

# BECHUANALAND PROTECTORATE.

No. 42 of 1939.

(Promulgated 8th September, 1939.)

## PROCLAMATION

BY HIS EXCELLENCY THE HIGH COMMISSIONER

Entitled the Bechuanaland Protectorate Enemy Property and Trade Regulation Proclamation, 1939.

Whereas it is expedient to provide for the better control of the property of persons who are enemies or of enemy nationality in the Bechuanaland Protectorate (hereinafter referred to as "the Territory") and for the collection of information as to the property of such persons held by persons in the Territory, and as to debts due from persons residing in the Territory to persons in enemy territory; and further to regulate trading with persons or bodies of persons of enemy nationality or association;

Now therefore under and by virtue of the powers in me vested I do hereby declare, proclaim and make known as follows:—

1. (1) The High Commissioner shall appoint an officer in the Territory to act as Custodian of enemy property (hereinafter referred to as "the Custodian") for the purpose of receiving, holding, preserving and dealing with such property as may be paid to or vested in him in pursuance of this Proclamation and of collecting and registering the information referred to in this Proclamation.

Appointment, powers and duties of Custodian of enemy property.

(2) The Custodian shall have such powers and duties with respect to the property so paid to or vested in him as may be prescribed by regulations made under this Proclamation.

(3) The Custodian may place on deposit with any bank or invest in any securities approved by the Resident Commissioner any moneys paid to him under this Proclamation or received by him from property vested in him under this Proclamation, and any interest or dividends received on account of such deposits or investments shall be dealt with in such manner as the Resident Commissioner may direct.

2. Any person residing in the Territory who holds or manages for and on behalf of an enemy or enemy subject any property, or who is indebted to any enemy in an amount of ten pounds or more, shall within one month after the commencement of this Proclamation, or

Duty of residents to furnish information in certain cases, and penalties for failing to do so.

if the property comes into his possession or under his control or the debt becomes due after such date then within one month after the time when it comes into his possession or under his control or the debt becomes due, by notice in writing communicate the fact to the Custodian and shall furnish the Custodian with such particulars in relation thereto as he may require, and if any person fails so to do he shall, on conviction before a Subordinate Court, be liable to a fine not exceeding fifty pounds or to imprisonment for a period not exceeding six months or to both such fine and imprisonment, and in addition to a further fine not exceeding five pounds for every day during which the default continues, and in default of payment of any such fine to a further period of imprisonment not exceeding six months.

Duty of enemy subjects within the Territory to furnish particulars if so required, and penalties for failing to do so.

3. It shall be the duty of every enemy subject who is within the Territory if so required by the Custodian, within one month after being so required, to furnish the Custodian with such particulars as to—

- (a) any stocks, shares, debentures, or other securities issued by any company, Government, municipal or other authority held by him or in which he is interested; and
- (b) any other property of the value of fifty pounds or upwards belonging to him or in which he is pecuniarily interested,

as the Custodian may require, and if he fails to do so he shall, on conviction before a Subordinate Court, be liable to a fine not exceeding fifty pounds or to imprisonment for a period not exceeding six months or to both such fine and imprisonment, and in addition to a further fine not exceeding five pounds for every day during which the default continues.

Powers of High Court to vest property in, and confer powers upon, the Custodian.

4. (1) The High Court of the Territory may, on the application of any person who appears to the Court to be a creditor of an enemy or enemy subject or entitled to recover damages against an enemy or enemy subject, or to be interested in any property belonging to or held or managed for or on behalf of an enemy or enemy subject, or on the application of the Custodian, by order vest in the Custodian any such property, if the Court is satisfied that such vesting is expedient for the purposes of this Proclamation, and may by the order confer upon the Custodian such

powers of selling, managing and otherwise dealing with the property as to the Court may seem proper.

(2) The Court before making any order under this section may direct that such notices (if any), whether by way of advertisement or otherwise, shall be given as the Court may think fit.

(3) Any person acting in pursuance of any order granted under sub-section (1) of this section shall be held perpetually indemnified from all liability to any person whatsoever claiming to have any right, title or interest in respect of any property the subject of such order, and it shall not be necessary for such person to enquire into or to be concerned with the propriety of any such order or to enquire whether the Court had jurisdiction or power to make the same.

(4) Any application made under this section may at any time when the High Court is not sitting be dealt with by the Court of the Assistant Resident Commissioner under the provisions of section *eleven* of the Bechuanaland Protectorate High Court Proclamation, 1938.

Powers of Assistant Resident Commissioner.

5. In any case in which it appears to him advisable that any debt due to an enemy be paid to him, the Custodian may demand that it be so paid, and when such demand is made the debtor shall pay the sum so demanded, and the receipt of the Custodian shall be a full acquittance. Failure to comply with any such demand shall render the debtor liable to the penalties provided in section *three*.

Custodian may demand payment of debts due to enemies.

6. (1) The Custodian shall, except so far as the High Court may otherwise direct, and subject to the provisions of the next succeeding sub-section, hold any money paid to and any property vested in him under this Proclamation until the termination of the present war, and shall thereafter deal with the same in such manner as the High Commissioner may by Proclamation or otherwise direct.

Custodian may hold money and property vested in him until termination of war.

(2) The property held by the Custodian under this Proclamation shall not be liable to be attached or otherwise taken in execution, but the Custodian may, if so authorised by an order of the Court or if for the benefit of the owner of the property or any of his dependents by order of the Resident Commissioner, pay

Such property not liable to attachment.

out of the property held by him in respect of any person the whole or any part of the property specified in the order:

Provided that before paying any such debt the Custodian shall take into consideration the sufficiency of the property paid to or vested in him in respect of the enemy or enemy subject in question to satisfy that debt and any other claims against that enemy or enemy subject of which notice verified by affidavit may have been served upon him.

