent of, or expenses in connexion with, any premises or part of premises not occupied or used for the purpose of producing the profits;

(g) any tax paid or payable under this Chapter.

(2) In computing the profits or losses of a partnership, nothing shall be deducted for salaries or other remuneration of partners or for interest on partners' capital.

18.—(1) The profits derived from any trade, profession or business carried on in the Colony for each year of assessment shall be the full amount of the profits which arose or accrued from transactions within the Colony of such trade, profession or business during the year preceding the year of assessment. Basis for computing profits.

(2) Where the Commissioner is satisfied that the accounts of a trade, profession or business carried on or exercised in the Colony are usually made up to some day other than the thirty-first day of March, he may direct that the profits from that source be computed on the amount of the profits of the year ending on that day in the year preceding the year of assessment. Where, however, the profits of any trade, profession or business have been computed by reference to an account made up to a certain day, and no account is made up to the corresponding day in the year following, the profits from that source both of the year of assessment in which such failure occurs and of the two years of assessment following shall be computed on such basis as the Commissioner in his discretion thinks fit.

(3) Notwithstanding the provisions of section 45 a claim made under this section to an adjustment of any assessment by reference to the profits for any period other than the year preceding the year of assessment shall be entertained if it is made within the period of twelve months next succeeding that year of assessment. A claim so made shall be regarded as an appeal for the purposes of Chapter VII.

(4) Where in the case of any trade, profession or business it is necessary in order to arrive at the profits or losses of any year of assessment or other period to divide and apportion to specific periods the profits or losses for any period for which accounts have been made up, or to aggregate any such profits or losses or any apportioned parts thereof, it shall be lawful to make such a division and apportionment or aggregation, and any apportionment under this section shall be made in proportion to the number of days in the respective period.

19.—(1) For the purposes of this section—

(a) a person is closely connected with another person where the Commissioner in his discretion considers that such persons are substantially identical or that the ultimate controlling interest of each is owned or deemed under this section to be owned by the same person or persons; Liability of certain non-resident persons.

(b) the controlling interest of a company shall be deemed to be owned by the beneficial owners of its shares, whether

held directly or through nominees, and shares in one company held by or on behalf of another company shall be deemed to be held by the shareholders of the last-mentioned company.

(2) Where a non-resident person carried on business with a resident person with whom he is closely connected and the course of such business is so arranged that it produces to the resident person either no profits or less than the ordinary profits which might be expected to arise, the business done by the non-resident person in pursuance of his connexion with the resident person shall be deemed to be carried on in the Colony, and such non-resident person shall be assessable and chargeable with tax in respect of his profits from such business in the name of the resident person as if the resident person were his agent, and all the provisions of this Ordinance shall apply accordingly.

Profits of certain businesses to be computed on a percentage of the turnover.

20. Where the Commissioner in his discretion considers that the true amount of the profits of a non-resident person in respect of a trade, profession or business carried on in the Colony cannot be readily ascertained, such profits may be computed on a fair percentage of the turnover of that trade or business in the Colony:

Provided that the amount of such percentage shall be subject to appeal in accordance with the provision of Chapter VII.

Assessment of partnerships.

21.—(1) Where a trade, profession or business is carried on by two or more persons jointly, the tax in respect thereof shall be computed and stated jointly in one sum and a joint assessment shall be made in the partnership name.

(2) The precedent partner shall make and deliver a statement of the profits or losses of such trade, profession or business, on behalf of the partnership ascertained in accordance with the provisions of this Chapter relating to the ascertainment of profits.

Where no active partner is resident in the Colony the return shall be furnished by the manager or agent of the partnership in the Colony.

(3) Tax upon the partnership shall be recoverable by all means provided in this Ordinance out of the assets of the partnership, or from any partner, or from the manager or agent of the partnership in the Colony.

