

LEGISLATIVE COUNCIL.

Draft Bill.

No. S. 164.—The following bill, which it is proposed to introduce into the Legislative Council on the 15th June, is published for general information:—

C.S.O. 965/1903. Parts I & II.

[No. 9:—11.6.25.—5]

A BILL

INTITULED

An Ordinance for the establishment of an improved telephone service in the Colony.

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

- Short title. 1. This Ordinance may be cited as the Telephone Ordinance 1925.
- Interpretation. 2. In this Ordinance,—
- “ Arbitrators ” includes an umpire appointed by the arbitrators.
 - “ Company ” means “ Hongkong Telephone Company Limited ”.
 - “ Concession ” means sole right to supply telephonic communication which is granted to the Company by this Ordinance.
 - “ Director ” means the Director of Public Works or his duly authorized representative.
 - “ Person ” includes any person, firm, company, or corporation.
 - “ Peak District ” includes all that area in the Island of Hongkong situated above the 700-foot contour and to the west of a line drawn in a north and south direction through Middle or Cemetery Gap, including the hills known as Mount Cameron, Mount Gough, Mount Kellett and Victoria Peak.
 - “ Street ” includes any square, court or alley, highway, lane, road or passage whether a thoroughfare or not.
 - “ Subscriber ” means subscriber to a telephone of the Company.
 - “ Undertaking ” includes all works, goods, and property of whatever nature belonging to the Company.
- Grant of telephone concession to the Company for 50 years. 3.—(1) Subject to the provisions hereinafter contained the Government grants to the Company the sole right to supply and operate public telephonic communication within the Colony for the period of 50 years commencing on and from the 1st day of July, 1925.
- (2) On the 30th day of June, 1925, the franchise to operate telephones which was granted by the Government to the China and Japan Telephone and Electric Company Limited by an Agreement dated the 1st day of February, 1905, shall absolutely cease and determine.
- (3) On and from the 1st day of July, 1925, the right interest and benefit of and in all contracts now subsisting between the China & Japan Telephone & Electric Co., Ltd. of the one part and subscribers of the other part shall be deemed to be and are hereby assigned to the Company subject nevertheless to all the obligations arising thereunder.
- Registration and Articles of the Company. 4. The Company shall be and remain registered under the Companies Ordinance, 1911, and its Memorandum and first Articles of Association thereof shall be approved by the Governor in Council and neither its memorandum nor any of its Articles of Association shall, at any time, be amended or added to in any way, except with the previous consent in writing of the Governor in Council.

5. The Directors of the Company shall be not less than four and not more than eight in number, and all the Directors shall be *bona fide* resident in Hongkong. Number and residence of Directors.

6.—(1) The capital of the company shall be \$5,000,000 divided into 500,000 shares of \$10 each, and the Company shall not, except with the previous consent of the Legislative Council, make any further issue of shares or otherwise save as in this Ordinance provided in any manner whatever increase the moneys employed in the company's undertaking beyond the sum of \$5,000,000. Authorised capital of Company.

(2) The Company shall not issue any debentures or borrow on mortgage except with the consent of the Legislative Council. Restriction on borrowing.

7. The Company shall pay to the Treasurer, as a Royalty for the concession, on the 1st day of July in every year during the aforesaid period of fifty years, commencing on the 1st day of July, 1926, the sum of \$4 in respect of each direct exchange line telephone which has been used and paid for during the whole previous twelve months by a subscriber. In cases where direct exchange telephones have been used and paid for by subscribers for periods of less than twelve months prior to the 1st day of July in each 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. Payment to Government.

8. Subject to the consent in writing of the Director and subject also to the restrictions and provisions hereinafter contained and to such further conditions as the Director may in any particular case impose or prescribe, the Company may execute works as follows :— Power to execute works.

- (a) It may place and maintain telephone lines and cables and ducts under any public street and may alter or remove the same :
- (b) It may place and maintain telephone lines and cables over, along or across any public street and may place and maintain posts in or upon any public street and may alter or remove the same :
- (c) It may, for the purposes aforesaid, open or break up any public street :
- (d) It may place and maintain telephone lines and cables and posts under, in, upon, over, along or across any unleased Crown Land or any estuary or branch of the sea or the shore or bed of any tidal waters within the boundaries of the Colony (but so that the same shall not hinder or interfere with navigation) and may alter or remove the same :
- (e) It may place and maintain telephone and cables under, in, upon, over, along, or across railway tracks, tunnels and other railway property belonging to the Government (but so that the same shall not hinder or interfere with the railway traffic) and may alter or remove the same.

Provided always that the Company shall not be deemed to acquire any right other than that of user only in the soil of any street, or unleased Crown Land or any other place under, in, upon, over, along or across which the Company places or maintains any works.

9. In the exercise of the authority conferred under section 8 the Company shall do as little damage as may be, and shall make full reasonable compensation for all damage caused by reason of or in consequence of the exercise of such authority. Minimum of damage to be done. Compensation to be paid.

10. The Government agrees to provide to the Company, at the Company's expense, sites, to be approved of by the Governor in Council, for submarine cable terminal houses at suitable points within the Colony, and suitable sites, to be approved of by the Governor in Council, for the Company's submarine cable storage tanks. Government to provide facilities.

