

No. S. 423—The following draft bill is published for general information. It is not to be passed until after the coming into operation of the proposed consolidating China Order in Council.

C.S.O. 2584/23.

[No. 16 :—3.12.24.—4.]

A BILL

INTITLED

An Ordinance to amend the Companies Ordinance, 1911.

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

1. This Ordinance may be cited as the Companies Amendment Ordinance, 1925. Short title.

2. Section 1 (3) of the Companies Ordinance, 1911, is repealed and the following sub-section is substituted therefor :— Repeal of Ordinance No. 58 of 1911, s. 1 (3).

Application of China Orders in Council. (3) This Ordinance, in so far as it affects companies carrying on business within the limits of the China Orders in Council, shall be read with and subject to the provisions of the China Orders in Council.

3. Paragraph (i) of section 26 (1) of the Companies Ordinance, 1911, is amended by the repeal of the words "and addresses, and occupations, if any", on the sixth and seventh lines thereof. Amendment of Ordinance No. 58 of 1911, s. 26 (1) (i).

4. Section 27 (2) of the Companies Ordinance, 1911, is amended by the insertion of the word "the" between the word "in" and the word "case" in the third line thereof, and by the repeal of the words "and addresses, and occupations, if any," in the third and fourth lines thereof. Amendment of Ordinance No. 58 of 1911, s. 27 (2).

5. Section 63 (1) of the Companies Ordinance, 1911, is amended by the substitution of the words "China Orders in Council" for the words "China (Companies) Order in Council, 1915" in the fourth line thereof. Amendment of Ordinance No. 58 of 1911, s. 63 (1).

6. Section 64 (2) of the Companies Ordinance, 1911, is repealed and the following sub-section is substituted therefor :— Amendment of Ordinance No. 58 of 1911, s. 64 (2).

(2) Every limited company (other than a company licensed to be registered without the addition of the word "Limited" to its name)—

(a) which exhibits outside its registered office or outside or inside any office or place in which its business is carried on, or

(b) which uses on its seal, or

(c) which uses in any notice, advertisement or other official publication of the company, or in any contract, deed, bill of exchange, promissory note, indorsement, cheque, or order

for money or goods purporting to be signed by or on behalf of the company, or in any bill of parcels, invoice, receipt or letter of credit of the company, or in any trade catalogue, trade circular, show card or business letter,—

any name of or for the company in Chinese characters, whether such name be a transliteration or translation of its name in the memorandum or not, shall append to such name so used in Chinese characters the Chinese characters 有限公司 and, if a China company, shall also prefix thereto the Chinese characters 英商:

Provided that it shall be lawful for the Governor in the case of any company other than a China company, and for the Minister in the case of any China company, by licence to direct that such company shall be exempted, wholly or in part, from the requirements of this sub-section, and to revoke any such licence.

Amendment of Ordinance No. 58 of 1911, s. 90 (1) (a). 7. Paragraph (a) of section 90 (1) of the Companies Ordinance, 1911, is amended by the repeal of the words "addresses and descriptions" in the fourth and fifth lines thereof.

Amendment of Ordinance No. 58 of 1911, s. 113. 8. Section 113 of the Companies Ordinance, 1911, is amended by the addition of the following sub-section at the end thereof:—

(10) In this section "person" shall include a firm.

Amendment of Ordinance No. 58 of 1911, s. 261. 9. Section 261 of the Companies Ordinance, 1911, is amended as follows:—

(a) Paragraph (e) is repealed and the following paragraph is substituted therefor:—

(e) "China company" means a company limited by shares or by guarantee, which is incorporated under this Ordinance, and the operations of which are directed and controlled from a place within the limits of the China Orders in Council.

(b) The figures "1924" are substituted for the figures "1904" in the second line of paragraph (d).

(c) The words "China Orders in Council" are substituted for the words "China (Companies) Order in Council, 1915" in the third and fourth lines of paragraph (1) and in the second and third lines of paragraph (s).

Amendment of Ordinance No. 58 of 1911, s. 270. 10. Section 270 of the Companies Ordinance, 1911, is amended by the substitution of the words "China Orders in Council" for the words "China (Companies) Order in Council, 1915" in the first and second lines, and in the fourth and fifth lines, of sub-section (2) thereof.

Repeal of Ordinance No. 58 of 1911, s. 274. 11. Section 274 of the Companies Ordinance, 1911, is repealed.

Objects and Reasons.

1. Clauses 2, 5, and 10, and paragraphs (b) and (c) of Clause 9, of the bill are purely formal amendments rendered desirable by the making of the recent consolidating China Order in Council.