(4) Where under this section profits have been assessed in the name of a partnership, and a change occurs in such partnership by reason of retirement or death, or the dissolution of the partnership as to one or more of the partners, or the admission of a new partner, in such circumstances that one or more of the persons who were joint owners of the assets of such partnership continues to be owner or joint owner of such assets, the person or partnership becoming owner of such assets in consequence of such change shall be charged with the said tax or any part of it which remains unpaid, and the provisions of Chapter VIII shall apply to such person or partnership accordingly.

Persons assessable on behalf of a non-resident person.

22.—(1) A non-resident person shall be assessable either directly or in the name of his agent in respect of all his profits made from transactions in the Colony of any

trade, profession or business carried on in the Colony, whether such agent has the receipt of the profits or not, and the tax so assessed whether directly or in the name of the agent shall be recoverable by all means provided in this Ordinance out of the assets of the non-resident person or from the agent. Where there are more agents than one they may be assessed jointly or severally in respect of the profits of the non-resident person and shall be jointly and severally liable for tax thereon.

(2) Every person chargeable with tax as agent, or from whom tax is recoverable in respect of the profits of another person, may retain out of any assets coming into his possession or control on behalf of such other person or in his capacity as agent so much thereof as shall be sufficient to produce the amount of such tax, and he shall be and is hereby indemnified against any person whomsoever in respect of his retention of such assets.

(3) Where a person chargeable with tax or from whom tax is recoverable in respect of the profits of another person has paid such tax, and no assets of such other person come into his possession or control out of which he could retain the tax so paid, such tax shall be a debt due to him from such other person.

23.—(1) The profits of a company, whether mutual or proprietary, from the business of life insurance shall be the investment income of the Life Insurance Fund less the management expenses (including commission) attributable to that business:

Ascertainment of profits of insurance companies.

Provided that where such a company transacts life insurance business both in the Colony, whether directly or through an agent, and elsewhere, the profits from business in the Colony shall be deemed to be the same proportion of the total investment income of the Life Insurance Fund of the company as the premiums from life insurance business in the Colony bear to the total life insurance premiums received by it, subject to a deduction of agency expenses in the Colony (including commission) and a fair proportion of the expenses of the head office of the company, due account being taken in each case by set-off against such expenses of any income or profits other than life insurance premiums or investment income.

(2) The profits of a company, whether mutual or proprietary, from the business of insurance (other than life insurance) shall be ascertained by taking the gross premiums from insurance business in the Colony (less any premiums returned to the insured and premiums paid on re-insurance) and deducting therefrom a reserve for unexpired risks at the percentage adopted by the company in relation to its operations as a whole for such risks at the end of the period of which the profits are being ascertained, and adding thereto a reserve similarly calculated for unexpired risks outstanding at the commencement of such period, and from the net amount so arrived at deducting the actual losses (less the amount recovered in respect thereof under re-insurance), the agency expenses in the Colony, and a fair proportion of the expenses of the head office of the company, due account being

taken in each case by set-off against such expenses of any income or profits other than premiums.

(3) Where the Commissioner is satisfied that by reason of the limited extent of the business transacted in the Colony by a non-resident insurance company it would be unreasonable to require the company to furnish the particulars necessary for the application of sub-sections (1) and (2), he may, notwithstanding the provisions of those sub-sections, permit the profits of the company to be ascertained by reference to the proportion of the total profits and income of the company corresponding to the proportion which its premiums from insurance business in the Colony bear to its total premiums, or on any other basis which appears to him to be equitable.

(4) For the purposes of this section "investment income of the Life Insurance Fund" means, in the case of a company whose sole business is life insurance, the whole of its income from investments, and, in the case of any other company, such part of its income from investments as appears fairly attributable to its life insurance business.

Ascertainment of income of clubs, trade associations, etc.

24.—(1) Where a body of persons, whether corporate or unincorporate, carries on a club or similar institution and receives from its members not less than half of its gross receipts on revenue account (including entrance fees and subscriptions), it shall not be deemed to carry on a business; but where less than half of its gross receipts are received from members, the whole of the income from transactions both with members and others (including entrance fees and subscriptions) shall be deemed to be receipts from a business, and the body of persons shall be chargeable in respect of the profits therefrom.

