

CHAPTER 114

THE TRADING WITH THE ENEMY ACT

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CHAPTER 114

TRADING WITH THE ENEMY

*29 of
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An Act to impose penalties for trading with the enemy; to make provision as respects the property of enemies and enemy subjects; and to provide for purposes connected with the matters aforesaid.

[3rd September, 1939]

PART I

PRELIMINARY

1. (1) This Act may be cited as the Trading with the Enemy Act. Short title and commencement

(2) This Act shall be deemed to have come into operation on the 3rd September, 1939:

Provided that a person shall not, by virtue of this subsection, be liable to any penalty in respect of anything done by him before the date of the publication of this Act in the *Gazette* which, if it had been done in England, would not have been unlawful in common law.

2. (1) In this Act, unless the context otherwise requires- Interpretation

"enemy subject" means-

(a) an individual who possesses the nationality of a State at war with the Republic; or

(b) 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 the Republic is at war, not being an area in the occupation of the Republic or of a Power allied with the Republic, and also any area which the President may, by statutory order, direct to be treated for the purposes of this Act as enemy territory.

(2) A certificate of the President that 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 shall, for the purposes of any proceedings under or arising out of this Act, be conclusive evidence of the facts stated in the certificate.

(3) In considering for the purposes of any of the provisions of this Act whether any person has been an enemy or an enemy subject, no account shall be taken of any state of affairs existing before the commencement of this Act.

(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.

(As amended by No. 34 of 1947 and S.I. No. 5 of 1965)

PART II

TRADING WITH THE ENEMY AND MATTERS RELATING THERETO

3. (1) Any person who trades with, or attempts to trade with, the enemy within the meaning of this Act shall be guilty of an offence of trading with the enemy, and shall be liable- Penalties for trading with the enemy

(a) on conviction by the High Court to imprisonment for a term not exceeding seven years or to a fine, or to both; or

(b) on conviction by a magistrate holding a subordinate court of the first class to imprisonment for a term not exceeding twelve months or to a fine not exceeding fifteen thousand penalty units, or to both;

and the court may in any case order that any goods or money in respect of which the offence has been committed shall be forfeited.

(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, an enemy, and, in particular, but without prejudice to the generality of the foregoing provisions, if he has-

(i) 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 any enemy or destined for or coming from enemy territory; or

(ii) 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) performed any obligation to, or discharged any obligation of, an enemy, whether the obligation was

undertaken before or after the commencement of this Act; or

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

and any reference in this Act to an attempt to trade with the enemy shall be construed accordingly:

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

(i) done anything under an authority given generally or specially by, or by any person authorised in that behalf by, the President; or

(ii) 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) Proceedings in respect of an offence of trading with the enemy alleged to have been committed by any person may be taken before a court in the Republic having jurisdiction in the place where that person is for the time being, provided that such court is otherwise empowered to try such case.

(5) In any proceedings for an offence of trading with the enemy, the fact that any document has been despatched addressed to a person in enemy territory shall, unless the contrary is proved, be evidence, as against any person who was a party to the despatch of the document,

that the person to whom the document was despatched was an enemy.

(6) 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.

(As amended by No. 34 of 1947, S.I. No. 5 of 1965 and Act No. 13 of 1994)

4. (1) Subject to the provisions of this section, "enemy" for the purposes of this Act means-

Definition of "enemy"

(a) any State, or Sovereign of a State, at war with the Republic;

(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;

(d) any body of persons constituted or incorporated in, or under the laws of, a State at war with the Republic; and

(e) as respects any business carried on in enemy territory, any individual or body of persons (whether corporate or unincorporate) carrying on that business;

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

(2) The President 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:

Provided that, notwithstanding the provisions of the Interpretation and General Provisions Act, the names of any persons so specified in any such order as aforesaid shall be deemed to have been published when a copy of such order has been deposited at the office of the Custodian of Enemy Property, where it may be inspected free of charge by members of the public at any time during the usual Government office hours.

(As amended by No. 34 of 1947 and S.I. No. 5 of 1965)

5. (1) The President, if he thinks it expedient for securing compliance with section *three* so to do, may by written order authorise 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.

