

CHAPTER 173

TRADING WITH THE ENEMY 1939-9

This Act came into operation on 4th September, 1939.

Amended by:

1967/168

1982-54

Law Revision Orders

The following Law Revision Order or Orders authorized the insertion and removal of pages as the case may be under the Law Revision Act Cap.2 now repealed:

1985

Guide to symbols in historical notes:

- indicates an amendment made by an Act

/ indicates an amendment made by statutory instrument

CHAPTER 173

TRADING WITH THE ENEMY 1939-9

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**BARBADOS****TRADING WITH THE ENEMY**

1939-9

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 such matters.

[Commencement: 4th September, 1939]

Short title

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

Interpretation

- 2.(1) For the purposes of this Act, the expression

“enemysubject” means

- (a) an individual who, not being a citizen of Barbados, possess the nationality of a State at war with the Crown;* or

**[By the Interpretation Act, Cap. 1, section 10, a reference to the Crown shall be construed as a reference to the Crown in right of its government of Barbados.]*
[1967/168]

- (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 the Crown is at war, not being an area in the occupation of the Crown or of a Power allied with the Crown;

“Minister” means the Minister responsible for enemy property.

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(2) 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.

(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 4th September, 1939.

(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: but 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 the preceding provisions of this Act to make an order shall be construed as including a power, exercisable in the like manner, to vary or revoke the order.

Penalties for trading with the enemy

3.(1) Any person who trades with the enemy within the meaning of this Act shall be guilty of an offence of trading with the enemy and shall be liable

- (a) on conviction on indictment to imprisonment for 7 years or to a fine or to both such imprisonment and a fine; or
- (b) on summary conviction to imprisonment for 12 months or to a fine of \$2 400 or to both such imprisonment and such fine,

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, subject to subsection (3), 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 an 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; or
- (b) if he has done anything which, under the following provisions of this Act, is to be treated as trading with the enemy.

(3) 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 been performed before the commencement of the war by reason of which the person from whom the payment was received became an enemy.

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

[1964/8]

(6) Subsection (5) 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.

Definition of enemy

4.(1) Subject to this section, the expression “enemy” for the purpose of this Act means—

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

but does not include any person 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.

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Inspection and supervision of businesses

5.(1) The Minister, if he thinks it expedient for securing compliance with section 3 so to do, may by written order authorise a specified person (hereinafter 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 those purposes to enter on any premises used for the purposes of that business.

(2) Where 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 3, that the business should be subject to supervision, the Minister may appoint a person (hereinafter 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, shall be liable, on summary conviction, before a magistrate to a fine of \$240 or to imprisonment for 6 months or to both such fine and such imprisonment.

- (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 shall be liable
- (a) on conviction for indictment, to imprisonment for 5 years or to a fine or to both such imprisonment and a fine; or
 - (b) on summary conviction, to imprisonment for 12 months or to a fine of \$480 or to both such imprisonment and such fine.

Transfer of negotiable instruments and choses in action by enemies

6.(1) No assignment of a chose 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 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 Minister, be effective so as to confer any rights or remedies against any party to the instrument.

(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) Any person who 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, 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 court, not being either a court having jurisdiction in Barbados or a court of a State at war with the Crown, and would be enforced against him by such an order.

(5) 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 court in which the claim is brought 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.

(6) Nothing in this section shall apply to securities to which section 7 applies.

Transfer and allotment of securities

7.(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*, Cap. 308, are allotted or transferred to, or for the benefit of, an enemy subject without the consent of the Minister,
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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 this section shall be liable, on summary conviction, to imprisonment for 6 months or to a fine of \$480 or to both such imprisonment and such 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 this Island.

Purchase of enemy currency

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

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

Collection of enemy debts and custody of enemy property

9.(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 this Island, 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 sections 6 or 7, 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 order, shall be liable on summary conviction to imprisonment for six months or to a fine of four hundred and eighty dollars or to both such imprisonment and such 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 under this section, any document or information which he is required under the order to produce or furnish shall be liable on summary conviction to a fine of forty-eight 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 into the Consolidated Fund.

(8) For the purposes of this section, the expression—

“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;

“prescribed” means prescribed by an order made under this section.

False statements and obstruction

10.(1) Any person who, for the purpose of obtaining any authority or sanction under this Act or who 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, shall be liable on summary conviction to imprisonment for six months or to a fine of four hundred and eighty dollars or to both such imprisonment and such fine.

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

Offences by corporations

11. 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.

Expenses

12. The expenses incurred for the purposes of this Act by the Minister shall be defrayed out of moneys provided by Parliament.

Evidence of authority or sanction of Minister

13. 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, shall be evidence of the facts stated in the document.

Saving of rights of Crown

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