TRADING WITH THE ENEMY

CUSTODIAN

The Trading with the Enemy (Custodian) Order, 1951

1951 No. 153

Made - - - - 30*th January,* 1951

The Board of Trade, in exercise of the powers conferred upon them by Section 7 of the Trading with the Enemy Act, 1939(a), and of all other powers enabling them in that behalf do hereby make the following Order:—

1. Without prejudice to the effect of any Order made by the Board of Trade prior to the date of this Order and save as hereinafter otherwise provided, there shall vest in the Custodian—

(*a*) the beneficial interest of any enemy or enemy subject in any property belonging to or held or managed on behalf of an enemy or an enemy subject at the date of this Order consisting of securities, or being property existing by virtue of any will, settlement, trust, intestacy or of any contract or agreement of any kind whatsoever,

(*b*) without prejudice to the generality of the foregoing paragraph, the right to receive

(i) any monies payable presently or at any future time in respect of any such property as aforesaid,

(ii) any dividends, bonus or interest payable presently or at any future time in respect of any such securities as aforesaid and in respect of any securities comprised in any Vesting Order made prior to the date of this Order, and

(iii) any monies payable presently or at any future time in respect of any such securities as are mentioned in the last preceding sub-paragraph upon redemption or on maturity or upon such securities being drawn for payment or otherwise.

2. There shall be excepted from the vesting to be effected by this Order—

(*a*) any estate or interest in land,

(*b*) any property which has come into the ownership of any persons by reason of any trade authorised generally or specially by or by any person authorised in that behalf by a Secretary of State, the Treasury or the Board of Trade,

(*c*) any property which at any time after the 2nd day of February, 1948, has come into the ownership of any individual who, not being either a British subject or a British protected person, possesses German nationality and is resident in Bulgaria, Hungary, Roumania or Italy,

(*d*) any property in respect of which any licence, consent or authority has been given under the Act or any Order made thereunder,

(*e*) any right or interest the vesting of which in the Custodian would cause forfeiture or determination of such right or interest, and

(a) 2 & 3 Geo. 6. c. 89.

(*f*) any property in the estate of a deceased person which is German enemy property as defined by the Distribution of German Enemy Property Act, 1949(**a**), where no probate has nor letters of administration have been granted or resealed in the United Kingdom at the date of this Order or where a limited grant only (not being a grant to an attorney administrator or attorney administrators) has been made or where confirmation has not been granted at that date.

3. Nothing in this Order shall be taken to require payment to the Custodian of any money, the payment of which is authorised to some other person under an authority given generally or specially by or by any person authorised in that behalf by a Secretary of State, the Treasury or the Board of Trade.

4. The Custodian shall have the following rights and powers with regard to the property and monies referred to in Article 1 of this Order, namely:—

(*a*) to sell or otherwise dispose of and transfer any such property as aforesaid;

(*b*) to give a receipt or other effective discharge for any monies or other property payable or transferable to the Custodian in consequence of this Order;

(*c*) to recover and sue for any such monies or property as aforesaid and to enforce the due execution of any trusts or the due administration of any estate or the performance of any such contract or agreement as aforesaid and any rights relating thereto and for that purpose to begin and prosecute or discontinue legal proceedings and to instruct Solicitors and Counsel;

(*d*) to compromise any matter and to accept any composition or any payment or transfer on account;

(*e*) to employ and pay such agents as the Custodian shall think fit to employ;

(*f*) to sign, seal and deliver and execute any deed or other document in connection with any such matters as aforesaid;

(*g*) generally to do any act or thing that may be necessary or proper for reducing to possession, recovering, or protecting any such property and monies as aforesaid or for enforcing or making effective and complete the vesting effected by this Order and carrying out the powers, rights and duties of the Custodian in connection with the same.

5. In cases in which prior to the date of this Order money would, but for the existence of a state of war, have been payable in a foreign currency to or for the benefit of a person who was an enemy, that money shall be paid to the Custodian at the rate of exchange provided by Article 1 (iv) (*d*) of the Trading with the Enemy (Custodian) Order, 1939(**b**), and in cases in which money becomes payable in a foreign currency to the Custodian after the date of this Order (except in cases in which the money is payable under a contract in which provision is made for a specified rate of exchange) that money shall be paid in English currency at the middle official rate of exchange fixed by the Bank of England on the date on which the payment becomes due to the Custodian as aforesaid or the middle rate of exchange for telegraphic transfers in London on that date or if there was no such rate on that date at such rate as the Treasury may determine as appropriate for ascertaining the value in English currency of the money payable on that date.

