



# Ceylon Government Gazette

## EXTRAORDINARY.

REGISTERED AS A NEWSPAPER IN CEYLON.

Published by Authority.

No. 6,854 — WEDNESDAY, FEBRUARY 14, 1917.

### Part II.—Legal and Judicial.

*Separate paging is given to each Part, in order that it may be filed separately*

#### DRAFT ORDINANCE.

##### MINUTE.

The following Draft of a proposed Ordinance is published for general information :—

##### An Ordinance to amend "The Enemy Firms Liquidation Ordinance, No. 20 of 1916."

**Preamble.**

WHEREAS it is expedient to amend "The Enemy Firms Liquidation Ordinance, No. 20 of 1916": Be it therefore enacted by the Governor of Ceylon, by and with the advice and consent of the Legislative Council thereof, as follows :

**Short title.**

1 This Ordinance may be cited as "The Enemy Firms Liquidation (Amendment) Ordinance, No. of 1917."

**Amendment to section 2 of principal Ordinance.**

2 The following words shall be added to paragraph (c) of section 2 of the principal Ordinance : "or any company or any branch in Ceylon of any company which is incorporated or carries on business in enemy territory.

**Addition of sub-section to section 2 of principal Ordinance.**

3 The following sub-sections shall be added to section 2 of the principal Ordinance, the first part of the section being numbered accordingly, and shall be deemed to have been in force as from the date of the commencement of the principal Ordinance :

**Provision for addition or retirement of liquidators.**

(2) Any reference to a "liquidator" or "liquidators" in this Ordinance shall include any liquidator appointed in succession to, or in addition to, or in substitution of, any liquidator previously appointed, or deemed to be appointed, for the purposes of the same liquidation, and any liquidator continuing to act as a liquidator, after any other liquidator previously acting in conjunction with him shall have ceased to act, and all acts done, all proceedings taken or instituted, all powers or authorities conferred, and all obligations entered into by, upon, or affecting any person for the time being acting as liquidator in any liquidation under this Ordinance, shall have effect as if the person or persons for the time being acting as liquidator or liquidators under this Ordinance, and in the case of the liquidation of the firm of Messrs. Freudenberg & Co., the persons for the time being acting either as controllers under the order of the court, or as liquidators under this Ordinance, constituted a continuous legal personality.

(3) In all actions or proceedings instituted or carried on by or against any liquidator or liquidators appointed or deemed to be appointed liquidators under this Ordinance, whether in the name of the firm under liquidation or otherwise, it shall be sufficient to describe the said liquidator or liquidators under the style of "the liquidator" or "the liquidators" of the firm in question, and in any pending or revived action or proceeding the necessary amendment may be made accordingly.

(4) No act or proceeding by any liquidator, or in the course of any liquidation, shall be liable to be impeached or prejudiced by reason of any change in the firm of any persons appointed or deemed to be appointed liquidators under this Ordinance, or by reason of the erroneous description, omission, or inclusion of any person as liquidator, or by reason of any other formal defect relating to the name, description, or appointment of any liquidator.

Addition of sub-section to section 6 of principal Ordinance.

Power to satisfy certain claims against enemies out of assets of firm under liquidation.

4 The following sub-section shall be added to section 6 of the principal Ordinance :

(4) In any case in which the custodian of enemy property is satisfied that any enemy firm in course of liquidation is indebted to any enemy resident or carrying on business in the territory of a State at war with His Majesty, and that funds would be available to satisfy the said debt, in whole or in part, if such debt were entitled to satisfaction in the liquidation, and that any person resident or carrying on business in the Colony has a valid claim against such enemy resident or carrying on business as aforesaid, but is unable to obtain satisfaction of such claim owing to the circumstances of the present war, the custodian may direct the said claim to be satisfied, either in whole or in part, out of the assets of the said firm in course of liquidation, and upon the said claim being so satisfied the indebtedness of the said enemy firm to the said enemy shall be deemed to be discharged *pro tanto*.

Addition of sub-section to section 8 of principal Ordinance.

Provision for changes in the firm of the controllers of Messrs. Freudenberg & Co.