(2) Where a body of persons, whether corporate or unincorporate, carries on a trade association in such circumstances that more than half its receipts by way of entrance fees and subscriptions are from persons who claim or would be entitled to claim that such sums were allowable deductions for the purposes of section 16, such body of persons shall be deemed to carry on a business, and the whole of its income from transactions both with members and others (including entrance fees and subscriptions) shall be deemed to be receipts from a business, and the body of persons shall be chargeable in respect of the profits therefrom.

(3) In this section, "members", in relation to a body of persons, means those persons who are entitled to vote at a general meeting of the body at which effective control is exercised over its affairs.

Deduction of Property Tax from Profits Tax.

25. There shall be deducted from any profits tax payable under this Chapter in respect of any trade, profession or business any property tax payable under Chapter II of this Ordinance, in respect of any land and/or buildings, by such trade, profession or business.

Certain dividends excluded from assessment of profits.

26. For the purposes of assessment the dividends of a corporation, which is subject to tax under this Chapter, shall not be included in the profits of any other person for the purposes of taxation under this Ordinance.

CHAPTER V.

RETURNS, ETC.

27.—(1) An Examiner may give notice in writing to any person requiring him within a reasonable time stated in such notice to furnish a return of any sum assessable to Property Tax, Salaries Tax or Profits Tax under Chapters II, III and IV of this Ordinance, containing such particulars and in such form as may be prescribed. Returns and information to be furnished.

(2) Every person chargeable with tax for any year of assessment who has not been required within a period of three months after the commencement of such year of assessment to make a return of any income assessable to such tax for that year as provided in sub-section (1) shall within fourteen days after the expiration of such period give notice to the Commissioner that he is so chargeable.

(3) An Examiner may give notice in writing to any person when and as often as he thinks necessary requiring him within a reasonable time stated in such notice to furnish fuller or further returns respecting any matter of which a return is required or prescribed by this Ordinance.

(4) For the purpose of obtaining full information in respect of any person's income which is assessable to tax under this Ordinance—

(a) an Examiner may give notice in writing to such person requiring him within a reasonable time stated in such notice to produce for examination any deeds, plans, instruments, books, accounts, trade lists, stock lists, or documents which the Examiner may deem necessary;

(b) an Assistant Commissioner may give notice in writing to such person or to any other person whom he may deem able to furnish information in respect of such income, requiring him to attend at a time and place to be named by the Assistant Commissioner for the purpose of being examined respecting such income or any transactions or matters affecting the same.

(5) A return, statement, or form purporting to be furnished under this Ordinance by or on behalf of any person shall for all purposes be deemed to have been furnished by that person or by his authority, as the case may be, unless the contrary is proved, and any person signing any such return, statement, or form shall be deemed to be cognizant of all matters therein.

(6) For the purposes of making an assessment under section 36 the Examiner may serve a notice upon any person requiring him to furnish within such time, not being less than seven days, as may be specified in the notice, a return in the same form and verified in the same manner as a return under sub-section (1) setting forth (along with such other particulars as may be provided for in the notice) his income assessable to Property Tax, Salaries Tax or Profits Tax under Chapters II, III and IV of this Ordinance for each of the completed previous years comprised in the period first referred to in section 36 (1) and his estimated assessable income throughout the period from the expiry of the last of such completed previous years to the probable date of his departure.

(7) Any person discontinuing a business, profession or employment or the ownership of property shall give to the Commissioner notice of such discontinuance within fifteen days thereof.

Information to be furnished by officials and employers.

28.—(1) The Commissioner may give notice in writing to any officer in the employment of the Government or of any public body requiring him within a reasonable time stated in such notice to furnish any particulars which he may require for the purposes of this Ordinance which may be in the possession of such officer :

Provided that no such officer shall by virtue of this section be obliged to disclose any particulars as to which he is under any express statutory obligation to observe secrecy.