(a) 12, 13 & 14 Geo. 6. c. 85. (b) S.R. & O. 1939 (No. 1198) II, p. 3202.

Provided that if the money would be payable in a foreign currency (not being enemy currency) and the person by whom the money is payable to the Custodian is able to make immediate payment in that foreign currency (otherwise than in notes or coin) payment shall be made either in that foreign currency or in English currency converted at the official buying rate of exchange fixed by the Bank of England as the Custodian may require.

In this article (i) the expression "foreign currency" means any currency other than English currency and (ii) the expression "enemy currency" means the currency of any area under the sovereignty of a power with whom His Majesty is at war at the date of this Order.

6. Out-of-pocket payments duly made by the Custodian in relation to the receiving, collecting, vesting, management, holding or disposing of property which is the subject of this Order shall be reimbursed to the Custodian out of such property or out of the proceeds thereof and shall be chargeable accordingly.

7.—(*a*) Any property which is the subject of this Order shall not be liable to be attached or otherwise taken in execution.

(*b*) No person shall without the consent of the Board of Trade save as directed by this Order transfer part with or otherwise deal with any such property as aforesaid.

(*c*) Proceedings may be taken by the Custodian in the name of the Custodian of Enemy Property and no action shall abate or be affected by any change in the person nominated as Custodian.

(*d*) The Custodian, acting under a general or special direction of the Board of Trade, may at any time pay over any particular money paid to him under this Order or transfer any particular property vested in him by this Order to or for the benefit of the person who would have been entitled thereto but for the operation of the Act or any Order made thereunder or to any person appearing to the Custodian to be authorised by such person to receive the same.

8. The Custodian shall exercise all the powers conferred on him by this Order in such manner as he may from time to time be directed by the Board of Trade and subject to any such direction as he may from time to time think fit.

9. The Interpretation Act, 1889(**a**), shall apply to this Order as if it were an Act of Parliament.

10. For the purposes of this Order the following expressions shall have the following meanings:—

(*a*) "the Act" means the Trading with the Enemy Act, 1939(**b**);

(*b*) "the Custodian" means the Custodian of Enemy Property appointed under section 7 of the Act for that part of the United Kingdom in which the property is situate or if in any case any doubt shall arise, then such Custodian of Enemy Property appointed under the said section as the Board of Trade shall direct;

(*c*) "enemy" means—

(i) the German State;

(ii) any individual resident in Germany;

(iii) any body of persons constituted or incorporated under the laws of Germany;

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

(iv) any body of persons (whether corporate or unincorporate) carrying on business in any place, if and so long as the body is controlled by any State, individual or body of persons as aforesaid;

(v) as respects any business carried on in Germany any individual or body of persons (whether corporate or unincorporate) carrying on that business in Germany;

(*d*) "enemy subject" means an individual who, not being either a British subject or a British protected person, possesses German nationality and is resident in Japan, Bulgaria, Hungary, Roumania, Italy or Austria;

(*e*) "Germany" means territory comprised in the German State on the first day of March, 1938;

(*f*) "property" has the same meaning as that assigned to it in Section 7 of the Act;

(*g*) "securities" means annuities, stock, shares, bonds, coupons, debentures or debenture stock registered or inscribed in any register, branch register or other book kept in the United Kingdom or transferable by delivery of any document situate in the United Kingdom;

(*h*) "Vesting Order" has the same meaning as that assigned to it in Article 2 of the Trading with the Enemy (Custodian) Order, 1939(a).

11. In the application of this Order to Scotland the expression "attached or otherwise taken in execution" means arrested in execution or in security or otherwise affected by diligence.

12. This Order may be cited as the Trading with the Enemy (Custodian) Order, 1951.

Dated this 30th day of January, 1951.

H. S. Gregory,
A Secretary of the Board of Trade.

EXPLANATORY NOTE

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

This Order vests in the Custodian certain enemy property and the right to receive certain monies. The enemy property comprises certain securities and property existing by virtue of any will, settlement, trust, intestacy, contract or agreement. The monies, the right to receive which is vested by this Order, comprise those payable in respect of such property as is referred to above and those payable in respect of securities already vested in the Custodian including proceeds of redeemed securities, drawn bonds, etc.

The Order affects property and monies of the German State, individuals and bodies of persons resident or carrying on business in Germany, those controlled by such persons, and certain enemy subjects of German nationality resident in Japan, Bulgaria, Hungary, Roumania, Italy or Austria.

Trade as already authorised and money and property arising in consequence thereof is not affected by the present Order.

(a) S.R. & O. 1939 (No. 1198) II, p. 3202.