The Government shall also provide, free of cost to the Company, a suitable reserve or suitable reserves, in which vessels and craft may not anchor, for submarine cables of the Company, such reserve or reserves to be approved of by the Governor in Council.

Depth, course and position of works. **11.** The depth, course and position at and in which any telephone lines or cables, posts, inspection pits or any other works are to be placed shall be determined by the Director.

Wires to be on metallic return principle. **12.** Every wire placed or maintained by the Company, either overhead or underground, shall, subject to the provisions of section 25, be on the principle of a metallic return otherwise called the Double Wire System.

Marking of future underground apparatus. **13.** Every underground tube, casing, wire, or cable of the Company, hereafter placed or laid or relaid by the Company, shall be so marked by the Company throughout its course as to distinguish it from the tubes, casings, pipes, wires, or cables of every other person.

Posts to be of approved design and material. **14.** Every post of the Company shall be of a pattern, design and material which is approved by the Director.

Restriction on attachments to Public Buildings or to trees. **15.** No wire, stay, bracket, insulator or other thing whatsoever shall be attached to any Government building except with the previous consent in writing of the Director or to any tree except with the previous consent in writing of the Superintendent of the Botanical and Forestry Department, and the Company shall not without the like consent of the said Superintendent lop, top or fell any tree or shrub.

Posts to bear distinguishing marks and reference plans to be supplied. **16.—(a)** Every post of the Company shall be marked by the Company with a distinguishing mark painted or otherwise legibly marked upon it, and the Company shall at all times maintain such marks in a legible condition.

(b) The Company shall forthwith cause a plan to be made of the area of operation and shall cause to be marked thereon the alignment of all its then existing lines, street distributing boxes, posts and other works, and shall once in every year cause that plan to be duly corrected so as to show the lines, street distributing boxes, posts and other works for the time being in position.

(c) Every such plan shall be drawn to such scale as the Director may require, provided however that no particular scale shall be required unless maps of the locality on that scale are for the time being available to the public or to the Company.

(d) Every plan so made or corrected or a copy thereof marked with the date when it was so made or corrected shall be kept by the Company at its principal office or place of business within the area of operation, and shall at all reasonable times be open to the inspection of all applicants.

(e) The Company shall if required by the Director supply, free of charge, to the Director a copy of every such plan, duly corrected so as to agree with the original kept at the principal office or place of business of the Company.

Overhead wires to be carried at height of at least 18 feet. **17.** Every overhead wire or cable in any main thoroughfare shall be carried at a height of not less than eighteen feet above the ground except with the previous consent in writing of the Director.

Telephone lines to be maintained in safe condition. **18.** Every telephone line shall be maintained in a safe condition as regards both electrical and mechanical conditions.

19. The insulation resistance of the Company's apparatus shall not fall below the following requirements as between conductors or between conductors and earth. Insulation resistance.

Main Underground Cables	500 megohms per mile.
Cast iron distribution boxes fitted with vacuum discharges and glass fuses - - - - -	10 megohms.
Lead sheathed leading-in cable - - - - -	100 megohms per mile.
Coil windings and wires of the telephone set - -	10 megohms.
Subscribers circuits - -	200,000 ohms.
Exchange switchboard circuits - - - - -	2 megohms.

The Governor in Council may, however, by Order, published in the Gazette, direct that any of the provisions of this section be relaxed in any particular instances to such extent and subject to such conditions (if any) as he may think reasonable and proper under all the circumstances.

20. All circuits and apparatus shall be so arranged that there shall be no danger of any part thereof becoming accidentally charged to any pressure beyond the limits of pressure for which it is intended. Pressure on circuits and apparatus to be limited.

21. Whenever the Company leads a telephone or aerial line across or in proximity to any telephone or telegraph wire or aerial line belonging to any person, the Company shall ensure that its telephone or aerial line is so protected as to guard against the possibility of it coming into contact with the telephone or telegraph wire or aerial line of any such person. Crossed services of others to be protected.

22. After the Company has opened or broken up any public street it shall be under the following further obligations :— Provisions as to completion and protection of works in public streets and payment of costs of surfacing.

- (a) It shall, with all convenient speed, complete the work on account of which it has opened or broken up the same, and fill in the ground and remove all rubbish occasioned by its work :
- (b) The surface of such street shall be made good by the Director and the Company shall pay on demand to the Treasurer such sum as the Director may certify to be the cost of such making good :
- (c) It shall in the meantime cause the place where such street is opened or broken up to be fenced and watched and to be properly lighted at night :
- (d) It shall pay to the Treasurer any such sum as may be certified by the Director to be the reasonable cost of keeping such portion of the street in repair for six months after the same is restored so far as such cost may be applicable to and increased by such opening or breaking up.

Provided always that, if the Company shall fail, within such period as the Director shall consider reasonable under the circumstances, to complete the work on account whereof it shall have opened or broken up such street and to fill in the ground, it shall be lawful for the Director, forthwith and without notice to the Company, to fill in the ground and remove all rubbish, and the cost as certified by the Director of any work executed by the Director under the terms of this proviso shall be paid by the Company on demand to the Treasurer.

