STATUTORY INSTRUMENTS

1961 No. 1497

INSURANCE

The Insurance Contracts (War Settlement) (Germany) Order, 1961

Laid before Parliament in draft

Made - - - - 2nd August, 1961

Coming into Operation in accordance with Article 1 (2)

At the Court at Buckingham Palace, the 2nd day of August, 1961

Present,

The Queen's Most Excellent Majesty in Council

Whereas Her Majesty's Government in the United Kingdom and the Government of the Federal Republic of Germany on the 28th day of January, 1960, entered into an Agreement (hereinafter referred to as "the said Agreement") relating to contracts of insurance and contracts and treaties of reinsurance made between certain persons who subsequently became enemies as a result of the war:

And Whereas by Section 1 of the Insurance Contracts (War Settlement) Act, 1952(a), it is provided that Her Majesty may, by Order in Council, do all such things as appear to Her to be necessary for carrying into effect the said Agreement:

And Whereas a draft of this Order has been approved by resolution of each House of Parliament:

Now, therefore, Her Majesty, in pursuance of the said Section and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1.—(1) This Order may be cited as the Insurance Contracts (War Settlement) (Germany) Order, 1961.

(2) This Order shall come into operation on a date three months after the exchange of the instruments of ratification of the said Agreement.

2. Subject to the following provisions of this Order the provisions of the said Agreement that are set out in the Schedule to this Order (hereinafter referred to as "the scheduled provisions") shall have the force of law in the United Kingdom in relation to the following contracts of insurance and contracts and treaties of reinsurance the proper law of which is the law of

(a) 15 & 16 Geo. 6 & 1 Eliz. 2. c. 56.

any part of the United Kingdom and which were made between persons who subsequently became enemies:

(1) Contracts of insurance concluded in the United Kingdom,

(i) one of the parties to which was an insurer constituted or incorporated in, or under the laws of, Germany, or

(ii) one of the parties to which was an insurer constituted or incorporated in, or under the laws of, any part of the United Kingdom, Australia, Canada (including Newfoundland), New Zealand, Union of South Africa or Hong Kong and the other party to which was a person, other than an insurer, resident in or constituted or incorporated in, or under the laws of, Germany;

(2) Contracts or treaties of reinsurance concluded in the United Kingdom, one of the parties to which was an insurer constituted or incorporated in, or under the laws of, any part of the United Kingdom, Australia, Canada (including Newfoundland), New Zealand, Union of South Africa or Hong Kong and the other party to which was an insurer constituted or incorporated in, or under the laws of, Germany;

(3) Contracts of insurance concluded in Germany one of the parties to which was,

(i) an insurer constituted or incorporated in, or under the laws of, any part of the United Kingdom, or

(ii) a person who was resident in or constituted or incorporated in, or under the laws of, any part of the United Kingdom;

(4) Contracts or treaties of reinsurance concluded in Germany, one of the parties to which was an insurer constituted or incorporated in, or under the laws of, any part of the United Kingdom;

(5) Contracts of insurance and contracts and treaties of reinsurance concluded elsewhere than in Germany or the United Kingdom (other than contracts or treaties concluded in Austria and of which the law of any part of the United Kingdom is the proper law) one of the parties to which was either an insurer constituted or incorporated in, or under the laws of, any part of the United Kingdom or a person who was resident in or constituted or incorporated in, or under the laws of, any part of the United Kingdom and the other party to which was a person, including an insurer, resident in or constituted or incorporated in, or under the laws of, Germany.

3. The scheduled provisions shall not apply to any contracts of insurance or contracts or treaties of reinsurance one of the parties to which is a person, including an insurer, resident in or constituted or incorporated in, or under the laws of, Germany, unless such person, being an individual, is resident in or, being a body of persons, has its principal seat in the Federal Republic of Germany or in Land Berlin (West Berlin).

4. Save as is provided by Article 6 of this Order nothing in this Order shall affect the operation of the Act of 1939 or any Order made or direction given thereunder as respects any action already taken or any money already paid to a Custodian of Enemy Property in pursuance thereof.

5. Nothing in this Order shall have effect to give to the provisions of the said Agreement the force of law in the United Kingdom in relation to any contract of insurance or any contract or treaty of reinsurance one of the parties to which is a person (including an insurer) resident in or, being a

body of persons, having its principal seat in Land Berlin (West Berlin) if before the date of the coming into operation of this Order the Government of the Federal Republic of Germany shall have made a declaration to the Government of the United Kingdom of Great Britain and Northern Ireland to the effect that the said Agreement shall not apply in the Land Berlin.

6. There shall be transferred by virtue of this Order, without any liability to stamp duty to the person who, but for the operation of the Act of 1939 and any Order made thereunder, would now be entitled thereto, any rights and liabilities at present vested in a Custodian of Enemy Property appointed under the Act of 1939, being property arising under any contract or treaty to which the said Agreement applies.

