
STATUTORY INSTRUMENTS

1952 No. 862

The Japanese Treaty of Peace Order 1952

1.—(1) In this Order

- (i) “The Dominions” means Canada, Australia, New Zealand, the Union of South Africa, Pakistan and Ceylon and also includes any territory administered by the Government of any of those Dominions.
- (ii) “Japanese person” means
- (a) the Japanese State and the Sovereign of Japan;
 - (b) a Japanese national, that is to say, a subject or citizen of Japan or any body of persons (whether corporate or unincorporate) constituted or incorporated according to the laws of Japan or any of its dependent territories;
 - (c) any person acting for or on behalf of the Japanese State, the Sovereign of Japan or a Japanese national; or
 - (d) any body of persons (whether corporate or unincorporate) owned or controlled by the Japanese State, the Sovereign of Japan or a Japanese national.
- (iii) “Japanese property” means any property, rights or interests within Her Majesty's dominions (except the Dominions) and the Protected Territories, belonging to a Japanese person and shall include any property, rights or interests which belonged to or were held or managed on behalf of a Japanese person at the time such property, rights or interests became vested in or payable to a Custodian of Enemy Property or otherwise became subject to control by the Board of Trade under the Trading with the Enemy Act, 1939, together with the net proceeds of the sale, liquidation or other dealings by a Custodian of Enemy Property with any such property, rights or interests and any income derived by any such Custodian directly therefrom but shall not include
- (a) any property, rights or interests specified in sub-paragraph 2(II) of paragraph (a) of Article 14 of the Treaty or
 - (b) any property, rights or interests which are the subject of proceedings in any British Prize Court or
 - (c) any moneys received by a Custodian of Enemy Property by virtue of any investment made by him in pursuance of the powers conferred upon him by the Trading with the Enemy Investment Order, 1940(1).
- (iv) “Property, rights and interests” means real and personal property, and any estate or interest in real or personal property, any negotiable instrument, any debt or other chose in action, and any other right or interest, whether in possession or not.
- (2) Any reference to the Trading with the Enemy Act, 1939, shall be construed as a reference to that Act as amended by or under any other Act.
- (3) The Interpretation Act, 1889, applies for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

2. So far as they are by their nature capable of so doing the provisions of the Treaty and Protocol set out in the First Schedule hereto shall be and have effect as law.

3.—(1) The Board of Trade may, subject to the consent of the Treasury, appoint on such terms as they may specify an Administrator who shall be a corporation sole under the name of the Administrator of Japanese Property and is in this Order referred to as “the Administrator”.

(2) The Administrator shall be assisted by such officers and servants as the Board of Trade, subject to the consent of the Treasury, determine and there shall be paid by the Board of Trade to the Administrator and to such officers and servants such salaries or other remuneration as the Treasury may determine.

4.—(1) The Administrator shall act under the general direction of the Board and shall have the powers conferred upon him and the duties imposed upon him by this Order and by any other Order in Council made under the Act and may do all such things as he may consider necessary or desirable for carrying out the powers and duties so conferred and imposed.

(2) The Administrator may sue or be sued in the name of the Administrator of Japanese Property.

(3) The Administrator shall have an official seal and power to hold land without licence in mortmain.

(4) The seal of the Administrator shall be authenticated by the signature of the Administrator or some other person authorised by the Administrator to act in that behalf.

(5) Any contract or instrument which, being entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Administrator by any person generally or specially authorised by him for that purpose.

(6) Any document purporting to be a document duly executed or issued under the seal of the Administrator authenticated as aforesaid or purporting to be signed by the Administrator or any person authorised to act on his behalf, unless the contrary be proved, shall be deemed to be a document so executed or issued or so signed, as the case may be.

5.—(1) Where any right or interest in the estate of a deceased person is Japanese property, the Administrator may act in the administration of the estate, and the Court having jurisdiction to grant letters of administration of the estate may grant such letters to the Administrator by the name of the Administrator of Japanese Property, and, for that purpose, the Court shall consider the Administrator as in law entitled equally with any other person or class of persons to obtain the grant of letters of administration.

(2) The Administrator shall be treated as, and shall have the powers of, a trust corporation for the purposes of the Law of Property Act, 1925, the Settled Land Act, 1925, the Trustee Act, 1925, the Administration of Estates Act, 1925, and the Supreme Court of Judicature (Consolidation) Act, 1925.