23. When the Company shall open or break up any street it shall not remove, displace or interfere with any gas or water pipe or main or any drain or sewer or any tube, casing, wire or cable for the carriage of electrical current except with the previous consent of the owner thereof. Restriction on Company interfering with works of others.

Provided that when any such owner refuses to give any such consent as aforesaid, it shall be lawful for the Company to appeal from such refusal to the Director, who shall, if he considers such refusal to have been unreasonable, give a certificate under his hand to the Company to that effect, and, upon receipt of such certificate it shall be lawful for the Company to act in every respect as if the consent of such owner had been previously obtained.

Company not to have claim against Government for disturbance of their works by certain specified works.

24. The Company shall not have any claim in damages or otherwise against the Government in respect of any disturbance or interruption of any part of the Company's undertaking lines or works occasioned by any works on or excavation or disturbance of streets or lands which the Governor in Council may think it necessary or desirable to make for the purpose of altering the level of any lands or the gradient or level of or repairing or constructing any street, path or land or laying or renewing drain pipes or sewers gas or water pipes or mains or any tube, casing, wire or cable for the carriage of electrical current or inspecting the same or for any other lawful purpose, whether of a like nature to the purposes aforesaid or not, or in respect of any disturbance or interruption occasioned by any person using or making any works upon or excavation or disturbance of any streets or lands.

Precaution to be taken to prevent lightning discharges entering buildings.

25. The Company shall take all reasonable precautions to prevent lightning discharges from entering any buildings in which its telephones are installed or to which any wire, bracket or other apparatus of the Company is attached.

Company to be answerable for and indemnify Government against claims.

26. The Company shall be answerable for and shall indemnify the Government against all claims on account of accident, damage or injury to property or to any person arising through its act, neglect or default, or through the act, neglect or default of its servants or of any contractor employed by it, or through or in consequence of any of the Company's works under this concession, or through the construction, maintenance, repair or operation of the Company's telephone system, or through the downfall of wires, cables, insulators, brackets, posts or any part of its lines by reason of storm (if the damage caused by such storm is due to the Company's negligence) or any other cause of whatever nature or through the Company's system interfering with, injuring or impairing the efficiency of any other undertaking.

Company to alter works on notice.

27. The Company shall, within a reasonable time after receipt of notice in writing from the Director, at the sole cost and charges of the Company and in such manner as the Director shall prescribe:—

- (a) Alter the course, depth and position or the mode of attachment of any of the Company's lines or cables and the position of any post or inspection pit or other works of the Company; save that the Company shall not be required to alter its ducts or main cables unless in the opinion of the Governor in Council such alteration is necessary;
- (b) Cause any line or cable to be protected, insulated or enclosed in order that the same may not affect, endanger or interfere with any other telegraph line or cable or any line or cable system for the carriage of electrical current;
- (c) Where any such work as aforesaid shall necessitate the opening or breaking up of any street make good the surface thereof.

Overhead lines to be placed in cables and overhead lines and cables to be placed underground on notice.

28. The Director may, by notice in writing to the Company, require that all or any overhead lines shall be placed in cables and that all or any overhead lines or cables shall be placed underground, and upon receipt of notice in that behalf the Company shall, at its own cost and charges, within a reasonable period not exceeding two years from the date of such notice, carry out the works required by such notice.

Provided that the Company shall only be required to place its lines underground in those parts of its system in which twenty or more wires can in the opinion of the Director be conveniently grouped together, and the opinion of the Director in this respect shall be conclusive and binding on the Company.

29. The Company shall at its own cost and charges, within two years from the commencement of this Ordinance or such later limit of time as may be specified and approved by the Governor in Council and notified in writing to the Company, place underground such as may be practicable of its wires or cables passing over, across or along any street or road in the City of Victoria.

Wires in Victoria to be placed underground.

30. The Company shall, on and from the 1st day of July, 1925, take over, maintain and operate the public telephone service in the Colony, and shall within such period of time as the Governor in Council may decide to be reasonable, install an improved system of telephone service to be approved of by the Governor in Council, with modern appliances, including all reasonable modern inventions. The Company shall also, at all times during the continuance of the concession, provide and maintain to the satisfaction of the Director of Public Works a good efficient and continuous service of public telephonic communication. The Company shall likewise provide buildings for its plant and offices, and shall keep in a good and sufficient state of repair all lines, cables, posts, attachments, plant and appliances necessary for the provision and maintenance of such service.

Improve and efficient service to be provided and works kept in repair.

31.—(a) The Company shall establish, at its own cost, and keep in proper condition such number of testing circuits as the Director may reasonably direct for the purpose of testing the insulation resistance of the conductors, and shall supply and keep in proper condition all such instruments for testing as the Director may approve, and shall supply energy to every testing station for the purpose of testing.

Company shall provide testing circuits, etc.

(b) The Company shall afford to the Director all facilities for inspection and testing of its works and for the reading, testing and inspection of its testing instruments, and may, on each occasion of the testing of its works or the reading, testing or inspection of any testing instruments, be represented by an agent who may be present but shall not interfere with the reading, testing or inspection.

(c) On the occasion of the testing of any works of the Company by the Director reasonable previous notice in writing thereof shall be given to the Company, and the testing shall be carried out at such suitable hours as in the opinion of the Director will least interfere with the telephone service and in such manner as the Director may think fit, but, except under the provisions of a written order made in each case in that behalf by the Director, no person shall be entitled to have access to or interfere with the works of the Company at any points other than those at which the Company itself has access to the same.