(2) Every person who is an employer shall, when required to do so by notice in writing given by an Examiner, furnish within a reasonable time stated in such notice a return containing the names and places of residence and the full amount of the remuneration, whether in cash or otherwise, for the period specified in the notice, of—

(a) all persons employed by him in receipt of remuneration in excess of a minimum figure to be fixed by the Examiner; and

(b) any other person employed by him named by the Examiner.

(3) Any director of a company, or person engaged in the management of a company, shall be deemed to be a person employed by the company.

Occupiers to furnish returns of rent payable.

29. An Examiner may give notice in writing to any person who is the occupier of any land and improvements thereon requiring him within a reasonable time stated in such notice to furnish a return containing—

(a) the name and address of the owner of such land and improvements; and

(b) a true and correct statement of the rent payable and any other consideration passing therefor.

Who may act for incapacitated or non-resident person.

30. An act or thing required by or under this Ordinance to be done by any person shall, if such person is an incapacitated or non-resident person, be deemed to be required to be done by the trustee of such incapacitated person or by the agent of such non-resident person, as the case may be.

Precedent partner to act on behalf of a partnership.

31.—(1) Wherever two or more persons in partnership act in the capacity of trustees or executors, or as agents, or are employers, or are persons in receipt of profits or act in any other capacity whatever, either on behalf of themselves or of any other person, the precedent partner of such partnership shall be answerable for doing all such acts, matters, and things as would be required to be done under the provisions of this Ordinance by an individual acting in such capacity :

Provided that any person to whom a notice has been given under the provisions of this Ordinance as precedent partner of a partnership shall be deemed to be the precedent partner thereof unless he proves that he is not a partner in such partnership, or that some other person resident in the Colony is the precedent partner thereof.

(2) Where two or more persons who are not in partnership act jointly in any capacity mentioned in sub-section (1), they shall be jointly and severally answerable for doing all such acts, matters, and things as would be required to be done under the provisions of this Ordinance by an individual acting in such capacity.

32. The secretary, manager, or other principal officer of every company or body of persons corporate or unincorporate shall be answerable for doing all such acts, matters, or things as are required to be done under the provisions of this Ordinance by such company or body of persons :

Principal officer to act on behalf of a company or body of persons.

Provided that any person to whom a notice has been given under the provisions of this Ordinance on behalf of a company or body of persons shall be deemed to be the principal officer thereof unless he proves that he has no connexion with the company or body of persons, or that some other person resident in the Colony is the principal officer thereof.

33.—(1) Every notice to be given by the Commissioner, an Assistant Commissioner, or an Examiner under this Ordinance shall bear the name of the Commissioner or Assistant Commissioner or Examiner, as the case may be, and every such notice shall be valid if the name of the Commissioner, Assistant Commissioner, or Examiner is duly printed or signed thereon.

Signature and service of notices.

(2) Every notice given by virtue of this Ordinance may be served on a person either personally or by being delivered at, or sent by post to, his last known place of abode or any place at which he is, or was during the year to which the notice relates, carrying on business :

Provided that a notice of assessment under section 38 shall be served personally or by being sent by registered post to any such place as aforesaid.

(3) Any notice sent by post shall be deemed to have been served on the day succeeding the day on which it would have been received in the ordinary course by post.

(4) In proving service by post it shall be sufficient to prove that the letter containing the notice was duly addressed and posted.

(5) Every name printed or signed on any notice or signed on any certificate given or issued for the purposes of this Ordinance which purports to be the name of the person authorized to give or issue the same shall be judicially noticed.

CHAPTER VI.

ASSESSMENTS.

Examiner to make assessments.

34.—(1) Every person who is in the opinion of an Examiner chargeable with tax under this Ordinance shall be assessed by him as soon as may be after the expiration of the time limited by the notice requiring him to furnish a return under section 27 (1).

Provided that the Examiner may assess any person at any time if he is of opinion that such person is about to leave the Colony; or that for any other reason it is expedient to do so.

