



**BERMUDA
1939 : 29**

TRADING WITH THE ENEMY ACT 1939

ARRANGEMENT OF SECTIONS

1	Interpretation	8	Collection of enemy debts and custody of enemy property
2	Definition of enemy	9	False statement; obstruction
3	Offences	10	Offences by corporations
4	Inspection and supervision of businesses	11	Exercise of powers conferred on Governor
5	Transfer of negotiable instruments and choses in action	12	Saving rights of Crown
6	Transfer and allotment of securities	13	Commencement; exemption from retrospective effect of Act [<i>omitted</i>]
7	Purchase of enemy currency		

[11 September 1939]

[preamble and words of enactment omitted]

Interpretation

1 (1) In this Act—

"enemy subject" means—

- (i) an individual who, not being either a Commonwealth citizen or a British protected person, possesses the nationality of a State at war with Her Majesty; or

TRADING WITH THE ENEMY ACT 1939

- (ii) a body of persons constituted or incorporated in, or under the laws of, any such State;

"enemy territory" means any area which is under the sovereignty of, or in the occupation of a power with whom Her Majesty is at war, not being an area in the occupation of Her Majesty or of a Power allied with Her Majesty; and also any area which the Governor may by order direct to be treated for the purposes of this Act as enemy territory;

(2) If in any proceedings under or arising out of this Act any question arises whether any area is or was under the sovereignty of or in the occupation of, any Power, or as to the time at which any area became or ceased to be under such sovereignty or in such occupation, a certificate given by the Governor and purporting to contain information communicated to the Governor by a Secretary of State as to the status as aforesaid of such area, or as to such time as aforesaid, shall be conclusive evidence of the facts stated in the certificate to have been so communicated.

(3) *[omitted] [transitional]*

(4) For the purposes of this Act, a person shall be deemed to be a director of a body corporate if he occupies in relation thereto the position of a director, by whatever name called; and, for the purposes of the provisions of this Act relating to offences by bodies corporate, a person shall be deemed to be a director of a body corporate if he is a person in accordance with whose directions or instructions the directors of that body act:

Provided that a person shall not, by reason only that the directors of a body corporate act on advice given by him in a professional capacity, be taken to be a person in accordance with whose directions or instructions those directors act.

(5) Any power conferred by this Act to make any order shall be construed as including a power, exercisable in the like manner, to vary or revoke the order.

Definition of enemy

2 (1) Subject to this section, "enemy", for the purposes of this Act, means—

- (a) any State, or Sovereign of a State, at war with Her Majesty;
- (b) any individual resident in enemy territory;

- (c) any body of persons (whether corporate or unincorporate) carrying on business in any place, if and so long as the body is controlled by a person who, under this section, is an enemy; or
- (d) any body of persons constituted or incorporated in, or under the laws of, a State at war with Her Majesty;

but does not include any person by reason only that he is an enemy subject.

(2) The Governor, with the prior approval of a Secretary of State, may by order direct that any person specified in the order shall, for the purposes of this Act, be deemed to be, while so specified, an enemy.

Offences

3 (1) Any person who trades with the enemy within the meaning of this Act commits an offence of trading with the enemy:

Punishment on conviction on indictment: imprisonment for 7 years or a fine of \$28,800 or both such imprisonment and fine.

Punishment on summary conviction: imprisonment for 6 months or a fine of \$2,880 or both such imprisonment and fine.

The court before which the offender is convicted may in any case order that any goods or money in respect of which the offence has been committed shall be forfeited to Her Majesty.

(2) For the purposes of this Act a person shall be deemed to have traded with the enemy—

- (a) if he has had any commercial, financial or other intercourse or dealings with, or for the benefit of any enemy and, in particular, but without prejudice to the generality of the foregoing provision—
 - (i) if he has supplied any goods to or for the benefit of an enemy, or obtained any goods from an enemy, or traded in, or carried, any goods consigned to or from an enemy or destined for or coming from enemy territory; or
 - (ii) if he has paid or transmitted any money, negotiable instrument or security for money to or for the benefit of an enemy or to a place in enemy territory; or
 - (iii) if he has performed any obligation to, or discharged any obligation of, an enemy, whether

TRADING WITH THE ENEMY ACT 1939

the obligation was undertaken before or after the commencement of this Act; or

- (b) if he has done anything which, under the succeeding provisions of this Act, is to be treated as trading with the enemy:

Provided that a person shall not be deemed to have traded with the enemy by reason only—

- (i) that he has done anything under an authority given generally or specially by, or by any person authorized in that behalf by, the Governor; or
- (ii) that he has received payment from an enemy of a sum of money due in respect of a transaction under which all obligations on the part of the person receiving payment had been performed before the commencement of the war by reason of which the person from whom the payment was received became an enemy.

(3) Any reference in this section to an enemy shall be construed as including a reference to a person acting on behalf of an enemy.

(4) A prosecution for an offence of trading with the enemy shall not be instituted except by, or with the consent of the Director of Public Prosecutions:

Provided that this subsection shall not prevent the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence, or the remanding, in custody or on bail, of any person charged with such an offence, notwithstanding that the necessary consent to the institution of a prosecution for the offence has not been obtained.