Provided that the Company shall not be held responsible for any interruption of or irregularity in the telephone service which may be occasioned by or required by the Director for the purpose of any such testing as aforesaid.

Provided also that the testing shall not be made in regard to any particular portion of the works oftener than once in any one year unless in pursuance of a written order made in each case in that behalf by the Director.

32. The Company shall, on and from the 1st day of July, 1925, take over, maintain and operate the existing telephone exchanges of the China and Japan Telephone and Electric Company Limited, and shall within three and a half years from the date of the commencement of this Ordinance or such other extended period as may be approved of by the Governor in Council and published in

Specified exchanges to be provided.

the Gazette, provide and equip to the satisfaction of the Director, in reinforced concrete and brick or similar fire resisting material, in locations suitable for the purpose at Victoria, the Peak District, in the neighbourhood of Quarry Bay, at Kowloon, New Kowloon and Taipo, suitable and adequate telephone exchanges, capable of expansion to meet the following requirements:—

In the City of Victoria 10,000 Subscribers.

In the Peak District 500 Subscribers.

In the neighbourhood of Quarry Bay 1,000 Subscribers.

In Kowloon 10,000 Subscribers.

In New Kowloon 1,000 Subscribers.

In Taipo 500 Subscribers.

And the Company shall from time to time hereafter furnish such exchanges with all such fittings and apparatus as shall be necessary to meet the requirements of such respective areas.

The Company shall also, within such period of time as the Governor in Council may decide to be reasonable and after receipt of notice in that behalf from the Director provide and equip in like manner such further exchanges as the Director shall from time to time during the continuance of the concession by notice in writing require, but such further exchanges need not exceed in number two in that part of the Island of Hongkong outside the boundaries of the City of Victoria and four in the New Territories. Each of such last mentioned exchanges shall be adequate for the requirements of the area concerned, and shall be capable of such expansion as shall appear to the Governor in Council to be reasonably necessary, and shall be furnished from time to time by the Company with all such fittings and apparatus as shall be necessary for the requirements of the area concerned.

Lines to be provided on request.

33. The Company shall, within a reasonable time after the receipt of a request in writing in that behalf from any person, and upon the payment in advance of the Company's usual charges (if demanded), and the signature of the Company's usual form of agreement for an exchange line (if required), install a telephone in such building within the Colony as the requesting party may require, and shall connect the same with the nearest exchange and accord to the requesting person a good and continuous telephone service for so long as any such person continues to pay the Company's usual charges on due date. For the purposes of this clause the Company shall be given such time as the Governor in Council may decide to be reasonable within which to obtain adequate plant.

Rates of subscription.
Matters covered by subscription.

34. The Company shall be entitled to charge its subscribers rates of subscription which shall not exceed those specified in the Schedule or such revised rates as are hereinafter provided for. Such subscription shall include the cost of erection and fitting up of the lines and the installation of all necessary receivers, transmitters, switches or other appliances and the connection thereof with the nearest exchange and also all necessary repairs and renewals requisite for the maintenance of an efficient and continuous service, with the exception of damage, not occasioned by fair wear and tear, to telephonic apparatus which is inside a subscriber's premises.

Computation of net profits.

35.—(1) For the purposes of section 36, the net profits of the Company shall be the gross takings of the Company less the moneys appropriated for the following purposes, namely:—

- (1) Interest on moneys borrowed by the Company, including interest on Debentures:
- (2) the sums payable yearly to the Treasurer in accordance with section 7:
- (3) working costs:
- (4) reasonable management expenses:
- (5) superannuation and provident funds:
- (6) maintenance and removal of works, apparatus and other property

of the Company : (7) depreciation of buildings, plant, apparatus and other property of the Company : and (8), the appropriation of authorised sums to Reserve.

(2) The amount to be written off or provided annually for depreciation shall not exceed ten per cent of the cost of the Company's plant and equipment other than land and buildings. The depreciation on land and buildings shall be such a sum or sums as shall be fixed by an architect approved of by the Director and the Company.

(3) The Company shall be entitled to appropriate annually to Reserve a sum not exceeding fifty thousand dollars, and the Company shall (save that it cannot capitalise the same without the previous consent of Legislative Council) have power to deal with the Reserve in such manner as it shall think fit.

(4) The cost of making provision for the maintenance of an efficient service shall not include any sums expended in 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 authorised 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 authorised.

36.—The net profits of the Company as defined in section 35 shall be dealt with in the following manner, namely :—

Authorised dividend and disposal of surplus profits.