Inspection and supervision of businesses

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

(3) If any person, 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, that person shall be liable, on conviction by a magistrate holding a subordinate court of the first class, to a fine not exceeding one thousand five hundred penalty units or to imprisonment for a term not exceeding six months, or to both.

(4) If any person, with intent to evade the provisions of this section, destroys, mutilates or defaces any book or other document which an inspector or supervisor is or may be authorised under this section to inspect, that person shall be liable-

(a) on conviction by the High Court, to imprisonment for a term not exceeding five years or to a fine, or to both; or

(b) on conviction by a magistrate holding a subordinate court of the first class, to imprisonment for a term not exceeding twelve months or to a fine not exceeding three thousand penalty units, or to both.

(As amended by Act No. 13 of 1994)

6. (1) Where any business is being carried on in the Republic by, or on behalf of, or under the direction of, persons all or any of whom are enemies or enemy subjects or appear to the President to be associated with enemies, the President may, if he thinks it expedient so to do, make-

Power to control and wind up certain businesses

(a) an order (hereafter in this section referred to as a "restriction order") prohibiting the carrying on of the business either absolutely or except for such purposes and subject to such conditions as may be specified in the order; or

(b) an order (hereafter in this section referred to as a "winding-up order") requiring the business to be wound up;

and the making of a restriction order as respects any business shall not prejudice the power of the President, if he thinks it expedient so to do, at any subsequent date to make a winding-up order as respects that business.

(2) Where an order under subsection (1) is made as respects any business, the President may, by that or a subsequent order, appoint a controller to control and supervise the carrying out of the order, and, in the case of a winding-up order, to conduct the winding up of the business, and may confer on the controller any such powers in relation to the business as are exercisable by a liquidator in the voluntary winding up of a company in relation to the company (including power in the name of the person carrying on the business or in his own name, and by deed or otherwise, to convey or transfer any property, and power to apply to the court to determine any question arising in the carrying out of the order), and may by the order confer on the controller such other powers as the President thinks necessary or convenient for the purpose of giving full effect to the order.

(3) Where a restriction order or a winding-up order is made as respects any business, the distribution of any assets of the business which are distributed while the order is in force shall be subject to the same rules as to preferential payments as are applicable to the distribution of the assets of a company which is being wound up, and

the said assets of the business shall, so far as they are available for discharging unsecured debts, be applied in discharging unsecured debts due to creditors of the business who are not enemies in priority to unsecured debts due to any other creditors, and any balance, after providing for the discharge of all liabilities of the business, shall be distributed among the persons interested in the business in such manner as the President may direct:

Provided that the provisions of this subsection shall, in their application to the distribution of any money or other property which would, in accordance with those provisions, fail to be paid or transferred to an enemy, whether as a creditor or otherwise, have effect subject to the provisions of section *eleven* (which relates to the collection of enemy debts and the custody of enemy property) and of any order made under that section.

(4) Where any business for which a controller has been appointed under this section has assets in enemy territory, the controller shall, if in his opinion it is practicable so to do, cause an estimate to be prepared-

(a) of the value of those assets;

(b) of the amount of any liabilities of the business to creditors, whether secured or unsecured, who are enemies;

(c) of the amount of the claims of persons who are enemies to participate, otherwise than as creditors of the business, in any distribution of assets of the business made while an order under subsection (1) is in force as respects the business;

and where such an estimate is made, the said liabilities and claims shall, for the purposes of this section, be deemed to have been satisfied out of the said assets of the business in enemy territory, or to have been satisfied thereout so far as those assets will go, and only the balance (if any) shall rank for satisfaction out of the other assets of the business.

(5) Where an estimate has been prepared under subsection (4), a certificate of the controller as to the value or amount of any assets, claims or liabilities to which the estimate relates shall be conclusive for the purpose of determining the amount of the assets of the business available for discharging the other liabilities of the business and for distribution amongst other persons claiming to be interested in the

business:

Provided that nothing in this subsection shall affect the rights of creditors of and other persons interested in, the business against the assets of the business in enemy territory.

(6) The President may, on an application made by a controller appointed under this section, after considering the application and any objections which may be made by any person who appears to him to be interested, by order grant the controller a release, and an order of the President under this subsection shall discharge the controller from all liability in respect of any act done or default made by him in the exercise and performance of his powers and duties as controller; but any such order may be revoked by the President on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(7) If any person contravenes, or fails to comply with, the provisions of any order made under subsection (1), he shall be guilty of an offence of trading with the enemy.