5 The following sub-section shall be added to section 8 of the principal Ordinance, and shall be deemed to have been in force as from the date of the commencement thereof :

(6) All references to "the controllers" in this section shall be construed as references to the persons for the time being constituting the firm carrying on business at the date of the passing of this Ordinance under the firm name of Messrs. Ford, Rhodes, Thornton & Company, who shall have been appointed either as controllers under the said order, or as liquidators by the Governor under this Ordinance, notwithstanding any change in the constitution of the said firm, or any modification in the said firm name, and the powers conferred upon Harold Douglas Thornton, Patrick Haggard Fraser, and Maurice John Harding by the power of attorney referred to in the last preceding sub-section shall be deemed to have been conferred upon and to be exercisable by the members of the said firm, appointed as aforesaid, for the time being resident in the Colony.

Amendment of section 11 of principal Ordinance.

6 (1) The following paragraphs shall be added to sub-section (1) of section 11 of the principal Ordinance :

(e) To require any person who shall have in his possession or control any keys, safe, office furniture, or other things whatsoever belonging to an enemy firm which may have been used in connection with the business of the firm, to deliver the same into the possession of the liquidator.

(f) To require any person who, before the appointment of the liquidator, managed or assisted in the management of the business of an enemy firm, to give such assistance in connection with the liquidation as may be required.

(2) In sub-section (2) of section 11 of the principal Ordinance, for the expression "(c) and (d)," there shall be substituted the expression "(c), (d), (e), and (f)."

- Addition of sub-section (2) to section 14 of principal Ordinance.**
- 7** The following sub-section shall be added to section 14 of the principal Ordinance, the first part of the section being numbered accordingly :
- (2) In any case in which any property of an enemy is subject to any mortgage, lien, or charge in favour of an enemy firm, and owing to the circumstances of the present war it is not reasonably practicable to enforce such mortgage, lien, or charge under the last preceding section, the powers of the court under this section shall include power to vest such property in the liquidator for the purposes of the liquidation, subject to the rights of any person entitled to any prior mortgage, lien, or charge, on such terms and conditions as to the court shall seem just.
- Amendment of section 18 of principal Ordinance.**
- 8** In section 18 of the principal Ordinance, after the words "in any proceeding instituted," there shall be inserted the word "revived."
- Amendment of section 20 of principal Ordinance.**
- 9** The following amendments shall be made in section 20 of the principal Ordinance :
- (a) In the first line of the section, after the words "assets of the enemy firm," there shall be added the words "available in the Colony."
- (b) The following sub-sections shall be added to the section, the first part thereof being numbered accordingly :
- (2) In any such case the custodian of enemy property may, by order published in the "Government Gazette," vest in the liquidator for the purposes of the liquidation, subject to the rights of any secured creditor, any property belonging to any partner of the firm (or, in the case of a firm consisting of a single person, to the person constituting the firm), which is not the property of the firm within the meaning of this Ordinance, and such property so vested shall, subject as aforesaid, be deemed to be property of the firm for the purposes of the liquidation.
- (3) In any case in which any such order has been made, it shall be the duty of the liquidator, on realizing the said property, before applying the proceeds thereof for the purposes of the liquidation, to satisfy out of such proceeds any debt due to any person from such partner or person, as the case may be, which is not a firm debt.
- Provided that no creditor shall be entitled to the benefit of this sub-section unless he shall have made a claim in respect of his debt to the liquidator within one month of the publication of the said order in the "Government Gazette."
- Provided further that if the proceeds of the said property are not sufficient to satisfy all the just claims so made to the liquidator, such proceeds shall be applied, subject to the rights of any secured creditor, in the satisfaction of the said claims *pro rata*.
- Amendment of section 35 of principal Ordinance.**
- 10** The following words shall be added to sub-section (1) of section 35 of the principal Ordinance: "or which is incorporated or carries on business in enemy territory."
- Amendment of sub-section (3) of section 35 of principal Ordinance.**
- 11** In sub-section (3) of section 35 of the principal Ordinance, after the words "in the course of any liquidation under this Ordinance," there shall be inserted the words "or in any proceedings referred to in section 21 of this Ordinance."
- Addition of new section to principal Ordinance.**
- 12** The following section shall be added immediately after section 36 of the principal Ordinance, and shall be numbered 36 A :
- 36 A.** Where it appears to the Governor in Executive Council that a contract entered into before or during the war with an enemy firm, in respect of whose business a liquidator or liquidators have been appointed, or are deemed to have been appointed, under this Ordinance, is injurious to the public interest, the Governor in Executive Council may, by order, cancel or determine such contract, either unconditionally or upon such conditions as the Governor in Executive Council may think fit, and thereupon such contract shall be deemed to be cancelled or determined accordingly.
- Provisions as to contracts against public interests.**  
See "The Trading with the Enemy (Amendment) Act, 1916," section 2.