6.—(1) If any person, other than a Custodian of Enemy Property, without the consent of the Administrator transfers, disposes of, or otherwise deals with any Japanese property, he shall be guilty of an offence under Section 1 of the Act, and any such transfer, disposal or dealing shall be void;

provided that it shall be a defence for any person charged with an offence under this paragraph to prove that he did not know and had reasonable cause for not knowing that such property was Japanese property or that he had reasonable cause for believing that any necessary consents had been obtained.

(2) No Japanese property shall be liable to be attached or taken in execution.

7. Every person holding or having the control or management of any Japanese property or owing any debt which is Japanese property (including, when the Japanese property consists of shares, stock or other securities issued by a company, municipal authority or other body, or any right or interest therein, such company, authority or body) shall, unless particulars thereof have already been

furnished to a Custodian of Enemy Property in accordance with the Trading with the Enemy Act, 1939, or Orders made thereunder, within three months from the date upon which this Order comes into operation by notice in writing communicate the fact to the Administrator and shall furnish the Administrator with such particulars in relation thereto as the Administrator may require.

8.—(1) If it appears to the Administrator expedient so to do for the purpose of collecting Japanese property or discharging any of his other functions, the Administrator may, by notice in writing—

- (a) require any person to produce, at a time and place specified in the notice, to the Administrator, or to any person nominated by him for the purpose, any books or documents specified or described in the notice being books or documents which are in his custody or under his control or
- (b) require any person to furnish to the Administrator such returns, accounts or other information as may be specified or described in the notice, and specify the time, the manner and the form in which any such returns, accounts or information are to be furnished.

(2) The Administrator may take copies of any books or documents produced under subparagraph (a) of the foregoing paragraph.

9.—(1) Any person having the possession, control or management of any Japanese property transferable by delivery shall, on being so required by the Administrator, deliver the property to him and the Administrator shall have power to sell or otherwise deal with the property so delivered to him.

(2) When Japanese property consists of any sum of money due to a Japanese person it shall be paid to the Administrator who shall have power to enforce payment thereof, and for that purpose shall have all such rights and powers as if he were the creditor.

(3) When Japanese property consists of any property, rights or interests in the possession of a Custodian of Enemy Property, that Custodian shall, on being so required by the Administrator, either sell the property and pay the proceeds thereof to the Administrator or deliver, transfer or pay the property to the Administrator and the Administrator shall have power to sell or otherwise deal with the property so delivered, transferred or paid to him.

(4) A certificate by the Administrator that any property, rights or interests are Japanese property shall be prima facie evidence of the facts stated in the certificate, and where any requirement or demand for payment by the Administrator as aforesaid is accompanied by such a certificate, a Custodian, or any other person in possession of property transferable by delivery, or the person by whom a sum of money is due, shall comply with the requirement or demand and shall not be liable to any action or legal proceeding in respect of such compliance, but if it is subsequently proved that the property, rights or interests are not Japanese property, the owner thereof shall be entitled to recover the same from the Administrator, or if it has been sold the proceeds of sale, but not to any other remedy.

10.—(1) The Board of Trade may by Order vest in the Administrator any Japanese property, or the right to transfer the same. Any Order so made by the Board is hereinafter referred to as a “Vesting Order”.

(2) The Administrator shall have such rights, powers, duties and liabilities with regard to the Japanese property, or the right to transfer the same, vested in him by a Vesting Order as are prescribed by the Vesting Order.

(3) A Vesting Order as respects property of any description shall be of the like purport and effect as a vesting order as respects property of the same description made by the High Court under the Trustee Act, 1925, and shall be sufficient to vest in the Administrator any property or the right to transfer any property as provided by the Vesting Order without the necessity for any further conveyance, assurance or document.

(4) Any power conferred by this Order to make a Vesting Order shall be construed as including a power, exercisable in the like manner, to vary or revoke the Order.

11.—(1) The Administrator shall not be bound by any provision in any article of association, bye-law or other rule governing a company or other body which restricts the right to transfer shares, stock or other securities or imposes any conditions as to the price at which, or the person to whom, shares, stock or other securities are to be offered or sold.

(2) Where in exercise of the powers conferred on him the Administrator executes a transfer of any shares, stock or securities the company or other body in whose book the shares, stock or securities are registered shall, upon the receipt of the transfer so executed by the Administrator and upon being required by him so to do, register the shares, stock or securities in the name of the Administrator or other transferee notwithstanding any regulation or stipulation of the company or other body, and notwithstanding that the Administrator is not in possession of the certificate, scrip or other document of title relating to the shares, stock or securities transferred, but such registration shall be without prejudice to any lien or charge in favour of the company or other body, or to any other lien or charge of which the Administrator or a Custodian of Enemy Property has notice.