(8) Where an order under subsection (1) has been made as respects a business carried on by any individuals or by a company, no bankruptcy petition, or petition for sequestration or summary sequestration against the individuals, or petition for the winding up of the company, shall be presented, or resolution for the winding up of the company passed, or steps for the enforcement of the rights of any creditors of the individuals or company taken, without the consent of the President but, where the business is carried on by a company, the President may present a petition for the winding up of the company by the court, and the making of an order under this section shall be a ground on which the company may be wound up by the court.

(9) Where an order is made under this section appointing a controller for any business, any remuneration of, and any costs, charges and expenses incurred by, the controller, and any other costs, charges and expenses incurred in connection with the control and supervision of the carrying out of the order, shall, to such amount as may be certified by the President, be defrayed out of the assets of the business, and, as from the date of the certificate, be charged on those assets in priority to any other charges thereon.

(No. 34 of 1947)

7. (1) No assignment of a chose in action made by or on behalf of an enemy shall, except with the sanction of the President, 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 President, be effective so as to confer any rights or remedies against any party to the instrument.

Transfer of
negotiable
instruments and
choses in action
by enemies

(2) Subsection (1) 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 either a court having jurisdiction in the Republic, or a court of a State at war with the Republic, and would be enforced against him by such an 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 High Court any sum which, but for the provisions of 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 the next following section applies.

(As amended by S.I. No. 5 of 1965)

8. (1) If-

Transfer and
allotment of
securities

(a) any securities to which this section applies are transferred by or on behalf of an enemy; or

(b) any such securities, being securities issued by a company within Cap. 388 the meaning of the Companies Act, are allotted or transferred to, or for the benefit of, an enemy subject without the consent of the President; then, except with the sanction of the President, 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 President.

(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 the provisions of this section shall be liable, on conviction by a magistrate holding a subordinate court of the first class, to imprisonment for a term not exceeding six months or to a fine not exceeding three thousand penalty units, or to both.

(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 the Republic.

(As amended by Act No. 13 of 1994)

9. (1) Purchasing enemy currency shall be treated as trading with the Purchase of enemy. enemy currency

(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 the Republic is at war, not being an area in the occupation of the Republic, or of a Power allied with the Republic, or any such other notes or coins as are for the time being declared by an order of the President to be enemy currency.

(As amended by S.I. No. 5 of 1965)

10. It shall be lawful for the Postmaster-General-

(a) to intercept and confiscate any postal order remitted in contravention of the provisions of this Act;

(b) to cancel the advice to the paying authorities in respect of any International Money Order remitted in contravention of this Act.

(No. 34 of 1947)

Power of
Postmaster-
General to
confiscate and
cancel postal
matter

PART III

PROPERTY OF ENEMIES AND ENEMY SUBJECTS

11. (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 President may appoint a Custodian of Enemy Property for the Republic, and may by statutory order-

Collection of
enemy debts and
custody of enemy
property

(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 the provisions of section *seven* or *eight*, 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 as

respects-

- (i) property which has been, or is required to be, vested in the Custodian by or under the order;
 - (ii) property of which the right of transfer has been, or is required to be, so vested;
 - (iii) any other enemy property which has not been, and is not required to be, so vested; or
 - (iv) money which has been, or is by the order required to be, paid to the Custodian;
- (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 President 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 it 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;
- (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;

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 under this section shall have effect notwithstanding anything in any Act passed before this Act.

(5) If any person pays any debt, or deals with any property, to which any order under this section applies, otherwise than in accordance with the provisions of the order, he shall be liable on conviction by a magistrate holding a subordinate court of the first class to imprisonment for a term not exceeding six months or to a fine not exceeding three thousand penalty units, or to both; and the payment or dealing shall be void.

(6) If any person, without reasonable cause, fails to produce or furnish, in accordance with the requirements of an order under this section, any document or information which he is required under the order to produce or furnish, he shall be liable on conviction by a magistrate holding a subordinate court of the first class to a fine not exceeding three hundred penalty units for every day on which the default continues.

(7) All fees received by the Custodian by virtue of an order under this section shall be paid into the general revenues of the Republic.