Addition of new chapter to principal Ordinance.

13 The following chapter shall be added to the principal Ordinance :

CHAPTER VI.

*Sales of Immovable Property.*

Special definitions.

38. The expression " prohibited person " means—
- (a) Any enemy ;
  - (b) Any person resident or carrying on business in enemy territory ;
  - (c) Any corporation under enemy control ;
  - (d) Any person who but for the conclusion of any peace made in relation to the present war would be an enemy, or a person resident or carrying on business in enemy territory, or a corporation under enemy control.

The expression " corporation under enemy control " includes—

- (a) A corporation of which any of the directors or persons occupying the position of directors by whatever name called is an enemy, or a person resident or carrying on business in enemy territory ;
- (b) A corporation shareholders in which holding ten per cent. or more of the issued capital or voting rights of the corporation are enemies, or persons resident or carrying on business in enemy territory, or persons who hold such capital or voting rights, directly or indirectly, for or at the disposal of enemies or persons resident or carrying on business in enemy territory ;
- (c) A corporation which is by any other means whether of a like or different character in fact under the control, directly or indirectly, of enemies or persons resident or carrying on business in enemy territory or corporations under enemy control ;
- (d) A corporation the executive whereof is a corporation within paragraph (a), (b), or (c) of this definition.

The expression " foreigner " means a person other than a British subject, and includes a foreign corporation.

The expression " corporation under foreign control " includes—

- (a) A corporation of which any of the directors or persons occupying the position of directors by whatever name called is a foreigner ;
- (b) A corporation shareholders in which holding twenty-five per cent. or more of the issued capital or voting rights are foreigners or persons who hold such capital, or voting rights, directly or indirectly, for or at the disposal of foreigners ;
- (c) A corporation which is by any other means whether of a like or different character in fact under the control, directly or indirectly, of foreigners or corporations under foreign control ;
- (d) A corporation the executive whereof is a corporation within paragraph (a), (b), or (c) of this section.

A reference to any " immovable property " (whether in this or any other chapter of this Ordinance) includes a reference to any part of such property, and to any right, title, or interest, whether legal or beneficial, in such property.

No sale to prohibited persons. Declaration by purchasers.

39. No sale of any immovable property by any liquidator under this Ordinance—

- (a) Shall be made to any prohibited person or to any person acting for or on behalf of or in trust for any prohibited person, or to any other person who may be precluded from purchasing such property by the prescribed conditions of sale ;
- (b) Shall be completed unless and until an affidavit in the form prescribed in the schedule to this Ordinance (subject to such alterations or additions, if any, as may be directed by the custodian of enemy property) shall have been made before a Justice of the Peace by the purchaser, or in the case of a purchaser who is a corporation, by some officer of the corporation duly authorized in that behalf.

Prohibition of acquisition of interest by prohibited person.