12. If any person called upon to pay any money or to transfer or otherwise deal with any property, rights or interests has reason to suspect that the same are Japanese property he shall before paying, transferring or dealing with the same report the matter to the Administrator and shall comply with any directions that the Administrator may give in respect thereto.

13. In any proceedings by the Administrator to recover a debt, a statement of facts verified by an affidavit made by the Administrator or any other person authorised by him shall be prima facie evidence of the facts therein stated.

14. The Administrator shall, subject as hereinafter provided, retain out of the Japanese property or the proceeds thereof vested in or collected or received by him under this Order such sum as, subject to the consent of the Treasury, he may consider necessary to cover expenses and the amount for which he may be liable in respect of any proceedings or claims and to enable him to repay to the Board of Trade the salaries and other remuneration paid by the Board under Article 3(2) hereof, and subject thereto shall hold and deal with the said Japanese property and the proceeds thereof in such manner as the Treasury shall direct.

15. Any Japanese property or the proceeds thereof may

- (a) on the direction of the Treasury be transferred by the Administrator in accordance with any arrangements that have been made by or on behalf of Her Majesty's Government in the United Kingdom with the Government of any other country or any person acting on their behalf for the resolution of conflicting claims to Japanese property; and
- (b) on the direction of the Board of Trade be released from the provisions of this Order.

16. The time at which the periods of prescription or limitation of right of action or of the right to take conservatory measures in respect of relations affecting persons or property referred to in Paragraph 1 of Part B of the Protocol shall begin again to run, shall be the date of the coming into force of the Treaty, subject, in the case of any period of limitation of right of action, to any provision of the Limitation (Enemies and War Prisoners) Act, 1945, fixing a later date; except that in the case of the periods fixed for the presentation of interest or dividend coupons or for the presentation for payment of securities drawn for repayment or repayable on any other ground, the period shall begin to run again on the date when money becomes available for payment to the holder of the coupon or security.

17. The period to be allowed within which presentation of negotiable instruments for acceptance or payment and notice of non-acceptance or non-payment or protest may be made under Paragraph 2 of Part C of the Protocol shall be the period ending the 31st day of December, 1952.

18. Any person who

- (a) without reasonable excuse fails to comply with any requirement made by or under this Order to furnish information or to produce books or documents; or
- (b) knowingly or recklessly makes a statement which is false in a material particular in giving information for the purpose of this Order or any Vesting Order or for the purposes of obtaining any authority or sanction under this Order;

shall be guilty of an offence under Section 1 of the Act.

19.—(1) Accounts shall be prepared by the Administrator, in such form and manner and at such time as the Treasury may direct, of the sums received and the sums paid by him in pursuance of this Order or any direction given thereunder and the Comptroller and Auditor-General shall examine and certify every such account.

(2) The Comptroller and Auditor-General shall lay copies of every such certified account, together with his report thereon, before both Houses of Parliament.

20.—(1) This Order shall apply to the whole of Her Majesty's dominions (except the Dominions) and to the Protected Territories.

(2) In its application to any part of Her Majesty's dominions which is outside the United Kingdom of Great Britain and Northern Ireland, the Channel Islands and the Isle of Man, and in its application to the Protected Territories, this Order shall be subject to such modifications as may be made by the legislatures of those parts or the Protected Territories for adapting to the circumstances thereof the provisions of this Order.

(3) In the application of this Order to any part of Her Majesty's dominions which is outside the United Kingdom of Great Britain and Northern Ireland, the Channel Islands and the Isle of Man, or to any of the Protected Territories,

- (i) any reference to “the Administrator” shall be construed as a reference to the Administrator appointed for the territory in question;
- (ii) any reference to “the Board of Trade” or to “the Treasury” shall be construed as a reference to the Governor or Officer administering the Government of the territory in question;
- (iii) any reference to “Japanese property” shall be construed as a reference to such Japanese property as is situate within the territory in question;
- (iv) any reference to the Trading with the Enemy Act, 1939, to the Trading with the Enemy Investment Order, 1940, or to the Limitation (Enemies and War Prisoners) Act, 1945, shall be construed as a reference to the corresponding legislation (if any) in force in the territory in question.