(8) In this section-

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

"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

"prescribed" means prescribed by an order made under this section.

(As amended by S.I. No. 5 of 1965 and Act No. 13 of 1994)

12. (1) The rights, powers, duties and liabilities which may be conferred and imposed by the President on the Custodian of Enemy Property under subsection (1) of section *eleven* shall, where it appears to the President that it is expedient that any business should be carried on or continue to be carried on in or from the Republic, include such rights, powers, duties and liabilities as respects the property and money mentioned in paragraph (d) of the said subsection (1) as, in the opinion of the President, are necessary or expedient in order to enable that business so to be carried on.

Provisions as to
Custodian

(2) The power of the President under the said subsection (1) shall include power, where the Custodian dies or for any other reason ceases to hold office as such, by order to vest in his successor any property or right which was vested in the first-mentioned Custodian at the time of his dying or ceasing to hold office.

(No. 34 of 1947)

13. (1) If any person, 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, he shall be liable on conviction by a magistrate holding a subordinate court of the first class to imprisonment for a term not exceeding six months or to a fine not exceeding three thousand penalty units, or to both.

False statements
and obstruction

(2) Every person who wilfully obstructs any person in the exercise of any powers conferred on him by or under this Act shall be liable on conviction by a magistrate holding a subordinate court of the first class to a fine not exceeding one thousand five hundred penalty units.

(As amended by Act No. 13 of 1994)

14. 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, he, as well as the body corporate, shall be deemed to be guilty of that offence, and shall be liable to be proceeded against and punished

Offences by
corporations

accordingly.

15. Any document stating that any authority or sanction is given under any of the provisions of this Act by the President and purporting to be signed on behalf of the President by the Minister shall be evidence of the fact stated in the document. Evidence of authority or sanction of the President

(As amended by S.I. No. 5 of 1965)

16. This Act shall be without prejudice to the exercise of any right or prerogative of the State. Saving of rights of the State

SUBSIDIARY LEGISLATION

TRADING WITH THE ENEMY

Cap. 114
Government Notices
91 of 1940
171 of 1940
191 of 1941
154 of 1948
497 of 1964
Statutory Instrument
5 of 1965

SECTION 11-THE CUSTODIAN OF ENEMY PROPERTY ORDER

1. This Order may be cited as the Custodian of Enemy Property Order. Title

2. (1) Any 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, and any money which is to be deemed for the purposes of the Act to be money which would, but for the existence of a state of war, be so payable, shall be paid to the Custodian. Money to be paid to Custodian

(2) Without prejudice to the generality of sub-paragraph (1), there shall be paid to the Custodian in particular any 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, by way of-

(a) dividends, bonus or interest, in respect of any shares, stock, debentures, debenture stock, bonds or other securities, issued by any company or government, or any municipal or other authority;

(b) payment of any securities which have become payable on maturity or by being drawn for payment or otherwise;

(c) interest or other payment in respect of any loan or deposit whether secured or unsecured;

(d) profits or share of profits in any business, syndicate or other mercantile enterprise or adventure;

(e) debt, including money in the possession of any bankers, whether on deposit or current account or whether held in trust or in custody for or for the benefit of an enemy;

(f) money due under or in respect of any policy of assurance;

(g) rent or other payment reserved out of or payable in respect of freehold or leasehold property or any interest in land;

(h) payment in respect of any requisitioned property;

(i) payment arising under any trust, will or settlement.

(3) Any money which would, but for the provisions of section *seven* or *eight* of the Act be payable to any purported assignee, transferee or allottee, shall be paid to the Custodian.

(4) Any money required to be paid under sub-paragraphs (1), (2) and (3) to the Custodian, shall be paid-

(a) within fourteen days after the commencement of this Order, if the money has become payable or would but for the existence of a state of war, have become payable before the commencement of this Order;
or

(b) within fourteen days after the day on which a person becomes an enemy, if the money is required to be paid to the Custodian by reason of that person being an enemy and the money has become payable or would, but for the existence of a state of war, have become payable before the day on which that person becomes an enemy; or

(c) in any other case, within fourteen days after the day on which the money becomes payable or would, but for the existence of a state of war, become payable;

(d) in cases in which money would, but for the existence of a state of war, be payable in a foreign currency to or for the benefit of a person who is an enemy (other than cases in which money is payable under a contract in which provision is made for a specified rate of exchange), in currency which is legal tender within the Republic (hereinafter referred to as *Zambian currency*) at such rate of exchange as the President may determine as appropriate for ascertaining the value in *Zambian currency* of the money payable on that date.