40. Except under the authority of an order of the Governor issued with the consent of the Secretary of State, either with reference to any particular case or class of cases or generally, no person in whom any immovable property sold under this Ordinance shall be or become vested—

- (a) Shall sell, transfer, lease, mortgage, devise, or bequeath such property to any prohibited person (either alone or jointly with any other person); or
- (b) Shall in any way deal therewith so that the same shall be acquired or owned by any prohibited person (either alone or jointly as aforesaid), or be held on behalf of or in trust for or for the benefit of or so as in any way to come under the control of any prohibited person (either alone or jointly as aforesaid);

and if any person contravenes any of the provisions of this section, such person, or in the case of a deceased person, his heirs, executors, and administrators, jointly and severally to the extent to which his estate shall have come into their hands, shall forfeit to His Majesty a sum of seventy-five thousand rupees, to be recovered by application to the Supreme Court at the suit of the Attorney-General.

Provided that a person shall not be liable to a forfeiture under this section, if he shall prove that the act in respect of which the forfeiture is sought was done in ignorance, that it was contrary to this section, and that the person doing the act took all reasonable precautions to satisfy himself that such act was not contrary to this section.

Forfeiture of interest acquired by prohibited persons, &c.

41. In the following cases, that is to say :

- (a) If any person purchases any immovable property sold under this Ordinance contrary to paragraph (a) of section 39 ;
- (b) If any sale, transfer, lease, mortgage, devise, or bequest of, or other dealing with, such immovable property takes place contrary to section 40 ;
- (c) If any person in whom any immovable property sold under this Ordinance shall be or become vested (not being a property in respect of which the Governor shall have issued an order under section 40) shall be or become a prohibited person ;

the Attorney-General (without prejudice in the case of a contravention of section 40 to his powers under that section) may apply to the Supreme Court for a declaration—

- (i.) That any right, title, or interest in any such immovable property acquired, or purporting to be acquired, contrary to either of the said provisions, or vested in any person who is or has become a prohibited person ; or
- (ii.) In the case of any person liable to a forfeiture under section 40 any right, title, or interest in the immovable property concerned which may be vested in such person,

is forfeited to His Majesty, and the court shall declare the same forfeited accordingly as from the date when the liability to such forfeiture first accrued.

Provided always that in dealing with the application the court may take into consideration the position of persons, not being themselves prohibited persons—

- (a) Who have *bona fide* for value and without actual notice or knowledge of the circumstances occasioning the liability to such forfeiture (the burden of proof whereof shall be on them) acquired any right, title, or interest in such immovable property through or under any person liable to the forfeiture thereof ; or
- (b) Who have acquired any right, title, or interest in any such immovable property under the will of or otherwise through or under any person liable to the forfeiture thereof ;

and may make such order as it thinks fit, wholly or partially relieving such persons from the forfeiture of any such right, title, or interest so acquired, and may otherwise make such order as it may under the circumstances deem equitable.

Power of  
Governor to  
require  
particulars of  
nationality, &c.

42. (1) The Governor may at any time require any person claiming to be the owner, lessee, or mortgagee of any immovable property sold under this Ordinance, or to be otherwise interested therein, or apparently acting in the management or control or enjoyment thereof, to furnish him in writing with such particulars as appear to the Governor to be necessary to enable him to ascertain whether any such person is a prohibited person, or whether such property is owned by or held for or on behalf of or in trust for or for the benefit of or in any way so as to come under the control of a prohibited person, and in the case of a corporation may also require any director of the corporation or person occupying the position of director by whatever name called, or the secretary or any other officer of the corporation performing the duties of secretary, or any person acting as manager or agent for the corporation, in connection with the property, to furnish the required particulars.

(2) If any person fails when required to furnish such particulars as it is in his power to give, or ascertain, or furnishes particulars which are false in any material respect, he shall be guilty of an offence, and liable on conviction to a fine not exceeding one thousand five hundred rupees, or to imprisonment of either description for a period not exceeding six months, or to both.

(3) Particulars furnished in pursuance of this section may be used in evidence against the person by whom, or the corporation on behalf of which, they are furnished in any proceedings under this chapter, and the fact that any person who has been required to furnish particulars in pursuance of this section refuses or neglects to furnish such particulars as it is in his power to give or ascertain, or furnishes particulars which are false in any material respect, shall in any proceedings under section 40 or section 41 be *prima facie* evidence that the person or corporation regarding whom the particulars were required is a prohibited person.