[Section 3 amended by 1999:8 s.2 & Sch 1 effective 1 April 1999]

Inspection and supervision of businesses

4 (1) The Governor, if he thinks it expedient for securing compliance with section 3 to do so, may by written order authorize a specified person (hereafter in this section referred to as "an inspector") to inspect any books or documents belonging to, or under the control of, a person named in the order, and to require that person and any other person to give such information in his possession with respect to any business carried on by the named person as the inspector may demand, and for the purposes aforesaid to enter on any premises used for the purposes of that business.

(2) If, on a report made by an inspector as respects any business, it appears to the Governor that it is expedient for securing compliance with section 3, that the business should be subject to supervision, the Governor may appoint a person (hereafter in this section referred to as "a supervisor") to supervise the business, with such powers as the Governor may determine.

(3) Any person who, without reasonable cause, fails to produce for inspection, or furnish, to an inspector or a supervisor any document or information which he is duly requested by the inspector or supervisor so to produce or furnish, commits an offence against this Act:

Punishment on summary conviction: imprisonment for 6 months or a fine of \$1,440 or both such imprisonment and fine.

(4) Any person who, with intent to evade the provisions of this section, destroys, mutilates or defaces any book or other document which an inspector or a supervisor is or may be authorized under this section to inspect, commits an offence against this Act:

Punishment on conviction on indictment: imprisonment for 5 years or a fine of \$14,400 or both such imprisonment and fine.

Punishment on summary conviction: imprisonment for 6 months or a fine of \$1,440 or both such imprisonment and fine.

Transfer of negotiable instruments and choses in action

5 (1) No assignment of a chose in action made by or on behalf of an enemy shall, except with the sanction of the Governor, be effective so as to confer on any person any rights or remedies in respect of the chose in action; and neither a transfer of a negotiable instrument by or on behalf of an enemy, nor any subsequent transfer thereof, shall, except with the sanction of the Governor, be effective so as to confer any rights or remedies against any party to the instrument.

(2) The foregoing subsection shall apply in relation to any transfer of any coupon or other security transferable by delivery, not being a negotiable instrument, as it applies in relation to any assignment of a chose in action.

(3) If any person by payment or otherwise purports to discharge any liability from which he is relieved by this section, knowing the facts by virtue of which he is so relieved, he shall be deemed to have thereby traded with the enemy:

Provided that in any proceedings for an offence of trading with the enemy which are taken by virtue of this subsection it shall be a defence for the defendant to prove that at the time when he purported to discharge the liability in question he had reasonable grounds for believing that the liability was enforceable against him by order of a competent court, not being a court having jurisdiction in Bermuda or a court of a

TRADING WITH THE ENEMY ACT 1939

State at war with Her Majesty, and would be enforced against him by such order,

(4) Where a claim in respect of a negotiable instrument or chose in action is made against any person who has reasonable cause to believe that, if he satisfied the claim, he would be thereby committing an offence of trading with the enemy, that person may pay into the Supreme Court any sum which, but for subsection (1), would be due in respect of the claim, and thereupon that sum shall, subject to rules of court, be dealt with according to any order of the Court, and the payment shall for all purposes be a good discharge to that person.

(5) Nothing in this section shall apply to securities to which section 6 applies.

Transfer and allotment of securities

6 (1) If any securities to which this section applies—

(a) are transferred by or on behalf of an enemy; or

(b) being securities issued by a company incorporated in Bermuda, are allotted or transferred to, or for the benefit of, any enemy subject without the consent of the Governor, then, except with the sanction of the Governor, the transferee or allottee shall not, by virtue of the transfer or allotment, have any rights or remedies in respect of the securities, and no body corporate by whom the securities were issued or are managed shall take any cognizance of, or otherwise act upon, any such transfer except under the authority of the Governor.

(2) No share warrants, stock certificates or bonds, being warrants, certificates or bonds payable to bearer, shall be issued in respect of any securities to which this section applies, being securities registered or inscribed in the name of an enemy or of a person acting on behalf of or for the benefit of an enemy.

(3) Any person who contravenes this section commits an offence against this Act:

Punishment on summary conviction: imprisonment for 6 months or a fine of \$2,880 or both such imprisonment and fine.

(4) This section applies to the following securities, that is to say, annuities, stock, shares, bonds, debentures or debenture stock registered or inscribed in any register, branch register or other book kept in Bermuda.

Purchase of enemy currency

7 (1) Purchasing enemy currency shall be treated as trading with the enemy.

(2) In this section "enemy currency" means any such notes or coins as circulate as currency in any area under the sovereignty of a Power with whom Her Majesty is at war, not being an area in the occupation of Her Majesty or of a Power allied with Her Majesty, or any such other notes or coins as are for the time being declared by an order of Her Majesty's Treasury in the United Kingdom to be enemy currency.