(5) Nothing in the foregoing provisions of this Order shall be taken to require payment to the Custodian of any money, the payment of which is authorised to some other person, under an authority given generally or specifically by, or by any person authorised in that behalf by, the President.

(6) The Custodian shall have power to sue for and recover any moneys payable to him under this Order.

(As amended by No. 191 of 1941 and No. 5 of 1965)

3. (1) Property already lawfully vested in the Custodian shall until it Vesting Orders has been lawfully divested remain vested in the Custodian, and the President, in any case where it appears to him to be expedient to do so, may by order vest in the Custodian such enemy property as may be prescribed or the right to transfer such other enemy property as may be prescribed. Any order so made by the President is hereinafter referred to as a "Vesting Order".

(2) The Custodian shall, except in so far as may be otherwise prescribed by the Vesting Order, have such powers with regard to the enemy property or the right to transfer enemy property vested in him by

a Vesting Order as are prescribed by this Order.

(3) A Vesting Order as respects property of any description shall be of the like purport and effect as a vesting order as respects property of the same description made by the High Court under the Trustee Act, 1893, of the United Kingdom, and shall be sufficient to vest in the Custodian any property or the right to transfer any property as provided by the Vesting Order without the necessity of any further conveyance, assurance or document.

4. (1) The Custodian shall, subject to the provisions of sub-paragraph (2) and except in so far as the President either generally or in any specific case may otherwise direct or order, hold any money paid to him under this Order and any property or the right to transfer any property vested in him under any Vesting Order until the termination of the state of war, and shall thereafter deal with the same in such manner as the President shall direct. Disposal of property

(2) The Custodian, acting under a general or special direction of the President, may at any time pay over any particular money paid to him under this Order or transfer any particular property in respect of which a Vesting Order has been made to or for the benefit of the person who would have been entitled thereto but for the operation of the Act or any Order made thereunder or to any person appearing to the Custodian to be authorised by such person to receive the same.

(3) Any money paid to the Custodian under this Order and any property in respect of which a Vesting Order has been made shall not be liable to be attached or otherwise taken in execution.

(4) The receipt of the Custodian or any person duly authorised by him to sign receipts on his behalf for any money paid to him under this Order shall be a good discharge to the person paying the same.

5. Any person shall, within twenty-eight days after service on him of a notice by the Custodian requiring him so to do, furnish to the Custodian such returns, accounts and other information as are specified therein and produce such documents as are so specified being returns, accounts, information and documents, the furnishing or production of which the Custodian considers necessary for the discharge of his Production of documents

functions under this Order.

6. No person shall, without the consent of the President, save as directed by this Order, transfer, part with or otherwise deal with the property of any enemy.

Dealing with
enemy property
prohibited

Production of documents by managers, etc.

7. (1) Any person who holds or manages for or on behalf of an enemy any property shall, within fourteen days after the commencement of this Order (or, if the property comes into his possession or under his control after the commencement of this Order or the person for or on behalf of whom the property is held or managed, becomes an enemy after that date, then within fourteen days after the time when the property comes into the possession or under the control of the first-mentioned person or the person for or on behalf of whom the property is held or managed becomes an enemy, as the case may be), by notice in writing communicate the fact to the Custodian, and shall furnish the Custodian with such returns, accounts and other information, and produce for inspection such documents in relation thereto, as the Custodian may require.

(2) Any enemy subject who holds or manages any property or any person who holds or manages any property for or on behalf of an enemy subject shall furnish the Custodian with such returns, accounts and other information, and produce for inspection such documents in relation thereto, as the Custodian may require.

