

TRADING WITH THE ENEMY ACT

CHAPTER 14:03

Act
20 of 1939
Amended by
172/1961
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Current Authorised Pages

<i>Pages</i> <i>(inclusive)</i>	<i>Authorised</i> <i>by L.R.O.</i>
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Note on Subsidiary Legislation

The following Orders have been omitted:

- (a) Trading with the Enemy (Enemy Territory Cessation) (Belgium) Order 1952-1953 (GN 116/1952);
- (b) Trading with the Enemy (Enemy Territory Cessation) (Germany) Order 1953 (GN 61/1953);
- (c) Trading with the Enemy (Enemy Territory Cessation) (Japan) Order 1953 (GN 114/1953);
- (d) Trading with the Enemy (Enemy Territory Cessation) (Luxembourg) Order 1953 (GN 115/1953);
- (e) Trading with the Enemy (Enemy Territory Cessation) (Austria) Order 1953 (GN 116/1953);
- (f) Trading with the Enemy (Enemy Territory Cessation) (France) Order 1953 (GN 137/1953);
- (g) Trading with the Enemy (Enemy Territory Cessation) (Greece) Order 1955 (GN 127/1955);
- (h) Trading with the Enemy (Enemy Territory Cessation) (Netherlands) Order 1957 (GN 145/1957).

Note on Adaptation

Under paragraph 6 of the Second Schedule to the Law Revision Act (Ch. 3:03) the Commission amended certain reference to public officers in this Chapter. The Minister's approval of the amendments was signified by LN 120/1980, but no marginal reference is made to this Notice where any such amendment is made in the text.

CHAPTER 14:03

TRADING WITH THE ENEMY ACT

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CHAPTER 14:03

TRADING WITH THE ENEMY ACT

1950 Ed.
Ch. 42 No. 7.
20 of 1939.

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

Commencement.

[3RD SEPTEMBER 1939]

Short title.

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

(2) This Act shall be deemed to have come into operation on the 3rd of September 1939. However, 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 passing of this Act which, if it had been done in England, would not have been unlawful at Common Law.

Interpretation.

2. (1) In this Act “enemy subject” means—

(a) an individual who, not being either a British subject or a British protected person, possesses the nationality of a State at war with Trinidad and Tobago; or

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

“enemy territory” means any area which is under the sovereignty of, or in the occupation of, a Power with whom Trinidad and Tobago is at war, not being an area in the occupation of Trinidad and Tobago or of a Power allied with Trinidad and Tobago.

(2) The Minister may by Order direct that the provisions of this Act shall apply in relation to any area specified in the Order as they apply in relation to enemy territory, and those provisions shall apply accordingly.

(3) A certificate of the Minister 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.

(4) 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.

(5) 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. However, 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.

3. (1) Subject to this section, the expression “enemy” for the purposes of this Act, means— Definition of enemy.

- (a) any State, or Sovereign of a State, at war with Trinidad and Tobago;
- (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 Trinidad and Tobago; 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 Minister 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.

TRADING WITH THE ENEMY AND MATTERS RELATING THERETO

Penalties for trading with the enemy. [172/1961 136/1976].

4. (1) Any person who trades with or attempts to trade with the enemy within the meaning of this Act is liable—

- (a) on conviction on indictment to a fine and to imprisonment for seven years;
- (b) on summary conviction to a fine of twenty thousand dollars and to imprisonment for twelve months,

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

(2) For the purposes of this Act a person is 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 provision, 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,

but 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 Minister; 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 already been performed when the payment was received and had been performed at a time when the person from whom the payment was received was not 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) In any proceedings for an offence of trading with the enemy, the fact that any document has been despatched or 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.

(5) 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. However, 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.

(6) Proceedings in respect of an offence of trading with the enemy alleged to have been committed by any person may be taken before the appropriate Court having jurisdiction in the place where that person is for the time being.

Inspection and supervision of business.

5. (1) The Minister, if he thinks it expedient for securing compliance with section 4, 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 mentioned above 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 Minister that it is expedient for securing compliance with section 4 that the business should be subject to supervision, the Minister may appoint a person (hereafter in this section referred to as “a supervisor”) to supervise the business, with such powers as the Minister 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, is liable on summary conviction to a fine of two thousand dollars and to imprisonment for six months.

(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 authorised under this section to inspect, is liable—

- (a) on conviction on indictment to a fine and to imprisonment for five years;
- (b) on summary conviction to a fine of four thousand dollars and to imprisonment for twelve months.

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

Power to control and wind up certain business.

- (a) an order (hereinafter 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 (hereinafter 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 Minister, if he thinks it expedient to do so, 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 Minister 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 Minister 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 Minister may direct.

