



THE
CEYLON GOVERNMENT
GAZETTE
EXTRAORDINARY.

No. 8,645 — TUESDAY, JULY 30, 1940.

Published by Authority.

PART I.—GENERAL.

GOVERNMENT NOTIFICATIONS.

THE EMERGENCY POWERS (DEFENCE) ACT, 1939.

DEFENCE Regulations made by the Governor by virtue of the powers vested in him by section 1 of the Emergency Powers (Defence) Act, 1939, of the Imperial Parliament, as adapted, modified and extended to Ceylon by the Emergency Powers (Colonial Defence) Order in Council, 1939.

By His Excellency's command,

E. R. SUDBURY,
Secretary to the Governor.

Colombo, July 29, 1940.

REGULATIONS.

1. The Defence (Trading with the Enemy) Regulations, 1939, published in *Gazette Extraordinary* No. 8,501 of September 11, 1939, as amended by the regulations published in *Gazette Extraordinary* No. 8,569 of January 16, 1940, in *Gazette Extraordinary* No. 8,582 of February 28, 1940, in *Gazette* No. 8,606 of April 26, 1940, and in *Gazette* No. 8,630 of July 5, 1940, are hereby further amended by the insertion, immediately after regulation 6, of the following new regulation which shall have effect as regulation 6A:—

Collection of enemy debts and custody of enemy property.

6A. (1) With a view to preventing the payment of money to enemies and of preserving enemy property in contemplation of arrangements to be made at the conclusion of peace, the Governor may appoint a Custodian of Enemy Property and may by Order—

- (a) require the payment to the Custodian of money which would, but for the existence of a state of war, be payable to or for the benefit of a person who is an enemy, or which would, but for the provisions of regulation 4 or regulation 5, be payable to any other person;
- (b) vest in the Custodian such enemy property as may be prescribed, or provide for, and regulate, the vesting in the Custodian of such enemy property as may be prescribed;
- (c) vest in the Custodian the right to transfer such other enemy property as may be prescribed, being enemy property which has not been, and is not required by the Order to be, vested in the Custodian;
- (d) confer and impose on the Custodian and on any other person such rights, powers, duties, and liabilities as may be prescribed as respects—
 - (i.) property which has been, or is required to be, vested in the Custodian by or under the Order,
 - (ii.) property of which the right of transfer has been, or is required to be, so vested,
 - (iii.) any other enemy property which has not been, and is not required to be, so vested, or
 - (iv.) money which has been, or is by the Order required to be, paid to the Custodian;
- (e) require the payment of the prescribed fees to the Custodian in respect of such matters as may be prescribed and regulate the collection of and accounting for such fees;
- (f) require any person to furnish to the Custodian such returns, accounts, and other information and to produce such documents, as the Custodian considers necessary for the discharge of his functions under the Order;

and any such Order may contain such incidental and supplementary provisions as appear to the Governor to be necessary or expedient for the purposes of the Order.

(2) Where any requirement or direction with respect to any money or property is addressed to any person by the Custodian and accompanied by a certificate of the Custodian that the money or property is money or property to which an Order under this regulation applies, the certificate shall be evidence of the facts stated therein, and if that person complies with the requirement or direction, he shall not be liable to any action or other legal proceeding by reason only of such compliance.

(3) Where, in pursuance of an Order made under this regulation—

- (a) any money is paid to the Custodian;
- (b) any property, or the right to transfer any property, is vested in the Custodian, or
- (c) a direction is given to any person by the Custodian in relation to any property which appears to the Custodian to be property to which the Order applies,

neither the payment, vesting or direction nor any proceedings in consequence thereof shall be invalidated or affected by reason only that at a material time—

- (i) some person who was or might have been interested in the money or property, and who was an enemy or an enemy subject, had died or had ceased to be an enemy or an enemy subject, or
- (ii) some person who was so interested, and who was believed by the Custodian to be an enemy or an enemy subject, was not an enemy or an enemy subject.

(4) Any Order under this regulation shall have effect notwithstanding anything in any other written law.

(5) If any person pays any debt, or deals with any property, to which any Order under this regulation applies, otherwise than in accordance with the provisions of the Order, he shall be guilty of an offence and shall be liable, on conviction after summary trial before a Magistrate, to imprisonment of either description for a term not exceeding six months or to a fine not exceeding one thousand five hundred rupees or to both such imprisonment and such fine; and the payment or dealing shall be void.

(6) If any person, without reasonable cause, fails to produce or furnish, in accordance with the requirements of an Order under this regulation, any document or information which he is required under the Order to produce or furnish, he shall be guilty of an offence and shall be liable, on conviction after summary trial before a Magistrate, to a fine not exceeding one hundred and fifty rupees for every day on which the default continues.

(7) All fees received by the Custodian by virtue of an Order under this regulation shall be deposited to the credit of the Custodian in a special account to be opened in his name in such bank as the Governor may specify; and such account may be operated on by the Custodian subject to such directions as the Governor may issue in that behalf.

(8) In this regulation—

- (a) the expression "enemy property" means any property for the time being belonging to or held or managed on behalf of an enemy or an enemy subject;
- (b) the expression "property" means movable or immovable property, and includes any interest in any such property, any negotiable instrument, debt or other chose in action, and any other right or interest, whether in possession or not; and
- (c) the expression "prescribed" means prescribed by an Order made under this regulation.