7.—(1) In this Order and the scheduled provisions unless the context otherwise requires,

"the Act of 1939" means the Trading with the Enemy Act, 1939(a), as amended by or under any enactment;

"insurer" includes reinsurer;

"insurer constituted or incorporated in, or under the laws of, any part of the United Kingdom" includes a member of Lloyd's or any other body of underwriters approved by the Board of Trade;

"Germany" means territory comprised in the German Reich on the 31st day of December, 1937;

"Austria" means territory comprised in the Republic of Austria on the 31st day of December, 1937;

"the war" means the war between the United Kingdom and the German Reich which began on the 3rd day of September, 1939, and ended on the 9th day of July, 1951.

(2) For the purposes of this Order and the scheduled provisions persons shall be deemed to have become enemies when trading between them became unlawful under the Act of 1939 as the result of the war;

(3) The Interpretation Act, 1889(b), shall apply to the interpretation of this Order and the scheduled provisions as it applies to the interpretation of an Act of Parliament.

W. G. Agnew.

SCHEDULE

PART I

CONTRACTS OF INSURANCE AND CONTRACTS AND TREATIES OF REINSURANCE WHICH HAD NOT TERMINATED BEFORE THE PARTIES BECAME ENEMIES

1. Contracts of Insurance and Reinsurance shall be dealt with in accordance with the following clauses.

Insurance and Reinsurance (other than Life)

2. Contracts of Insurance other than Marine and Aviation Insurance shall be deemed not to have been dissolved by the outbreak of war, or by the fact of the parties becoming enemies, provided that

(*a*) the risk had attached before the parties became enemies, and

(a) 2 & 3 Geo. 6. c. 89. (b) 52 & 53 Vict. c. 63.

(*b*) the Insured had paid within six months from the date of the inception of the insurance or from the due date where such date is specially indicated, all moneys owed by way of premium or consideration for effecting or keeping effective the insurance in accordance with the contract.

3. Contracts of Marine and Aviation Insurance shall be deemed not to have been dissolved by the outbreak of war or by the fact of the parties becoming enemies, provided that

(*a*) the risk had attached before the parties became enemies, and

(*b*) the Insured had paid before the date at which the parties became enemies all moneys due by way of premium or consideration for effecting or keeping effective the insurance in accordance with the contract.

4. In the event of the Insured having made the payment referred to in clauses 2 (*b*) or 3 (*b*) above in respect of part only of the period for which the contract was effected, then the contract shall be deemed to have been in force for that part only of its period for which such premium or consideration had been paid.

5. Contracts of Insurance other than those remaining in force under the preceding clauses shall be deemed not to have come into existence and any moneys paid thereunder shall be returnable.

6.—(*a*) Where an insurance has been transferred during the war from the original to another Insurer, or has been wholly reinsured, the transfer or reinsurance shall, whether effected voluntarily or by administrative or legislative action, be recognised and the liability of the original Insurer shall be deemed to have ceased as from the date of the transfer or reinsurance. Where an insurance has been partly reinsured during the war, the reinsurance shall, if the British Insurer so elects, also be recognised. The original Insurer shall be entitled to receive on demand full information as to the terms of the transfer or reinsurance, and if it should appear that these terms were not equitable, they shall be amended so far as may be necessary to render them equitable.

(*b*) The Insured shall, subject to the concurrence of the original Insurer, be entitled to retransfer the contract to the original Insurer as from the date of the Insured formulating a demand to that effect.

(*c*) Appropriate premium shall be payable in respect of any period unexpired as at the date of the transfer or reinsurance or retransfer of the original insurance by the party relieved of liability to the party which assumes the liability during such unexpired period.

7. Treaties and Contracts of Reinsurance (save as hereinafter expressly provided) shall be deemed to have been determined as at the date that parties became enemies; all cessions thereunder shall be cancelled with effect from that date and the Reinsurer relieved of all liability for losses occurring on or after that date, except as provided hereunder.

Provided always that cessions in respect of voyage risks which had attached under a Treaty or Contract of Marine Reinsurance shall be deemed to have remained in full effect until their natural expiry in accordance with the terms and conditions on which the risk had been ceded.

8. Subject to any specific provisions in the Treaty or Contract of Reinsurance, or in default of agreement between the parties as to the manner of accounting, the Reinsurer shall take credit for all earned premium and give credit for all unearned premium on a pro rata temporis basis.

9. Contracts of Excess of Loss Reinsurance (other than those on an "Excess of Loss Ratio" basis) shall be deemed to have been determined as at the date the parties became enemies. Premiums, including minimum premiums, shall be adjusted on a pro rata temporis basis; insofar as the contract provided for the Reinsured's original premium income to be the basis of adjustment, the original premium income in respect of the period preceding the date when the parties became enemies shall be taken.

Contracts of Excess of Loss Reinsurance on an "Excess of Loss Ratio" basis shall be deemed not to have come into existence and any moneys paid thereunder shall be returnable. Provided always that such contracts issued to cover crops against hailstorm shall, if the initial premium was paid at the due time and before the parties became enemies, be deemed to have remained in full effect throughout the entire duration of the 1939 hail season, except that any losses which occurred on or after 3rd September, 1939, shall not be brought into account for the purpose of any calculation thereunder.