Procedure.

43. The Judges of the Supreme Court may make rules regulating the practice and procedure to be observed in and in relation to all proceedings before the Supreme Court under this chapter, and, pending the making of such rules, such practice and procedure shall be observed as the court may direct.

Power of  
Governor to  
extend  
provisions of  
this chapter.

44. It shall be lawful for the Governor, by Proclamation published in the "Government Gazette," in any case in which for economic, military, or other public reasons he shall deem it desirable that any immovable property to be sold under this Ordinance and specified in the Proclamation should either permanently or for a defined period be maintained under British control, to declare for the purpose of any such property, and either until further orders or for any such period as shall be from time to time specified by Proclamation, that the expression "prohibited person" in this chapter shall extend to and include—

- (a) Any foreigner ; and
- (b) Any corporation under foreign control ;

and thereupon the provisions of this chapter shall be construed accordingly, subject to such exceptions or relaxations as may be specified in the Proclamation.

#### SCHEDULE.

#### Affidavit by an Individual Buyer.

(Section 39.)

I, \_\_\_\_\_, of \_\_\_\_\_, make oath and state as follows (or not being a Christian, do hereby solemnly, sincerely, and truly declare, affirm, and say as follows) :—

1. I am a \_\_\_\_\_ subject, and reside and carry on business at \_\_\_\_\_, and am not an enemy within the meaning of "The Enemy Firms Liquidation Ordinance, No. 20 of 1916," or a person resident or carrying on business in enemy territory.

2. I further state and declare that there is no arrangement under which I am to hold the property which I am purchasing from the liquidator, or any right, title, or interest therein for or on behalf of or in trust for or for the benefit of or so that it shall in any way come under the control of an enemy within the meaning of "The Enemy Firms Liquidation Ordinance, No. 20 of 1916."

\* In cases in which an order has been made under section 44 add " or a foreigner, or a foreign corporation, or a corporation under foreign control."

or a person resident or carrying on business in enemy territory or a corporation under enemy control, \_\_\_\_\_,\* within the meaning of the said Ordinance, either alone or jointly with another or others.

Sworn to (or affirmed to, as the case may be) at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 191—.

Before me,

\_\_\_\_\_  
Justice of the Peace.

#### Affidavit on behalf of a Corporation.

I, \_\_\_\_\_, of \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_ (hereinafter called "the corporation"), the buyer of \_\_\_\_\_, being duly authorized by the corporation to swear this affidavit, make oath (or, as the case may be, not being a Christian, do hereby solemnly, sincerely, and truly declare, affirm, and say as follows) and state as follows:—

1. The corporation is not an enemy within the meaning of "The Enemy Firms Liquidation Ordinance, No. 20 of 1916," or a corporation resident or carrying on business in enemy territory, or a corporation under enemy control \_\_\_\_\_,\* within the meaning of this Ordinance, and to the best of my knowledge there is no arrangement under which the corporation is to hold the said property, or any right, title, or interest therein for or on behalf of or in trust for or for the benefit of or so that it shall in any way come under the control of any enemy within the meaning of "The Enemy Firms Liquidation Ordinance, No. 20 of 1916," or a person resident or carrying on business in any enemy territory or a corporation under enemy control, \_\_\_\_\_,\* within the meaning of this Ordinance, either alone or jointly with another or others.

Sworn to (or affirmed to, as the case may be) at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 191—.

Before me,

\_\_\_\_\_  
Justice of the Peace.

By His Excellency's command,

Colonial Secretary's Office,  
Colombo, February 3, 1917.

R. E. STUBBS,  
Colonial Secretary.

#### Statement of Objects and Reasons.

THE object of this Ordinance is to make certain amendments of detail in "The Enemy Firms Liquidation Ordinance, No. 20 of 1916."

2. Sections 2 and 10 provide for the possible necessity of liquidating branches of enemy firms who have carried on business in Ceylon on behalf of head offices in enemy territory.

3. Sections 3 and 5 provide for possible changes in the constitution of firms acting as liquidators, for the addition or substitution of new liquidators, and for the relinquishment of his appointment by a liquidator.