- (1) In payment of a dividend on the paid-up Capital of the Company which (save as in the next subsection provided) shall not exceed twelve per cent per annum :
- (2) If the net profits be such that a larger dividend than twelve per cent per annum could be paid, the sum representing an amount not exceeding a further six per cent per annum upon the said paid-up Capital of the Company shall be paid as to one-half thereof by way of increase of dividends to the shareholders of the Company and as to the balance thereof be set aside for the benefit of subscribers by way of reduction of the rates set out in the Schedule, or such revised rates as are hereinafter provided for, and any further profits in excess of the said further six per cent per annum shall be applied by the Company solely for the reduction of the rates payable by subscribers, so that the maximum dividend payable to the shareholders shall under no circumstances whatever exceed fifteen per cent per annum upon such paid-up capital as aforesaid.
- (3) The rate of dividend shall not be increased by the payment of any bonus or by any other colourable means of increasing the dividend, nor shall any other shares or class of shares bearing or capable of bearing a higher rate of interest be substituted.
- (4) Any dispute which may arise under section 35 or under this section as to the amount of the net profits of the Company or as to their disposal or division or as to their proper application for the reduction of rates payable by subscribers shall be referred to arbitration under the provisions of section 49.

37. It shall be lawful for either the Government or the Company from time to time to require from the other of them the revision of the rates of subscription set forth in the Schedule or for the time being in force, provided that after the first revision of rates there shall be a minimum interval of two years between every subsequent revision of

Revision of rates.

rates. Three months' previous notice in writing of such requirement shall be given by the party requiring revision to the other party, and thereupon, and in default of agreement between such parties with regard to such revision, the matter shall be referred to arbitration in accordance with the provisions of section 49. Either of such parties shall be entitled to place before the arbitrators any evidence which such party shall think fit relative to the subject of such application, and the arbitrators shall be entitled to require the Company to produce such books as may be necessary and to require an investigation of and report upon the Company's affairs to be made and prepared, at the cost of such party as may be decided by the arbitrators, by such independent auditor as the arbitrators may think fit.

If the arbitrators are of opinion that the then existing charges for subscriptions are insufficient to make provision for the maintenance of an efficient service and for the payment for the time being of a dividend of eight per cent per annum, the arbitrators shall require and the Government shall permit such charges to be increased to such sum as the arbitrators may consider adequate to provide for such service and dividend as aforesaid.

If, however, the arbitrators are of the opinion that the then existing charges exceed the amount required to provide for the time being for such service and a maximum dividend of fifteen per cent to shareholders of the Company, they shall require the Company to reduce such charges to such sum as the arbitrators shall consider adequate for the provision of such service and payment of such dividend as aforesaid, and the Company shall forthwith reduce such charges accordingly.

Lines, etc., for Government service to be paid for at usual rates of subscription.

38. All lines, branch lines and extensions required by the Government to be supplied by the Company to the Government shall be paid for in accordance with the rates of subscription specified in the Schedule or such revised rates as are provided for in section 37.

Company to keep and allow inspection of accounts.

39.—(a) The Company shall keep true and particular accounts of and concerning all matters connected with the aforesaid concessions and will on the first day of July, in every year, deliver to the Treasurer a statement in writing, showing the number of subscribers connected with each exchange and the number of persons who have requested to be supplied with lines during the preceding twelve months, and also the names and addresses of all persons who have requested to be supplied with lines during the preceding six months and with whose request the Company has not complied. The Company shall permit the Treasurer 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. The Company shall cause all its books to be kept in Hongkong at its registered office.

(b) 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.

Company to permit inspection of works.

40. The Company shall at all times during the continuance of the concession, permit the Director or his agent authorised in writing in that behalf to enter the premises of the Company at all reasonable times and to inspect and take account of all plant, fittings, apparatus or other material thereon, and shall, upon written demand, furnish to the Director all such particulars, information and accounts relative to the conduct of the Company's business and such other evidence as he may require of the due performance by the Company of its obligations under this Ordinance.

Penalty for breach of section 33.

41. If upon any reference to arbitration it shall be held that the Company has committed any breach of section 33, the arbitrators shall require the Company to pay the Treasurer such sum as the Governor in Council shall think fit not exceeding one hundred dollars for every such

breach and such further sum as the Governor in Council shall think fit not exceeding twenty dollars for every month during which such breach shall continue after due notice thereof has been given by the Government to the Company.

42. In the event of any breach by the Company of any of its obligations under this Ordinance, or under any Regulation made thereunder, other than any such breach as is referred to in section 33, the Company shall, without prejudice to the provisions of section 43, forfeit to the Government a penalty, payable to the Treasurer, of 100 dollars per day, for every day after the Company has received from the Director notice of any such breach and has in the opinion of the Governor in Council had a reasonable opportunity of remedying such breach, during which any such breach continues.

Penalty for breach by Company of any of its obligations.

43. If the Company shall :—

- (a) fail or neglect to execute and do all such assurances and things as shall be necessary for taking over the existing undertaking and for performing its obligations under this Ordinance, or
- (b) go into liquidation (otherwise than for the purpose of reconstruction), or
- (c) cease to carry on business, or
- (d) sell its undertaking or any part thereof or assign the benefit of the concession without the consent in writing of the Governor in Council or if upon any reference the arbitrators shall find :—

Power for Government to take over the undertaking in certain events.

- (1) that the system of the Company has ceased to be in regular operation for thirty-one consecutive days (except where such cessation shall in the opinion of the Governor in Council have been caused by stress of weather or any other cause of whatsoever nature beyond the Company's control), or
- (2) that the Company has neglected to provide and maintain an efficient and continuous service of public telephonic communication (and in particular has neglected to comply with the provisions of sections 30 and 32 or any of them),

then and in any such event the Government shall issue a notice in writing calling upon the Company to show cause why the concession should not be cancelled forthwith. The Company shall on receipt of such notice satisfy the Governor in Council that it will rectify the default or neglect, failing which the concession may be cancelled by the Governor in Council. In the event of any dispute arising under this section the matter shall be referred to arbitration as provided for in section 49.