Pro rata Treaties issued to cover crops against hailstorm shall be deemed not to have come into existence, unless satisfactory evidence is produced of a definite offer and a definite acceptance by the respective parties in which case the provisions of clause 7 above shall apply thereto except that all premiums thereunder for the 1939 hail season shall be deemed to have been fully earned by the Reinsurer.

10. Contracts of Facultative Reinsurance in respect of which

(*a*) the risk had attached before the parties became enemies, and

(*b*) all moneys owed by way of premium or consideration for effecting or keeping effective the reinsurance had been paid or set off in the customary manner,

shall be deemed to have remained in full effect until the date at which the parties became enemies and to have been determined on that date. The Reinsurer shall respond for losses recoverable under the contract which occurred before that date and shall be relieved of all liability for losses which occurred on or after that date. The Reinsurer shall take credit for earned premium and give credit for unearned premium on a pro rata temporis basis.

Provided that such Facultative Reinsurance in respect of voyage policies shall be deemed to have remained in full effect until their natural expiry in accordance with the terms and conditions on which the risk had been ceded.

Provided further that a Facultative Reinsurance in respect of any Contract of Insurance dealt with in clauses 2, 3 or 4 above shall be deemed to have remained in force as provided for in those clauses in relation to that contract.

11. Contracts of Facultative Reinsurance, other than those dealt with in the preceding clause, shall be deemed not to have come into existence and any moneys paid thereunder shall be returnable.

12. Contracts of Reinsurance voluntarily effected before the parties became enemies, with the object of relieving the original Insurer of liabilities in the territory concerned in the event of the parties becoming enemies, shall not be deemed to have been determined but shall be regarded as reinsurance within the meaning of clause (6) (*a*) above.

13. There shall be an adjustment of accounts between the parties, and in order to establish a resulting balance there shall be brought into the accounts all balances (which shall include an agreed reserve for losses still outstanding) and all moneys which may be due from one party to the other under all Treaties and Contracts of Reinsurance or which may be returnable by virtue of any of the foregoing provisions.

Supplementary accounts shall be rendered in respect of outstanding losses in connection with Treaties and Contracts of Reinsurance.

14. Contracts of Insurance, and Treaties and Contracts of Reinsurance, shall be deemed not to cover losses or claims due to belligerent action by either Power of which any of the parties was a national or by the Allies or Associates of such Power nor, in respect of voyage risks, losses or claims directly or indirectly due to compliance on or after the 15th August, 1939 by the Master of the vessel with orders given in furtherance of war policy by the Government of the Power of which the insured party was a national to delay, interrupt, or change the course of the voyage.

15. No interest shall be payable by any of the parties for any delay which, owing to the parties having become enemies, has occurred or may occur in the settlement of premiums, claims or balances of account.

16. The parties shall not be liable for claims insofar as liability for such claims shall since the parties became enemies have been adversely affected by any modification or application of the terms of the contract contrary to its original intention whether by enactment, administrative action or Court decision.

17. Except as provided in clauses 14 and 16, nothing in this Agreement shall nullify anything done in Germany after the outbreak of war by any of the parties in performance of Contracts of Insurance or of Facultative Reinsurance.

Insurance and Reinsurance (Life Clauses)

18. Contracts of Life Insurance (and of Facultative Reinsurance of Life risks) shall be deemed not to have been dissolved by the outbreak of war or by the fact of the parties becoming enemies, and in determining the obligations of the parties all the terms of the contracts shall, except where the parties mutually agree, be regarded as being in full force.

19. Insurers shall not be liable for claims insofar as liability for such claims shall since the parties became enemies have been adversely affected by any modification or application of the terms of the contract contrary to its original intention, whether by enactment, administrative action or Court decision.

20. Treaties of Reinsurance between parties who subsequently became enemies shall be deemed to have been determined as at the date the parties became enemies.

PART II

CONTRACTS OF INSURANCE AND CONTRACTS AND TREATIES OF REINSURANCE WHICH HAD TERMINATED BEFORE THE PARTIES BECAME ENEMIES

Insurance and Reinsurance (Other than Life)

No interest shall be payable by any of the parties for any delay which, owing to the parties having become enemies, has occurred or may occur in the settlement of premiums, claims or balances of account.

EXPLANATORY NOTE

(This Note is not part of the Order, but is intended to indicate its general purport.)

The Order gives effect to an Agreement made on the 28th January, 1960, between Her Majesty's Government and the Government of the Federal Republic of Germany relating to contracts of insurance and contracts and treaties of reinsurance made before 3rd September, 1939, between parties who became enemies as a result of the war with Germany which began on that date.

The Schedule to the Order contains provisions to maintain in force or determine these contracts and treaties and to deal with the consequences thereof.

The Order also divests the Custodians of Enemy Property of any rights and liabilities relating to these contracts and treaties now vested in them by Orders made under the Trading with the Enemy Act, 1939.