(3) Every company incorporated in the Republic and every company which though not incorporated in the Republic has a share transfer or share registration office in the Republic shall, within fourteen days after the commencement of this Order, by notice in writing communicate to the Custodian full particulars of all shares, stock, debentures and debenture stock, bonds or other securities issued by the company which are held by or for the benefit of an enemy; and, if any shares, stock, debentures or debenture stock, bonds or other securities issued by any such company as aforesaid are held by or for the benefit of any person who becomes an enemy after the commencement of this Order, the company shall, within fourteen days after the day on which that person becomes an enemy, by like notice communicate to the Custodian the like particulars in regard to that person.

(4) Every partner of every firm, any partner of which has, at any time before the commencement of this Order, become an enemy, or to which money has been lent for the purpose of the business of the firm by a person who so became an enemy, shall, within fourteen days after the commencement of this Order, by notice in writing communicate to the Custodian full particulars as to any share of profits or interest due to such enemy; and every partner of every firm, any partner of which becomes an enemy after the commencement of this Order, or to which a person who becomes an enemy has lent money for the purpose aforesaid before the day on which that person becomes an enemy, shall, within fourteen days after the day on which the partner or person concerned becomes an enemy, by like notice communicate to the Custodian the like particulars in regard to that partner or person.

8. (1) Where, in exercise of the powers conferred upon him, the Custodian purposes to sell any shares or stock forming part of the capital of any company, or any securities issued by the company, in respect of which a Vesting Order has been made, then any law or any regulation of the company to the contrary notwithstanding, the company may, with the consent of the President, purchase the shares, stock or securities, and any shares, stock or securities so purchased may from time to time be reissued by the company.

Sale of shares or
stock

(2) Where the Custodian executes a transfer of any shares, stock or securities which he is empowered to transfer by a Vesting Order, the company or other body in whose books the shares, stock or securities are registered shall, upon the receipt of the transfer so executed by the Custodian and upon being required by him so to do, register the shares, stock or securities in the name of the Custodian or other transferee notwithstanding any regulation or stipulation of the company or other body, and notwithstanding that the Custodian is not in possession of the certificate, script or other document of title relating to the shares, stock or securities transferred; but such registration shall be without prejudice to any lien or charge in favour of the company or other body, or to any other lien or charge of which the Custodian has notice.

9. There shall be retained by the Custodian in respect of his general administrative expenses fees equal to 5 per centum of-

Prescribed fees

(a) the amount of moneys paid to him; and

(b) the value at the date of vesting of any property which is vested in him or of which the right of transfer is vested in him.

The value of any property for the purpose of assessing the fees shall be the price which, in the opinion of the Minister responsible for finance, such property would fetch if sold in the open market. The fees in respect of such property may be retained out of any proceeds of the sale or transfer thereof or out of any income accrued therefrom.

(As amended by No. 171 of 1940 and No. 5 of 1965)

10. In this Order, "enemy" has the same meaning as that assigned to Interpretation it in the Act and "enemy property", "property" and "prescribed" have the same meanings as those assigned to them in section *eleven* of the Act, and references to "the Custodian" shall be construed as references to the Custodian of Enemy Property for the Republic from time to time.

SECTION 11-THE TRADING WITH THE ENEMY (INSOLVENCY) ORDER

Government Notices

232 of 1940

497 of 1964

1. This Order may be cited as the Trading with the Enemy (Insolvency) Order.

Title

2. In this Order, unless the context otherwise requires-

Interpretation

"a bankrupt" means a person adjudged bankrupt in pursuance of the Bankruptcy Act;

Cap. 82

"company" means any company in respect of which the High Court has jurisdiction to make a winding-up order;

"the Custodian" means the Custodian of Enemy Property for the Republic;

"Deed of Arrangement" means a Deed of Arrangement to which the Deeds of Arrangement Act Applies.

Cap. 84

3. Where any company goes into winding up or a person becomes bankrupt or enters into a Deed of Arrangement or where a debtor enters into a composition or a scheme of arrangement pursuant to section *eighteen* of the Bankruptcy Act, the benefit of all debts and of all claims which would but for the existence of a state of war be provable by an enemy in the winding-up or in the bankruptcy or under the Deed

Benefit of debts and
claims vested in
Custodian.
Cap. 82

of Arrangement, composition or scheme of arrangement, as the case may be, and of all securities therefor shall forthwith stand vested in the Custodian.

4. The Custodian shall, in relation to any such debt or claim, be entitled to prove in the winding-up or bankruptcy or under the Deed of Arrangement, as the case may be, to settle and agree accounts, to compromise disputed matters, to appeal from any rejection of a proof and otherwise to take in relation thereto such proceedings as he may think fit.