Upon such cancellation the rights powers benefit and privileges of the Company under this Ordinance shall cease and determine forthwith and it shall be lawful but not obligatory for the Government (without prejudice to any remedy against the Company for failure to comply with any of the provisions of this Ordinance or of any Regulation made hereunder) at any time within three months after the service of such notice either (a) by notice in writing to require the Company to remove forthwith all works of a like nature to those specified in section 8 (with which notice the Company shall comply as soon as reasonably may be) or (b) on notice in writing to the Company in that behalf immediately to take over and purchase from the Company the undertaking of the Company.

If the Government shall elect to take over and purchase the Company's undertaking the Company shall be deemed to have sold such undertaking to the Government on the date upon which the Government shall give notice of its intention to take over and purchase the same, and it shall be lawful for the Government forthwith to enter in and upon the premises of the Company wheresoever situate and to exercise all acts of ownership over all exchanges, plant, apparatus, lines and cables and all other property of the Company of whatsoever nature including any contractual rights or obligations and all books of account or other documents used by the Company in its undertaking.

Upon any such taking over and purchase and at all times thereafter the Company shall on demand execute and do all such assurances and things as may be reasonably required by the Government for assuring and effecting its undertaking in the Government or as it shall direct.

The undertaking so taken over as aforesaid shall as soon as reasonably possible be paid for by the Government in accordance with the then condition and value thereof and any dispute or difference between the parties as to the amount so to be paid shall be referred to arbitration in accordance with the provisions of section 49.

Upon any such taking over the Government shall not be compelled to purchase any plant, apparatus, machinery or any other property whatsoever of the Company which is then obsolete or unserviceable.

Upon any such taking over nothing shall be paid for or allowed in respect of the goodwill of the Company's undertaking or for any loss of estimated profits resultant on such taking over, or for any profits whatever except up to and including the date of such taking over.

The Government shall pay to the Company interest at the rate of eight per cent per annum upon the amount of the purchase money from the date of taking over until the date of payment.

Concession is not transferable and is exclusive.

44. The concession is personal to the Company, and the Company shall not, without the previous written consent of the Governor in Council, assign, transfer, mortgage, charge, lease or otherwise dispose of the concession or the benefit thereof or of any part thereof or of its undertaking or works or any part thereof to any other person or grant any sub-licence in respect of the concession; and the Government shall not during the continuance of the concession permit any person other than the Company to place or maintain telephones or telephone wires or cables within the Colony or the waters thereof, except in the case of the following telephones, namely:—

- (a) All telephones whatsoever which may be *bona fide* in operation at the date of the commencement of this Ordinance: and
- (b) such telephones as may now or hereafter be constructed or maintained by the Colonial Government or by the Imperial Government in connection with their Colonial and Imperial services: and
- (c) telephones constructed or maintained by the Eastern Extension Australasia and China Telegraph Company Limited and Great Northern Telegraph Company Limited in accordance with the agreement now existing or any modification or renewal thereof: and
- (d) such telephones as may now or hereafter be installed and maintained by any person solely for the private use of such person in his business.

Provided that it shall be lawful for the Government or such person as the Government shall authorise in that behalf, at any time during the five years preceding the termination of this concession, to execute and do any works of a like nature to those specified in section 8 and any other works which the Government may think necessary or desirable for the purpose of continuing the supply of public telephonic communication after the termination of the concession.

45. The Company shall during the whole term of the concession carry on its operations and use every endeavour to develop its system as though the concession were perpetual.

Company to operate as if tenure were perpetual.

46.—(a) It shall be lawful but not obligatory for the Government by notice in writing to the Company, given not less than five years previous to the date of the termination of the concession, to require the Company to continue the supply of telephonic communication in like manner and upon like terms as in this Ordinance and in any Regulation made hereunder provided (and particularly with the use of the most up-to-date apparatus suitable for local conditions and climate) for a further period of years and the Company shall, within six months of the date of such notice, inform the Government in writing whether it is willing to continue such supply. If the Company shall so signify its willingness to continue such supply then the supply shall be continued by the Company for the further term of twenty-five years from the expiration of the concession in like manner and upon like terms as aforesaid save so far as such terms may be varied by mutual agreement between the parties.

Procedure to be adopted on expiration of term of concession.

(b) If the Company shall fail or neglect to inform the Government within the prescribed period of its willingness to continue such supply, or shall decline within such period as aforesaid, then it shall be lawful for the Government, upon giving the Company six months' previous notice in writing, to take over and purchase from the Company, on the expiration of the concession, the whole or such part as the Government may think fit of the undertaking of the Company and upon such taking over and purchase the terms of section 43 shall apply in all respects as if such taking over had been effected under that section.