(2) Where a person has furnished a return of income liable to assessment the Examiner may either—

(a) accept the return and make an assessment accordingly; or

(b) if he does not accept the return, estimate the amount of the assessable income of such person and assess him accordingly:

Provided that if the Examiner accepts the return as substantially correct, but considers it necessary to make further inquiries on any matter, he may make immediately a provisional assessment in the amount of the return which until amended shall be a valid assessment for all purposes.

(3) Where a person has not furnished a return and the Examiner is of the opinion that such person is chargeable with tax, he may estimate the amount of the assessable income of such person and assess him accordingly, but such assessment shall not affect the liability of such person to a penalty by reason of his failure or neglect to deliver a return.

(4) In the case of profits from a trade or business, if accounts of such trade or business have not been kept in a form satisfactory to the Examiner, he may assess the profits or income of such trade or business on the basis of the usual rate of net profit on the turnover of such trade or business; and the Board of War Taxation may prescribe the amounts of such usual rates of profit in particular classes of trade or business.

Additional assessments.

35. Where it appears to an Examiner that a provisional assessment made under sub-section (2) of Section 34 should be increased or that for any year of assessment any person chargeable with tax has not been assessed or has been assessed at less than the proper amount, the Examiner may, within the year of assessment or within three years after the expiration thereof, assess such person at the amount or additional amount at which according to his judgment such person ought to have been assessed, and the provisions of this Ordinance as to notice of assessment, appeal and other proceedings shall apply to such assessment or additional assessment and to the tax charged thereunder:

Provided that, where the non-assessment or under assessment of any person for any year of assessment is due to fraud or wilful evasion, such assessment or additional assessment may be made at any time within six years after the expiration of that year of assessment.

36.—(1) When it appears to the Examiner that any person may leave Hong Kong during the current year of assessment or shortly after its expiry and that he had no present intention of returning, the Examiner may assess such person for the period from the expiry of the last previous year for which he has been assessed to the probable date of his departure from Hong Kong. For each completed previous year included in this period of assessment, an assessment shall be made on such person at the rate at which he would have been charged had he been fully assessed and for the period from the expiry of the last of such previous years to the probable date of departure, the Examiner shall estimate the income liable to tax under this Ordinance of such person and assess it at the rate in force for the year of assessment in which such assessment is made.

Departure from Colony and discontinuance.

(2) Where any business, profession, employment, or ownership of property is discontinued in any year an assessment may be made in that year on the basis of the income assessable under this Ordinance for the period between the end of the previous year and the date of such discontinuance in addition to the assessment, if any, in respect of the previous year.

37.—(1) An Assistant Commissioner shall give a notice of assessment to each person who has been assessed stating the amount assessed and the amount of tax charged.

Notice to be issued by Assistant Commissioner.

(2) Where the assessment is a provisional assessment made under section 34 (2) the person assessed shall be notified accordingly; and he shall further be notified in due course if such provisional assessment is confirmed, provided that the confirmation of a provisional assessment shall not preclude the making of an additional assessment subsequently under section 35.

(3) Where by reason of an amendment of the law it is necessary to vary the amount of tax charged in any notice of assessment the Assistant Commissioner may give such notification as may be necessary to the person assessed in that notice of assessment; and any notification so given shall, as regards any particulars of the assessment contained in the notification which have not been included in the notice of assessment, have effect as if the notification were a notice of assessment.

38.—(1) No notice, assessment, certificate, or other proceeding purporting to be in accordance with the provisions of this Ordinance shall be quashed, or deemed to be void or voidable, for want of form, or be affected by reason of a mistake, defect, or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of this Ordinance, and if the person assessed or intended to be assessed or affected thereby is designated therein according to common intent and understanding.

Validity of assessments, etc.

(2) Without prejudice to the generality of sub-section (1) an assessment shall not be impeached or affected—

(a) by reason of a mistake therein as to the name or surname of the person chargeable, the amount of income assessed, or the amount of tax charged; or