Powers of Custodian

5. It shall be the duty of the liquidator in the winding-up of a company, the trustee in any bankruptcy and of the trustee under any Deed of Arrangement and (except where a return has been duly made under paragraph 6) of the trustee under any such composition or scheme as aforesaid, within fourteen days of the facts coming to his knowledge, to make a return in writing to the Custodian of all debts and claims vested in the Custodian by virtue of this Order and provable in such winding-up or bankruptcy or under such Deed of Arrangement or under such composition or scheme, and to furnish such accounts and information and produce for inspection such documents in relation thereto as the Custodian may require.

Liquidator to make returns

6. It shall be the duty of a debtor who proposes to make or enter into any such composition or scheme of arrangement as aforesaid, within fourteen days of his lodging his proposal, to make a return in writing to the Custodian of all debts and claims which will vest in the Custodian by virtue of this Order if such composition or scheme be approved by the court, and to furnish such accounts and information and produce for inspection such documents in relation thereto as the Custodian may require.

Debtor to make returns

7. The Custodian shall exercise all the powers conferred on him by this Order in such manner as he may from time to time be directed by the President and subject to any such direction as he may from time to time think fit.

Custodian subject to direction by President

SECTION 11-THE TRADING WITH THE ENEMY (INVESTMENT) ORDER

Government Notices
151 of 1941
497 of 1964
Statutory Instrument

1. This Order may be cited as the Trading with the Enemy (Investment) Order, and shall be deemed to have come into operation on the 12th March, 1941. Title and commencement

2. Any moneys received by the Custodian of Enemy Property by virtue of any order made or to be made by the President under section eleven of the Act may be invested by the Custodian in the Post Office Savings Bank or in such securities as the President may from time to time specify. Investment of moneys

(As amended by No. 5 of 1965)

3. The Custodian of Enemy Property Order and every other such Order as aforesaid shall be read and take effect as if it contained a provision authorising all moneys arising directly or indirectly to the Custodian under or by virtue of such Order to be dealt with in the manner authorised by this Order. Authorisation

SECTION 11-THE TRADING WITH THE ENEMY (CUSTODIAN) ORDER

Government Notices
207 of 1946
497 of 1964

1. This Order may be cited as the Trading with the Enemy (Custodian) Order. Title

2. There shall vest in the Custodian the right to transfer all securities of the following descriptions, that is to say, annuities, stocks, shares, bonds, debentures or debenture stock registered or inscribed in any register, branch register or other book kept in the Republic or transferable by delivery of any document situate in the Republic, belonging to or held on behalf of a person who is an enemy for the purposes of this Order. Right to transfer securities

3. The Custodian is to be at liberty to transfer the said securities or any of them into his own name to be held by him as such Custodian or into the name or names of any other person or persons, whether on the occasion of a sale or otherwise, and to take possession of the said securities or any of them and subject to such terms and conditions (if any) as may be required by him and shall do so as and when requested. Custodian may transfer securities into his own name

by the President.

4. The Custodian (whether the said securities or any of them shall be transferred into his own name or not) shall sell all or any of the said securities as and when requested so to do by the President with power for that purpose to employ such brokers and agents as he shall think fit. Sale of securities
5. The Custodian shall exercise the voting and other rights carried by the said securities in such manner as may from time to time be directed by the President and, subject to any such directions, may exercise the rights in such manner as he may from time to time think fit. Exercise of voting and other rights
6. Out-of-pocket payments duly made by the Custodian in relation to the receiving, collecting, vesting, management, holding or disposing of the said securities and dividends, interest and other payments shall be reimbursed to the Custodian out of such dividends, interest and other payments as aforesaid or out of the proceeds of such securities as aforesaid and shall be chargeable accordingly. Reimbursement of payments
7. (1) Any security which is the subject of this Order shall not be liable to be attached or otherwise taken in execution. Securities not liable to be attached, etc.
- (2) No person shall, without the consent of the President, save as directed by this Order, transfer, part with or otherwise deal with any security or dividend, interest or other payment which is the subject of this Order.
- (3) The receipt of the Custodian or any person duly authorised by him to sign receipts on his behalf for any dividend, interest or other payment paid to him under this Order shall be a good discharge to the person paying the same.
- (4) Proceedings may be taken by the Custodian in the name of the Custodian of Enemy Property and no action brought shall abate or be affected by any change in the person nominated as Custodian.
8. For the purposes of this Order, "enemy" means any person Interpretation.