4. Section 4 will enable the Custodian to direct that certain claims for rebates, or return of passage money, by residents of the Colony against certain shipping companies, of which Messrs. Freudenberg & Co. were the agents, and who were in credit with Messrs. Freudenberg & Co., shall be satisfied out of the assets of that firm.

5. Section 6 embodies certain provisions which have been enacted in the corresponding Ordinance in force in the Straits Settlements, which may, in conceivable circumstances, possibly be found useful in this Colony.

6. Section 7 deals with the possible case of property which is mortgaged by an enemy who may now be in Germany or Australia in favour of an enemy firm in course of liquidation. It may not prove practicable to put the mortgage bond in suit owing to the difficulty of serving process, and the clause enables the court to vest the property which is the subject of the mortgage in the liquidator for the purposes of the liquidation.

7. Section 8 supplies a verbal omission in section 18 of the principal Ordinance.

8. Section 9 deals with the case of a firm whose assets in the Colony are not sufficient to discharge its liabilities. It

\* In cases in which an order has been made under section 44 add " or a foreign corporation, or a corporation under foreign control."

enables the Custodian to vest in the liquidator for the purposes of the liquidation property belonging to the partners of the firm which is not partnership property. It protects at the same time the right of private creditors of the members of the firm who may claim the right to enforce their debts against the property so vested in the liquidator.

9. Section 11 clears up a verbal point which was thought to be obscure in section 35 of the principal Ordinance.

10. Section 12 enacts for the purposes of this Colony a provision which is in force in England under "The Trading with the Enemy (Amendment) Act, 1916." It may be found in the course of the liquidation of an enemy firm that the firm has entered into contracts which are injurious to the public interest. Such contracts may remain in force even after the conclusion of the liquidation. An instance of such a contract might be a contract binding a man for the whole of his life to supply material used in the manufacture of munitions to an enemy firm at an advantageous rate. The new section will enable the Governor in Executive Council to cancel such a contract.

11. The new chapter added by section 13 deals with the question of the sales of immovable property. It prohibits the selling of any immovable property in the liquidations to any enemy or person resident or carrying on business in enemy territory or any corporation under enemy control (section 39). The expression "enemy" by virtue of section 35 includes an enemy company.

12. Further, by section 40 it precludes any such property from becoming effectually vested in any enemy or any person resident or carrying on business in enemy territory or in any corporation under enemy control. Sections 40 and 41 further insure that no immovable property sold in the liquidations shall, either directly or indirectly, come into the ownership or control of any person or company which now bears an enemy character either during the war or after the conclusion of peace. If any person knowingly deals with any of the properties in question contrary to the Ordinance, he becomes liable to a heavy fine (section 40).

13. Any interest acquired by any person bearing an enemy character contrary to the Ordinance becomes liable to forfeiture, as well as any interest remaining in any person who shall have infringed the Ordinance by so dealing with the property (section 41). A proviso allows the court to take into consideration the position of innocent *bona fide* purchasers for value, and persons who have acquired any right or interest in such property under a will or an intestacy.

14. Section 42 empowers the Governor to require particulars of nationality from any person claiming any interest in, or acting in the management, control, or enjoyment of, any such immovable property.

15. In certain cases it may prove desirable that any particular property for economic, military, or other public reasons should not only remain, either permanently or for a defined period, outside the ownership or control of any person who now bears an enemy character, but should also remain under exclusively British control. In such cases section 44 empowers the Governor to make an order extending the provisions above explained so as to put foreigners, foreign corporations, and corporations under foreign control within the category of prohibited persons as defined by section 38.

16. Under "The Enemy Property Ordinance, No. 23 of 1916," it is provided by a recent amendment that the jurisdiction to deal with enemy property under that Ordinance shall be confined to the Supreme Court. Following that precedent the special proceedings referred to in this chapter are also specially committed to the jurisdiction of the Supreme Court, and the Judges of the court are empowered to make rules for the purpose of these proceedings (section 43).

January 30, 1917.

ANTON BERTRAM.  
Attorney-General.