(c) Notwithstanding anything in this section contained it shall be lawful for the Government, on giving to the Company six months' notice in writing in that behalf and without requiring the Company to continue the supply under paragraph (a) of this section, to take over and purchase from the Company on the expiration of the concession all or such part as the Government shall think fit of the undertaking, and all property of whatever kind used by the Company in its undertaking and upon such taking over and purchase the terms of section 43 hereof shall apply in all respects as if such taking over and purchase had been effected under that section.

47. Upon any taking over and purchase of the Company's undertaking by the Government the price to be paid by the Government shall be determined by arbitration if the same cannot be agreed upon by the parties, and due regard shall be had to and allowance made for the then value of land and buildings and to the then condition and value of plant apparatus and material, and compensation shall be allowed to the Company in respect of spare plant provided for the reasonably anticipated future requirements of the undertaking.

Determination of amount of purchase money.

48. If upon the expiration of this concession no arrangements shall be made for the continuance of supply by the Company or if the Government shall not elect to take over and purchase the Company's undertaking under the foregoing provisions in that behalf, the Government may, on the expiration of the concession, require the Company to remove and the Company shall as soon as reasonably may be, and at its own cost, remove all works erected or made by the Company in pursuance of these presents, and the Company shall immediately upon such removal make good all damage which may be done in effecting such removal and make full compensation for all damage done in like manner as if such damage had been done in the exercise of the authority contained in section 8.

Removal of works on expiration of licence in default of arrangement for continuance or sale.

Reference to Arbitration.

49. Any claim under any of the provisions of this Ordinance other than section 42 by the Government or by any person against any person or the Government in respect of any matter arising out of this Ordinance or any Regulation made thereunder and any dispute, difference, doubt or question which may arise touching the carrying out or the construction of any of the provisions of this Ordinance or of any such Regulation or as to any matter in any way connected with or arising out of this Ordinance or of any such Regulation or the operation thereof or the obligations rights duties or liabilities of the Government or of any person in connection with or arising out of the same, shall be referred to arbitration, in accordance with the provisions of the Code of Civil Procedure in the same way as if all the parties concerned in any such claims, dispute, difference, doubt or question had entered into a written agreement with one another, to submit the same to the arbitration of two arbitrators in this Colony.

Service of Notices, etc.

50. Any notice, direction, request or order, required or authorised by this Ordinance to be given to the Company, may be served by prepaid registered letter sent through the post to the last known place of business of the Company in the Colony, and the same shall operate and be deemed to have been served at the expiration of twenty-four hours from the time of being put into the Post Office, and proof that the letter was properly addressed registered and posted shall be sufficient evidence of service.

Signature of Notices.

51. Any notice, direction, request or order required or authorised to be given by the Government may be signed by or on behalf of the Colonial Secretary.

Reservation of liability to penalties imposed by law.

Applicability of Post Office, London, technical instructions.

52. Nothing herein contained shall relieve the Company or any other person claiming any right hereunder from being subject to any restrictions, regulations, provisions or penalties which may hereafter be made or imposed by any Act of the Imperial Parliament made applicable to the said Colony or any Ordinance, regulation or by-laws now or hereafter in force in the said Colony, and the Company shall conform with the technical instructions contained in the Post Office, London, Engineering Department handbooks XIII, and XIV (Part I and Part II), and IV in relation to the construction of aerial lines on roads and railways, the construction of underground Telegraph and Telephone Lines and maintenance testing, so far as the same may be capable of being applied to local conditions, and so far as the same are not contrary to the provisions of this Ordinance, as if the same had been incorporated in and had formed part of this Ordinance.

Power to make regulations and by-laws.

53.—(1) The Governor in Council may make regulations for the carrying out of the provisions of this Ordinance.

(2) The Company may from time to time, subject to the approval of the Governor in Council, make by-laws for the carrying out of this Ordinance and a breach of any such by-law shall be punishable on summary conviction by a fine not exceeding fifty dollars.

(3) All regulations or by-laws made under this Ordinance shall be laid on the table of the Legislative Council at the first meeting thereof held after the publication in the Gazette of the making of such regulations or by-laws, and if a resolution is passed at the first meeting of the Legislative Council held after such regulations or by-laws have been laid on the table of the said Council resolving that any such regulation or by-law shall be rescinded or amended in any manner whatsoever, the said regulation or by-law shall, without prejudice to anything done thereunder, be deemed to be rescinded or amended, as the case may be, as from the date of publication in the Gazette of the passing of such resolution.

54. 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.

Saving of rights of the Crown and of certain other rights.

SCHEDULE.

The following annual rates (payable quarterly in advance) shall be paid by subscribers, with effect on and from the 1st day of July, 1925 : —

- (a) \$108 per exchange line within (i) Victoria and Kowloon, as defined by the Interpretation Ordinance, 1911 and (ii) within the Peak District, as defined by the Peak District Reservation Ordinance, 1904, but substituting "700 feet" for "788 feet".
- (b) \$108 per exchange line within a radius of one mile from any exchange that may hereafter be opened outside the areas referred to in (a).
- (c) An additional charge of \$50 per mile or part of a mile measured outwards from the nearest point of the boundary of the areas referred to in (a) and (b).
- (d) For extension telephones, bells, switches, switchboards, power-circuits, removals, and other services of like nature, such rates as the Governor in Council may approve.

Objects and Reasons.