Collection of enemy debts and custody of enemy property

8 (1) With a view to preventing the payment of money to enemies and of preserving enemy property in contemplation of arrangements to be made at the conclusion of peace, the Governor may appoint a custodian of enemy property for Bermuda, and may by order—

- (a) require the payment to the custodian of money which would, but for the existence of a state of war, be payable to or for the benefit of a person who is an enemy, or which would, but for section 5 or section 6, be payable to any other person;
- (b) vest in the custodian such enemy property as may be prescribed, or provide for, and regulate, the vesting in the custodian of such enemy property as may be prescribed;
- (c) vest in the custodian the right to transfer such other enemy property as may be prescribed, being enemy property which has not been, and is not required by the order to be, vested in the custodian;
- (d) confer and impose on the custodian and on any other person such rights, powers, duties and liabilities as may be prescribed—
 - (i) as respects property which has been, or is required to be, vested in the custodian by or under the order; and
 - (ii) as respects property of which the right of transfer has been, or is required to be, so vested; and
 - (iii) as respects any other enemy property which has not been, and is not required to be, so vested; and
 - (iv) as respects money which has been, or is by the order required to be, paid to the custodian;

TRADING WITH THE ENEMY ACT 1939

- (e) require the payment of the prescribed fees to the custodian in respect of such matters as may be prescribed and regulate the collection of and accounting for such fees;
- (f) require any person to furnish to the custodian such returns, accounts and other information and to produce such documents, as the custodian considers necessary for the discharge of his functions under the order;

and any such order may contain such incidental and supplementary provisions as appear to the Governor to be necessary or expedient for the purposes of the order.

(2) Where any requirement or direction with respect to any money or property is addressed to any person by the custodian and accompanied by a certificate of the custodian that the money or property is money or property to which an order under this section applies, the certificate shall be evidence of the facts stated therein, and if that person complies with the requirement or direction, he shall not be liable to any action or other legal proceeding by reason only of such compliance.

- (3) Where, in pursuance of an order made under this section—
 - (a) any money is paid to the custodian; or
 - (b) any property, or the right to transfer any property, is vested in the custodian; or
 - (c) a direction is given to any person by the custodian in relation to any property which appears to the custodian to be property to which the order applies, then neither the payment, vesting or direction nor any proceedings in consequence thereof shall be invalidated or affected by reason only that at a material time—
 - (i) some person who was or might have been interested in the money or property, and who was an enemy or an enemy subject, had died or had ceased to be an enemy or an enemy subject; or
 - (ii) some person who was so interested, and who was believed by the custodian to be an enemy or an enemy subject, was not an enemy or an enemy subject.

(4) Any order made under this section shall have effect notwithstanding anything in any Act passed before this Act.

(5) Any person who pays any debt, or who deals with any property, to which any order made under this section applies, otherwise than in accordance with the order, commits an offence against this Act:

Punishment on summary conviction: imprisonment for 6 months or a fine of \$2,880 or both such imprisonment and fine,

and the payment or dealing shall be void.

(6) Any person who, without reasonable cause, fails to produce or furnish, in accordance with the requirements of an order made under this section, any document or information which he is required under the order to produce or furnish, commits an offence against this Act:

Punishment on summary conviction: a fine of \$288 for each day during which the default continues.

(7) All fees received by the custodian by virtue of an order under this section shall be paid into the Consolidated Fund.

(8) In this section—

(a) "enemy property" means any property for the time being belonging to or held or managed on behalf of an enemy or an enemy subject;

(b) "property" means real or personal property, and includes any estate or interest in real or personal property, any negotiable instrument, debt or other chose in action, and any other right or interest, whether in possession or not; and

(c) "prescribed" means prescribed by an order made under this section.

False statement; obstruction

9 (1) Any person who, for the purpose of obtaining any authority or sanction under this Act, or in giving any information for the purposes of this Act or of any order made thereunder, knowingly or recklessly makes a statement which is false in a material particular, commits an offence against this Act:

Punishment on summary conviction: imprisonment for 6 months or a fine of \$2,880 or both such imprisonment and fine.

(2) Any person who wilfully obstructs any person in the exercise of any powers conferred on him by or under this Act commits an offence against this Act:

Punishment on summary conviction: a fine of \$1,440.

Offences by corporations

10 Where any offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of or to have been attributable to any neglect on the part of, any director, manager, secretary or other officer of the body corporate, then he, as well as

TRADING WITH THE ENEMY ACT 1939

the body corporate, shall be deemed to be guilty of that offence, and shall be liable to be proceeded against and punished accordingly.

Exercise of powers conferred on Governor

11 Anything required or authorized under this Act to be done by, to or before the Governor may be done by, to or before any person authorized in that behalf by the Governor.

Saving rights of Crown

12 This Act shall be without prejudice to the exercise of any right or prerogative of the Crown.

Commencement; exemption from retrospective effect of Act

13 [omitted]

[Amended by:

1940 : 4,

and by the Defence (Trading with the Enemy) Regulations, 1940, made under the authority of the Act of the Parliament of the United Kingdom entitled the Emergency Powers (Defence) Act, 1939 and

1967 : 242

1999 : 8]

[For Orders made under the Act, see Vol. IV of the Compilation of 1952 at pp. 3072-3091, and the Annual Volumes for 1952, 1953 and 1954.]