specified in the Trading with the Enemy (Specified Persons) (Amendment) Order, 1946, as amended by the Trading with the Enemy (Specified Persons) (Amendment) (No. 2) Order, 1946, and the Trading with the Enemy (Specified Persons) (Amendment) (No. 3) Order, 1946.

G.N. No. 76 of 1946.
G.N. No. 135 of 1946.
G.N. No. 181 of 1946

SECTION 11-THE TRADING WITH THE ENEMY (CUSTODIAN) (AMENDMENT) ORDER

Government Notices
208 of 1946
497 of 1964

1. This Order may be cited as the Trading with the Enemy (Custodian) (Amendment) Order. Title

2. Paragraphs 2, 6 and 7 of the Custodian of Enemy Property Order (requiring payment of certain monies to the Custodian and imposing restrictions and requirements in regard to certain property in the Republic) shall not apply to- Exceptions

(a) any money which would, but for the existence of a state of war, become payable to or for the benefit of any person within the description contained in paragraph 3 on or after the 6th September, 1946;

(b) any property which on or after the 6th September, 1946, comes into the ownership of any such person as aforesaid.

3. This Order applies- Application

(a) to any individual resident in any territory which has at no time been enemy territory;

(b) as respects any business carried on in the territory referred to in sub-paragraph (a), to any individual or body of persons (whether corporate or unincorporate) carrying on that business.

SECTION 11-THE TRADING WITH THE ENEMY (CUSTODIAN) (SPECIFIED PERSONS) ORDER

Government Notice
209 of 1946

1. This Order may be cited as the Trading with the Enemy (Custodian) (Specified Persons) Order. Title

2. There shall vest in the Custodian- Vesting of debt, etc.,

(a) any debt 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 for the purposes of this Order; in Custodian

(b) in respect of any monies which would, but for the existence of a state of war, be payable to or for the benefit of a person who is such an enemy as aforesaid all the right, title and interest of any such person as aforesaid:

Provided nevertheless that if in any case the vesting in the Custodian of any such debt or any such right, title or interest as aforesaid would cause a forfeiture or determination of such debt or right, title or interest as aforesaid, then, in any such case, this Order shall not have the effect of vesting the same in the Custodian.

3. For the purposes of this Order, "enemy" means any person specified in the Trading with the Enemy (Specified Persons) (Amendment) Order, 1946, as amended by the Trading with the Enemy (Specified Persons) (Amendment) (No. 2) Order, 1946, and the Trading with the Enemy (Specified Persons) (Amendment) (No. 3) Order, 1946. Interpretation
G.N. No. 76 of 1946.
G.N. No. 135 of
1946.
G.N. No. 181 of
1946

SECTIONS 3 AND 8-THE TRADING WITH THE ENEMY (AUTHORISATION) ORDER Government Notice
210 of 1946
497 of 1964

1. This Order may be cited as the Trading with the Enemy (Authorisation) Order. Title

2. Notwithstanding anything contained in section *three* of the Act, any person, unless the President otherwise directs, may trade within any territory which has at no time been enemy territory (which territory is hereinafter referred to as "the said territory") with any person to whom this Order applies. Trading within
certain territories

3. The transfer by or on behalf of any person to whom this Order applies of any annuities, stocks, shares, bonds, debentures or debenture stock registered or inscribed in any register, branch register or other book kept in the Republic which on or after the 6th September, 1946, come into the ownership of any such person as aforesaid, is hereby sanctioned. Transfer of annuities,
etc.

4. This Order applies-

Application

(a) to any individual resident in the said territory; and

(b) as respects any business carried on in the said territory to any individual or body of persons (whether corporate or unincorporate) carrying on that business.

GENERAL NOTE

This booklet contains only the more important subsidiary legislation made under the Trading with the Enemy Act. Reference should be made to the annual bound volumes of Government Notices for full particulars of the numerous Orders made under this Act.