

## BECHUANALAND PROTECTORATE.

No. 17 OF 1941.

(Promulgated 21st March, 1941.)

### PROCLAMATION

BY HIS EXCELLENCY THE HIGH COMMISSIONER.

Entitled the Bechuanaland Protectorate Trading with the Enemy (Amendment) Proclamation, 1941.

Whereas it is expedient further to amend the Bechuanaland Protectorate Trading with the Enemy Proclamation, 1939 (No. 40 of 1939), as amended by Proclamation No. 27 of 1940, hereinafter referred to as "the principal law", in order to make further and better provision as respects the property of enemies and enemy subjects:

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

1. (1) In sub-section (1) of section *one* of the principal law after the words "Any person who trades with" there shall be inserted the words "or attempts to trade with", and after paragraph (b) of sub-section (2) of that section there shall be inserted the words "and any reference in this Proclamation to an attempt to trade with the enemy shall be construed accordingly".

Amend-  
ment of  
section 1  
of Procla-  
mation No.  
40 of  
1939.

(2) 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 in the Territory having jurisdiction in the place where that person is for the time being.

(3) The following sub-section shall be inserted after sub-section (3) of section *one* of the principal law:—

"(3A) 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."

Amend-  
ment of  
section 2  
of Procla-  
mation No.  
40 of  
1939.

2. Sub-section (1) of section *two* of the principal law is hereby amended as follows:—

(a) At the end of paragraph (c) the word “or” shall be omitted, and after paragraph (d) there shall be inserted the following words—

“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;”

(b) For the words “does not include any person by reason only that he is an enemy subject” there shall be substituted the words “does not include any individual by reason only that he is an enemy subject”.

New sec-  
tion 3A  
of Procla-  
mation No.  
40 of  
1939.

3. The following new section is hereby inserted immediately after section *three* of the principal law:—

“3A. (1) Where any business is being carried on in the Territory 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 Resident Commissioner to be associated with enemies, the Resident Commissioner may, if he thinks it expedient so to do, make—

(a) an order (hereafter in this section referred to as a “restriction order”) prohibiting the carrying on 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 Resident Commissioner, 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 sub-section (1) of this section is made as respects any business, the Resident Commissioner 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 Resident Commissioner 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 Resident Commissioner 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, fall to be paid or transferred to an enemy, whether as a creditor or otherwise, have effect subject to the provisions of section *six A* of the principal law (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 sub-section (1) of this section 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 the last preceding sub-section, 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 sub-section 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 Resident Commissioner 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 Resident Commissioner under this sub-section 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 Resident Commissioner 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 sub-section (1) of this section, he shall be guilty of an offence of trading with the enemy.

(8) Where an order under sub-section (1) of this section has been made as respects a business carried on by any individuals or by a company, no insolvency petition, or petition for 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 Resident Commissioner, but where the business is carried on by a company the Resident Commissioner 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 Resident Commissioner, 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."

4. The following sub-section is hereby inserted immediately after sub-section (1) of section *eleven* of the principal law :—

New sub-section (1A) of section 11 of Proclamation No. 40 of 1939.

" (1A) The High Commissioner may by order direct that the provisions of this Proclamation shall apply in relation to any area specified in the order as they apply in relation to enemy territory, and the said provisions shall apply accordingly."

5. (1) The rights, powers, duties and liabilities which may be conferred and imposed by the Resident Commissioner on the Custodian of enemy property under sub-section (1) of section *six A* of the principal law shall, where it appears to the Resident Commissioner that

Provisions as to the Custodian.

it is expedient that any business should be carried on or continue to be carried on in or from the Territory, include such rights, powers, duties and liabilities as respects the property and money mentioned in paragraph (d) of the said sub-section (1) as, in the opinion of the Resident Commissioner, are necessary or expedient in order to enable that business so to be carried on.

(2) The power of the Resident Commissioner under the said sub-section (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 Custodian at the time of his dying or ceasing to hold office.

Short title  
and  
commence-  
ment.

6. This Proclamation may be cited as the Bechuanaland Protectorate Trading with the Enemy (Amendment) Proclamation, 1941, and shall have force and take effect from the date of its publication in the *Gazette*.

GOD SAVE THE KING.

Given under my Hand and Seal at Cape Town this Thirteenth day of March One thousand Nine hundred and Forty-one.

WALTER C HUGGARD,  
High Commissioner.

By Command of His Excellency  
the High Commissioner.

H. LESTER SMITH,  
for Administrative Secretary.