1. The object of this bill is to provide for the establishment of an improved telephone service in the Colony by means of a concession to a new local Telephone Company to supply telephonic communication within the Colony for a period of fifty years commencing from the 1st of July, 1925.

2. Clause 3 of the bill contains the grant of such concession to the local Company, together with provision for the cessation of the rights of the existing Company and for the contracts of the telephone subscribers being transferred from the existing Company to the new local Company.

3. Clause 4 provides for the Hongkong registration of the Company and that its Memorandum and Articles shall be subject to the approval of the Governor in Council.

4. Clause 5 limits the number of Directors, and enacts that they shall all be *bona fide* resident in Hongkong.

5. Clause 6 (1) mentions the original capital of the Company and provides against its increase or the acquirement by the Company of additional moneys for its undertaking without the previous consent of the Legislative Council.

Clause 6 (2) restricts the Company's powers of borrowing.

6. Clause 7 provides for the payment of royalty to the Government.

7. Clause 8 confers upon the company powers to execute the necessary works whilst clause 9 provides for the company making compensation for damage done in the execution of such works.

8. Clause 10 provides that certain facilities shall be granted by the Government to the Company. Clause 11 requires no special comment.

9. Clause 12 provides for the wires being on the metallic return principle subject to the provisions of clause 25.

10. Clause 13 provides for the marking of future underground cables, etc. Clauses 14 to 16 require no special comment.

11. Clause 17 enacts that overhead wires must be carried at a height of at least 18 feet above the ground.

12. Clauses 18, 19 and 20 contain certain safety provisions whilst clause 21 provides for the protection of the property of others which is crossed by the services of the Company.

13. Clause 22 provides for due precautions being taken by the company in the carrying out of its works in the public streets whilst clause 23 places certain limitations on interference with the works of others.

14. Clause 24 enacts that the Company shall not have any claim against the Government for the disturbance of certain of their works by certain specified Government works.

15. Clause 25 enacts that reasonable precautions must be taken to prevent lightning discharges from entering buildings.

16. Clause 26 renders the Company liable to indemnify the Government against claims in respect of various accidents, damage or injury.

17. Clause 27 provides for the company altering its works upon notice from the Director of Public Works, whilst clause 28 provides that overhead lines or cables shall be placed underground on similar notice and clause 29 provides for wires in the City of Victoria being placed underground within a certain period.

18. Clause 30 provides for the establishment by the Company within such period of time as the Governor in Council may decide to be reasonable of an improved system of telephone service and also for the telephone service of the company being kept in an efficient condition and all its buildings and plant being kept in good repair.

19. Clause 31 enacts that the company shall provide testing circuits.

20. Clause 32 imposes an obligation upon the company of establishing within a time limit specific exchanges capable of supplying a specified number of subscribers in various places and also provides for certain further exchanges being opened in the future.

21. Clause 33 imposes the obligation upon the Company of providing telephone lines on request. Failure to do so is punishable under clause 41.

22. Clause 34 provides for the rates of subscription in the schedule to the Ordinance or other revised rates being paid by subscribers.

23. Clause 35 provides for the ascertainment of net profits for the computation of dividend under clause 36.

24. Clause 36 provides for the authorised dividends of the Company, and for the disposal of surplus profits, after a maximum dividend has been provided for, in reduction of the rates payable by subscribers.

25. Clause 37 provides for the revision by arbitrations of the rates payable by subscribers, but imposes a limit on revisions subsequent to the first.

26. Clause 38 enacts that Government lines shall pay the usual rates of subscription.

27. Clause 39 provides for the company keeping and allowing inspection by the Treasurer of its accounts whilst clause 40 provides for the company's works being inspected by the Director of Public Works or his agent.

28. As regards clause 41, see remarks above re clause 33.

29. Clause 42 imposes a penalty for any breach by the Company of its obligations, other than those under clause 33.

30. Clause 43 gives the Government power to cancel the undertaking of the company in certain events and to purchase it subject to certain conditions.

31. Clause 44 provides against the transfer or assignment by the company of its concession conferred by this Ordinance.

32. Clause 45 provides for the company operating as if its concession were perpetual, whilst clause 46 provides for the procedure to be adopted on the expiration of the term of the concession and clause 47 provides for the ascertainment of the amount of purchase money to be paid by the Government in the event of their taking over the undertaking.

33. Clause 48 provides for the removal of its works by the company in default of arrangement for the continuance of its concession, and in default of the sale of its undertaking to the Government.

34. Clause 49 contains provisions for reference to arbitration in accordance with the Code of Civil Procedure, with the added stipulation that reference shall be to two arbitrators.

35. Clauses 50 and 51 are formal and relate to notices.

36. Clause 52 reserves the liability of the company to certain penalties imposed by law, and, subject to this Ordinance, makes certain technical instructions of the Post Office, London, applicable to the Company.

37. Clause 53 contains the usual powers re Regulations and Bye-laws.

38. Clause 54 saves the rights of the Crown.

39. The Schedule to the bill contains in paragraphs (a) (b) and (c) provisions for charging certain rates to subscribers according to certain areas and according to distance from the telephone exchanges. Paragraph (d) of the Schedule provides for certain charges for various matters being made, if approved by the Governor in Council.

H. E. POLLOCK,
Attorney General.

9th June, 1925.