2. Sections 26 and 27 of the Companies Ordinance, 1911, require that in the register and annual list of members the names, addresses, and occupations, of Chinese members must be given both in English and in Chinese characters. It seems unnecessary to require the addresses and occupations to be given in Chinese characters, and clauses 3 and 4 of the bill propose to amend the two sections in question so as to make the requirement of Chinese characters apply only in the case of the names of Chinese members. A similar amendment is made by clause 7 of the bill in the section (s. 90) of the Companies Ordinance, 1911, which relates to the return of allotments.

3. The new sub-section to be enacted by clause 6 of the bill will specify clearly the cases in which the Chinese characters for "Limited", and (in the case of China companies) "British company", must be used. Before the amendment made by section 2 of Ordinance No. 33 of 1923 the law on this subject was ambiguous and it may be that it was too wide and laid an unreasonable burden on companies using Chinese names. On the other hand, the new sub-section introduced in 1923 has proved on examination to be too narrow and to produce inconsistent results. The proviso will give power to exempt companies with old and well known hong names. In the case of companies of this kind there is no danger of misunderstanding as to the company's status and the requirements of the section are therefore unnecessary in such a case.

4. The object of clause 8 of the bill is to give the Registrar power to include the names of firms in the list of approved auditors, and so to give legislative recognition to the common practice, which exists both here and in England, of appointing firms as auditors. The Registrar's discretion over the list is not affected, and in general it is not intended that he shall add any firm to the list unless all the partners in the firm are in his opinion themselves qualified for inclusion in the list. Further, it is also intended in general that a firm shall be removed from the list if at any time it contains a partner who would not be qualified for inclusion in the list or who ought to be removed from the list.

5. Paragraph (a) of clause 9 of the bill restores the old definition of the term "China company" which appeared in section 2 of Ordinance No. 31 of 1911, and which corresponds with the definition of that term in the China Order in Council, 1924. The latter part of the definition as it appears in paragraph (c) of section 261 of the Companies Ordinance, 1911, in the recently issued edition of the Ordinances, contains the provisions which formerly appeared in section 26 of Ordinance No. 12 of 1921. These provisions are of a substantive nature and do not properly form part of a definition. Apart from this reason for the omission of those provisions from the definition of "China company" there is the additional reason, explained in paragraph 6 below, that the portion of the definition now to be omitted is contained in article 190 of the China Order in Council, 1924.

6. Section 274 of the Companies Ordinance, 1911, reproduces the provisions of article 3 of the China (Companies) Amendment Order in Council, 1919,

which now appears as article 190 of the China Order in Council, 1924. The provisions of articles 8, 9, 10 and 13, of the China (Companies) Order in Council, 1915, which deal with cognate subject matter, have never been reproduced in our Ordinances. This is a distinct "trap", because anyone reading Part XI of the Companies Ordinance, 1911, would imagine that section 274 contained all the requirements of the law with regard at least to the nationality and residence of the directorate of a China company, whereas it contains only part of those provisions. Two courses are open. One is to insert in the Companies Ordinance, 1911, the provisions of the China (Companies) Order in Council, 1915, referred to above. It is however, unnecessary to reproduce any such provisions because section 1 (3) of the Companies Ordinance, 1911, provides that that Ordinance, "in so far as it affects companies carrying on business within the limits of the China Orders in Council, shall be read with and subject to" the China Orders in Council. It has therefore been decided to adopt the other course, which is to repeal section 274. It may be asked why section 270, 271 and 272 are not repealed at the same time. The answer is that there are special reasons for retaining those sections. Section 270 might perhaps have been omitted, but it is a convenient introduction to section 271. Section 271 contains a considerable amount of detail which does not appear in the China Order in Council, 1924. Section 272 deals with the jurisdiction of the Supreme Court of Hongkong, and it seems desirable that any question of jurisdiction of the Hongkong courts should appear expressly, and not merely by implication, in our Ordinances.

J. H. KEMP,
Attorney General.

3rd December, 1924.

NOTICES.

COLONIAL SECRETARY'S DEPARTMENT.

No. S. 424.—Statement of Sanitary Measures adopted against Hongkong.

Place or Port.	Nature of Measures.	Date.	Reference to Government Notification.
Manila.	Inspections outside Manila harbour from 20th April. Third class passengers and new crew must comply with the vaccination requirements.	16th April, 1924.	...

No. S. 425.—Statement of Sanitary Measures adopted by Hongkong.

Disease.	Port or Place.	Restrictions in Force.	Authority.
Small-pox.	Dutch East Indies.	Medical examination; quarantine at the discretion of the Health Officer.	Notification No. 475 of 19th August, 1924.

CLAUD SEVERN,
Colonial Secretary.

19th December, 1924.