21. In the application of this Order to Scotland—

- (a) for any reference to the granting of letters of administration of an estate there shall be substituted a reference to the granting of confirmation as executor on the estate;
- (b) for any reference in Paragraph (3) of Article 10 to a Vesting Order made by the High Court under the Trustee Act, 1925, there shall be substituted a reference to a warrant to complete title granted under section twenty-two of the Trusts(Scotland)Act 1921; and
- (c) the expression “real and personal property” means heritable and moveable property and the expression “attached or taken in execution” means arrested in execution or in security or otherwise affected by diligence.

22. In the application of this Order to Northern Ireland—

- (a) for any reference to the Trustee Act, 1925, there shall be substituted a reference to the Trustee Act, 1893;

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- (b) any reference to a company shall be construed as including a company incorporated under the law of Northern Ireland;
- (c) for Paragraph (2) of Article 5 there shall be substituted the following Paragraph:—
 - “(2) The Administrator shall be treated as, and shall have the powers of, a trust corporation within the meaning of the Probate and Letters of Administration Act (Northern Ireland), 1933(2)
- (d) the reference in Paragraph (3) of Article 10 to the High Court shall be construed as a reference to the High Court of Justice in Northern Ireland.

23. In the application of this Order to the Channel Islands—

- (a) in Article 26 for the reference to the 7th day of May, 1952, there shall be substituted a reference to the day on which the Order is registered in the appropriate Court;
- (b) any reference to the Trading with the Enemy Act, 1939, shall be construed as a reference to that Act as extended to the Channel Islands by the Trading with the Enemy (Channel Islands) Order in Council, 1940(3);
- (c) no transfer under this Order of any real property situate in the Channel Islands shall have effect until registered in the Public Registry of Deeds of the Island in which the property is situate, by order of the Court thereof;
- (d) for Paragraph (3) of Article 10 there shall be substituted the following Paragraph:—

“(3) A Vesting Order as respects property of any description shall upon registration by the Royal Court be sufficient to vest in the Administrator any property or the right to transfer any property as provided by the Vesting Order without the necessity for any further conveyance, assurance or document.”;

and all Orders made by the Board of Trade under this Order shall be communicated to the Bailiff of Jersey or Guernsey, as the case may be, and shall be presented by him to the Royal Court of Jersey or the Royal Court of the Bailiwick of Guernsey, as the case may be, for registration and no such Order shall come into force until so registered;

- (e) any proceedings under Paragraph (4) of Article 9 for the recovery of any property situate in the Channel Islands shall be brought in the appropriate Court and process against the Administrator in any such proceedings shall be sufficiently served if addressed to the Administrator and served at the Offices of the Law Officers of the Crown for Jersey or Guernsey, as the case may be;
- (f) for Article 5 there shall be substituted the following Article:—

“5. Where any right or interest in the personal estate of a deceased person is Japanese property, the Court having jurisdiction to grant letters of administration of the estate shall, at the request in writing of the Administrator and upon the production of the certificate of the Administrator specifying the right or interest which is Japanese property and whether or not a previous grant of such letters has been made in respect of that estate, grant such letters as respects such Japanese property to the Administrator by the name of the Administrator of Japanese Property without requiring the Administrator or any sureties to enter into an administration bond and thereupon the Administrator shall be exclusively entitled to act in the administration of that estate in so far as such Japanese property is concerned.”

In this Article “Guernsey” means the Bailiwick of Guernsey and “the appropriate Court” means, in relation to Jersey, the Royal Court of Jersey and, in relation to Guernsey, the Royal Court of Guernsey.

(2) 23 & 24 Geo. 5. c. 16 (N.I.).

(3) Rev. XXIII, p. 130; 1940 I, p. 1045.

24. In the application of this Order to the Isle of Man—

- (a) any reference to the Trading with the Enemy Act, 1939, shall be construed as a reference to that Act as it extends to the Isle of Man;
- (b) in Paragraph (3) of Article 10 for the words “the High Court under the Trustee Act, 1925” there shall be substituted the words “the High Court, Chancery Division, under the Trustee Act, 1937 (being an Act of Tynwald)”;
- (c) for Paragraph (2) of Article 5 there shall be substituted the following Paragraph:—

“(2) The Administrator shall be treated as, and shall have the powers of, an approved Corporation for the purposes of the Judicature Amendment Act, 1935 (being an Act of Tynwald).”

25. Anything required or authorised under this Order to be done by, to or before the Board of Trade may be done by, to or before the President of the Board, any secretary, under-secretary or assistant secretary of the Board, or any person authorised in that behalf by the President of the Board.

26. This Order shall come into operation on the 7th day of May, 1952.

27. This Order may be cited as the Japanese Treaty of Peace Order, 1952.

F.J. Fernau