(4) The provisions of subsection (3) shall, in their application to the distribution of any money or other property which would, in accordance with those provisions, fall to be paid or transferred to an enemy, whether as a creditor or otherwise, have effect subject to the provisions of section 10 (which relates to the collection of enemy debts and the custody of enemy property) and of any order made under that section.

(5) 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 to do so, 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 liabilities and claims shall, for the purposes of this section, be deemed to have been

satisfied out of the 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.

(6) Where an estimate has been prepared under subsection (5) 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; but 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.

(7) The Minister 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 Minister 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 Minister on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(8) Any person who contravenes the provisions of any order made under subsection (1) is guilty of an offence of trading with the enemy.

(9) 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 Minister, but where the business is carried on by a company the Minister 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.

(10) 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 Minister, 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.

Transfer of negotiable instruments and things in action by enemies.

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

(2) Subsection (1) applies 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 thing 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.

(4) In any proceedings for an offence of trading with the enemy which are taken by virtue of subsection (3), 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 Trinidad and Tobago or a Court having jurisdiction in enemy territory, and would be enforced against him by such an order.

(5) Where a claim in respect of a negotiable instrument or thing 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.

(6) Nothing in this section shall apply to securities to which section 8 applies.

8. (1) Where—

- (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 the meaning of the Companies Act are allotted or transferred to, or for the benefit of, an enemy subject without the consent of the Minister,

Transfer and allotment of securities.

Ch. 81:01.

then, except with the sanction of the Minister, 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 cognisance of, or otherwise act upon, any such transfer except under the authority of the Minister.

(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 is liable on summary conviction to a fine of four thousand dollars and to imprisonment for six months.

(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 Trinidad and Tobago.

Purchase of enemy currency.

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

(2) In this section the expression “enemy currency” means any such notes or coins circulating as currency in any area under the sovereignty of a Power with whom Trinidad and Tobago is at war, not being an area in the occupation of Trinidad and Tobago or of a Power allied with Trinidad and Tobago, or any such other notes or coins as are for the time being declared by an order of the Minister to be enemy currency.

PROPERTY OF ENEMIES AND ENEMY SUBJECTS

Collection of enemy debts and custody of enemy property.

10. (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 Minister may appoint custodians of enemy property for Trinidad and Tobago and may by order—

- (a) require the payment to the prescribed 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 7 or section 8, be payable to any other person;
- (b) vest in the prescribed custodian such enemy property as may be prescribed, or provide for, and regulate the vesting in that custodian of such enemy property as may be prescribed;
- (c) vest in the prescribed 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 custodians 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 a 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 a custodian;
- (e) require the payment of the prescribed fees to the custodians 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 Minister 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 a 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 a custodian;
- (b) any property, or the right to transfer any property, is vested in a custodian; or

- (c) a direction is given to any person by a 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) Any person who 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, is liable on summary conviction to a fine of four thousand dollars and to imprisonment for six months.

(6) Any person who 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, is liable on summary conviction to a fine of four hundred dollars for every day on which the default continues.

(7) All fees received by any custodian by virtue of an order under this section shall be paid to the Comptroller of Accounts.

(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 thing 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.

11. (1) The rights, powers, duties and liabilities which may be conferred and imposed by the Minister on custodians of enemy property under section 10(1) shall, where it appears to the Minister that it is expedient that any business should be carried on or continue to be carried on in or from Trinidad and Tobago, include such rights, powers, duties and liabilities as respects the property and money mentioned in section 10(1)(d) as, in the opinion of the Minister, are necessary or expedient in order to enable that business so to be carried on.

Provisions as to custodians.

(2) The power of the Minister under subsection (1) shall include power, where a 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.

SUPPLEMENTARY PROVISIONS

12. (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, is liable on summary conviction to a fine of four thousand dollars and to imprisonment for six months.

False statements and obstruction.

(2) Any person who wilfully obstructs any person in the exercise of any powers conferred on him by or under this Act is liable on summary conviction to a fine of two thousand dollars.

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Offences by corporations.

13. 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 accordingly.

Exercise of powers by the Minister.

14. (1) The expenses incurred for the purposes of this Act shall be defrayed out of moneys provided by Parliament.

(2) Anything required or authorised under this Act to be done by, to or before the Minister may be done by, to or before any person authorised in that behalf by the Minister.

Evidence of authority or sanction of Minister.

15. Any document stating that any authority or sanction is given under any of the provisions of this Act by the Minister, and purporting to be signed on behalf of the Minister, or by a person who is empowered by this Act to do anything which may be done thereunder by the Minister, shall be evidence of the facts stated in the document.

Saving of rights of State.

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