(3) The receipt of the Custodian or any person duly authorised to sign receipts on his behalf for any sum paid to him under this Proclamation shall be a good discharge to the person paying the same as against the person or body of persons in respect of which the sum was paid to the Custodian.

(4) The Custodian shall keep a register of all property held by him under this Proclamation.

Custodian:  
Further  
powers.

7. (1) Should the Custodian have reason to believe that any person whose duty it is to supply information under this Proclamation has such information in his possession and has failed to supply it, the Custodian may in writing under his hand appoint any other person to examine the books, papers and premises of such person.

(2) Any person in any way wilfully obstructing the person appointed by the Custodian to make any search or enquiry, or failing to give reasonable information, shall be liable, on conviction before a Subordinate Court, to a fine of fifty pounds, or to imprisonment for a period of one month on failure to pay any fine imposed.

Property,  
etc., in  
enemy  
territory.

8. (1) From and after the commencement of this Proclamation every British subject within the Territory who is entitled to any property or interest in property situate in enemy territory, or who has any claim against any person, firm, company, or corporation residing or carrying on business in enemy territory, or any Government or public authority therein, shall notify the Custodian thereof and shall within one month after being required to do so by him furnish to him such particulars of the property or claim as he may prescribe.

(2) For the purposes of this section " enemy territory " shall include any territory occupied by forces of His Majesty's enemies.

9. In this Proclamation, unless the context otherwise requires—

“ 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 His Majesty, or
- (b) a body of persons constituted or incorporated in, or under the laws of, any such State;

“ enemy ” means—

- (a) any State, or Sovereign of a State, at war with His Majesty;
- (b) any individual resident in enemy territory;
- (c) any body of persons (whether corporate or incorporate) 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 His Majesty,

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

“ enemy territory ” means any area which is under the sovereignty of, or in the occupation of, a Power with whom His Majesty is at war, not being an area in the occupation of His Majesty or of a Power allied with His Majesty;

“ property ” means property movable or immovable and includes any rights whether vested or contingent in or arising out of property movable or immovable and any balances or deposits standing to the credit of any person at any bank.

10. The High Commissioner may by Notice in the *Gazette* from time to time make, alter and revoke regulations not inconsistent with this Proclamation further defining the powers and duties of the Custodian and for the better carrying out of the provisions of this Proclamation,

High Commissioner may make regulations defining the powers and duties of the Custodian,

High Commissioner may publish lists of persons not to be traded with.

11. (1) The High Commissioner may publish in the *Gazette* a list of persons or bodies of persons not resident or carrying on business in enemy territory (other than persons or bodies of persons, incorporated or unincorporated, residing or carrying on business solely within His Majesty's dominions), whenever by reason of the enemy nationality or enemy association of such persons or bodies of persons, incorporated or unincorporated, it appears to him expedient so to do and may from time to time add to or vary such list.

Penalties

(2) From and after the publication of any such list all persons or bodies of persons incorporated or unincorporated resident, carrying on business or being in the Territory who shall trade with any persons or bodies of persons mentioned in such list shall be guilty of an offence, and shall be liable on conviction to the penalties prescribed for the offence of trading with the enemy under the Bechuanaland Protectorate Trading with the Enemy Proclamation, 1939.

(3) The provisions of any Proclamation in force in the Territory relating to trading with the enemy shall, subject to such exceptions and adaptations (if any) as may be prescribed by Notice in the *Gazette*, apply in respect of such persons and bodies of persons as aforesaid, as if for references therein to trading with the enemy there were substituted references to trading with such persons and bodies of persons as aforesaid, and the provisions of this Proclamation shall apply as if for references to enemies there were substituted references to such persons and bodies of persons as aforesaid.

(4) For the purposes of this section, a person shall be deemed to have traded with a person or body of persons included in a list published under the provisions of this section if he enters into any transaction or does any act with, to, on behalf of, or for the benefit of such a person or body of persons, which, if entered into or done with, to, on behalf of, or for the benefit of any enemy would be trading with the enemy within the meaning of the Bechuanaland Protectorate Trading with the Enemy Proclamation, 1939.

(5) Nothing in this section contained shall be deemed to prohibit any person or body of persons incorporated or unincorporated resident, carrying on business or being in the Territory from entering into any transaction

or doing any act which shall be permitted by licence of the High Commissioner or other authority competent to grant such licence, whether such licence be specially granted to an individual or be announced as applying to classes of persons.

12. The Proclamations mentioned in the Schedule to this Proclamation and the Notices issued thereunder are hereby repealed. <sup>Repeal.</sup>

13. This Proclamation may be cited as the <sup>Short title and commencement.</sup> Bechuanaland Protectorate Enemy Property and Trade Regulation Proclamation, 1939, and shall have force and take effect from the fourth day of September, 1939.

GOD SAVE THE KING.

Given under my Hand and Seal at Capetown this Fourth day of September, One thousand Nine hundred and Thirty-nine

W. H. CLARK,  
High Commissioner.

By Command of his Excellency  
the High Commissioner.

H. E. PRIESTMAN,  
Administrative Secretary.

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SCHEDULE.

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PROCLAMATIONS REPEALED.

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1916.  
No. 45..... The Bechuanaland Protectorate Enemy Property and Trade Regulation Proclamation.
1918.  
No. 21..... The Bechuanaland Protectorate Enemy Property and Trade Regulation Amending Proclamation.
1921.  
No. 15..... The Bechuanaland Protectorate Enemy Property and Trade Regulation Amending Proclamation.
1922.  
No. 9..... The Bechuanaland Protectorate Enemy Property (Custodian Direction) Proclamation.