2. Subject as hereinafter provided, the Defence (Enemy Property) Regulations (hereinafter referred to as the "old regulations"), published in *Gazette Extraordinary* No. 8,499 of September 9, 1939, are hereby rescinded: Provided that such rescission—

- (a) shall be subject and without prejudice to the provisions of regulations 3 to 8 of these regulations; and
- (b) shall not affect or be deemed or construed to affect the continuance of the operation of the old regulations to the extent and for the purposes specified in the said regulations 3 to 8.

3. The Custodian of Enemy Property appointed under the old regulations shall be deemed for all purposes to be the Custodian appointed under the new regulation 6A inserted in the Defence (Trading with the Enemy) Regulations, 1939, by regulation 1 of these regulations, and shall exercise, perform, and discharge the powers, duties, and functions conferred or imposed upon the Custodian by the new regulation 6A aforesaid or by any Order made thereunder.

4. The Governor may by order declare that the property of any enemy or enemy subject shall, for such period as may be specified in the order, be deemed to have been exempt from the operation of the provisions of the old regulations; and where any such order is made, the property of that enemy or enemy subject shall be deemed to have been exempt from the operation of those provisions and to have been at the disposal of the enemy or enemy subject during the period so specified; and, accordingly, the Custodian shall not, in respect of such period, be accountable for the property of such enemy or enemy subject.

5. All moneys received, collected or recovered by the Custodian before the commencement of these regulations shall be deemed to have been duly received, collected or recovered, and all payments made and all fees or other charges retained, deducted or levied by the Custodian before the commencement of these regulations in pursuance or supposed pursuance of any powers vested in him by or under the old regulations shall be deemed for all purposes to have been duly made, retained, deducted or levied.

6. Where at any time before the commencement of these regulations any property, whether movable or immovable, which vested in the Custodian under the old regulations, was sold, leased or otherwise disposed of by the Custodian in the course of, or for the purposes of, the administration and management of such property, or was restored to the possession of the person who, immediately before it vested in the Custodian, was entitled to the possession thereof, such sale, lease, disposition or restoration of possession shall be deemed to have been duly authorized by directions issued to the Custodian by the Governor under the old regulations, whether or not such directions were in fact issued, and shall, notwithstanding anything in the old regulations, be deemed to have been valid and effectual in law for all purposes whatsoever.

7. (1) All property which immediately before the commencement of these regulations remained vested in the Custodian under or by virtue of the old regulations shall be deemed to be vested in him by a vesting order issued in pursuance of an Order under the new regulation 6A aforesaid of the Defence (Trading with the Enemy) Regulations, 1939.

(2) The Governor may, by order (hereinafter referred to as a "divesting order"), divest the Custodian of any property referred to in paragraph (1) and vest such property in the person who was entitled to such property immediately before it vested in the Custodian by virtue of the old regulations. No such divesting order shall be made except on payment of such fees as may be due to the Custodian under the old regulations and of the expenses incurred by the Custodian by way of guard hire and other charges in connexion with the custody and management of such property.

(3) Where the Custodian has sold any property vested in him by virtue of the old regulations, the Governor may direct the Custodian to pay to the person who was entitled to such property immediately before it vested in the Custodian the proceeds realized by the sale of such property less such fees as may be due to the Custodian under the old regulations and such other sums as the Governor may authorize to be deducted for expenses incurred by the Custodian by way of commission, guard hire, auctioneer's or other charges in connexion with the custody, management or sale of such property.

(4) The provisions of regulation 43 of the old regulations shall be deemed to be in force for the purpose of ascertaining the person in whom any property is to be vested by a divesting order under paragraph (2), or the person to whom any money is to be paid by virtue of any direction issued under paragraph (3), of this regulation.

8. Any liquidation of any enemy firm under the old regulations which is not completed before the commencement of these regulations, and all actions and other proceedings instituted in connexion with such liquidation and pending at the commencement of these regulations may be continued, completed, and determined under the old regulations which shall be deemed to be in force for such purpose; and the surplus proceeds of any such liquidation may thereafter be disposed of in such manner as the Governor may direct.

9. The Governor may by order provide—

- (a) for the removal of any doubt or difficulty which may arise in giving effect to the foregoing regulations 3 to 8; or
- (b) for the determination or adjustment of any question or matter for which no provision or effective provision is made in those regulations.

10. (1) The period commencing on the third day of September, 1939, and ending on the date on which these regulations come into force shall not be reckoned or taken into account for the purpose of determining—

- (a) whether the right of any person to institute or proceed with any action in any court or to enforce any decree of any court against any enemy or enemy subject is barred or otherwise affected by lapse of time; or
- (b) whether the right of any enemy or enemy subject to institute or proceed with any action in any court or to enforce any decree of any court against any person is barred or otherwise affected by lapse of time.

(2) Save as is expressly provided in paragraph (1) of this regulation in regard to the period of time therein specified, nothing in that paragraph shall affect or be deemed or construed to affect the application of the provisions of section 4 of the Civil Law Ordinance.

11. In these regulations—

- "commencement" when used with reference to these regulations means the date on which these regulations come into force;
- "enemy", "enemy firm", "enemy subject" and "property" have respectively the same meanings as they had in the old regulations;
- "old regulations" means the Defence (Enemy Property) Regulations rescinded by the foregoing regulation 2 of these regulations.

12. These regulations may be cited as the Defence (Trading with the Enemy) Amendment Regulations, and shall come into force on the date on which they are published in the *Gazette*.