
STATUTORY INSTRUMENTS

1948 No. 117

The Treaty of Peace (Italy) Order 1948

1. So far as they are by their nature capable of so doing the provisions of the Treaty set out in the First Schedule hereto shall be and have effect as law and for the purpose of carrying out those provisions the following provisions shall have effect:—

(1) In this Article the expression “property, rights or interests” includes 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) All property, rights or interests, being property, rights or interests to which this paragraph applies, are, subject to the provisions of paragraph 7 of this Article, hereby charged with the amounts due at the date when the Treaty came into force in respect of claims by His Majesty (otherwise than in the right of his Government in the Dominions) and by British nationals (other than British nationals ordinarily resident in any of the Dominions) against the Government of Italy or Italian nationals including debts owing to Him or them by the Government of Italy or Italian nationals, other than claims fully satisfied under any Articles of the Treaty other than Article 79:

Provided that any such property, rights or interests so charged as aforesaid or the proceeds thereof may (i) on the direction of the Treasury, be transferred by the Administrator hereinafter mentioned, free of any such charge in accordance with the provisions of any Agreement on the resolution of conflicting claims to Italian property, rights or interests to which His Majesty may be a party or in accordance with the terms of any other Agreement with the Government of Italy affecting the said property, rights or interests to which His Majesty is or may be a party; and (ii) on the direction of the Board of Trade be released by the said Administrator from the said charge;

(3) Paragraph (2) of this Article applies to any property, rights or interests within His Majesty's Dominions and Protected Territories (except the Dominions) belonging to or held or managed on behalf of the Government of Italy or an Italian national and shall include:—

(i) Any such property, rights or interests in the possession of a Custodian of Enemy Property under or by virtue of an Order made by the Board of Trade under Section 7 of the Trading with the Enemy Act, 1939, and the net proceeds of the sale, liquidation or other dealings by a Custodian of Enemy Property with any such property, rights or interests that are or have been in his possession as aforesaid;

(ii) property, rights or interests which have been subject to control by reason of a state of war existing between Italy and His Majesty, but shall not include:—

(a) property, rights or interests specified in sub-paragraphs (a) to (g) of paragraph 6 of Article 79 of the Treaty;

(b) property, rights or interests acquired under any authority given under the Trading with the Enemy Act, 1939;

(c) property, rights or interests which would be forfeited or determined if so charged as aforesaid;

(4) With a view to making effective and enforcing such charge as aforesaid;

(a) The Board of Trade may appoint on such terms as they may specify an Administrator who shall act under the general direction of the Board and shall have such powers and duties as are hereinafter provided;

- (b) if an Administrator dies or for any other reason ceases to hold office as such, the Board of Trade may appoint a successor, and may by Order vest in such successor any property, rights or interests which were vested in the first-mentioned Administrator at the time of his dying or ceasing to hold office;
- (c) 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 to the Administrator and to such officers and servants such salaries or other remuneration as the Treasury may determine;
- (a) (5) (a) If any person without the consent of the Administrator, transfers, disposes of, or otherwise deals with any property, rights or interests subject to the charge, or pays any debt subject thereto, he shall be guilty of an offence against Section 1 of the Act, and any such transfer, disposal, dealing or payment shall be void;
provided that it shall be a defence for any person charged with an offence under this sub-paragraph to prove that he did not know and had reasonable cause for not knowing that the property, right or interest was subject to the charge or that he had reasonable cause for believing that any necessary consents had been obtained;
- (b) no property, rights or interests subject to the charge shall be liable to be attached or taken in execution;
- (c) every person holding or having the control or management of any property, rights or interests, or owing any debt, subject to the charge (including when the property, rights or interests consist 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, and if any person knowingly fails to do so or furnishes any information false to his knowledge in a material particular he shall be guilty of an offence against Section 1 of the Act;
- (d) the Court may on the application of the Administrator require any person known or suspected to have in his possession or under his control any property, rights or interests subject to the charge, including any person known or suspected to owe a debt to the Italian Government or to an Italian national, or any person whom the Court may consider capable of giving information with respect to the same, subject to payment or tender of reasonable expenses of his attendance, to attend as a witness and to give evidence or produce documents before the Court or before such officer as the Court may appoint for the purpose of examining into the matter, who shall have power to take evidence and administer oaths, and if any person fails without reasonable excuse to comply with any of the provisions of the order he shall be guilty of an offence against Section 1 of the Act and on any such examination the Administrator shall be entitled to appear and be represented and to examine any such person;
for the purposes of this sub-paragraph “the Court” means the High Court or in Scotland the Court of Session;
the Lord Chancellor, or in Scotland, the Court of Session may make rules for regulating the procedure under this sub-paragraph;
- (e) when the property charged consists of property transferable by delivery, any person having the possession, control or management of the property 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;

- (f) when the property charged consists of any sum of money due to the Government of Italy or an Italian national it shall be paid to the Administrator who shall have power to enforce the payment thereof, and for that purpose shall have all such rights and powers as if he were the creditor;
 - (g) a certificate by the Administrator that any property, rights or interests are subject to the charge 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, the person in possession of the 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 were not subject to the charge, 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;
 - (h)
 - (i) the Board of Trade may by Order vest in the Administrator any property, rights or interests subject to the charge, or the right to transfer the same. Any Order so made by the Board is hereinafter referred to as a “Vesting Order”;
 - (ii) the Administrator shall have such rights, powers, duties and liabilities with regard to the property, rights or interests, or the right to transfer the property, rights or interests, vested in him by a Vesting Order as are prescribed by the Vesting Order;
 - (iii) 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;
 - (iv) 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. 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 has notice;
 - (v) 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;
 - (i) if any person called upon to pay any money or to transfer or otherwise to deal with any property, rights or interests has reason to suspect that the same are subject to such charge as aforesaid 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 with respect thereto;
- (6) The Board of Trade may from time to time make general rules and may prescribe forms for carrying into effect the provisions of this Order;
- (7) The Administrator shall retain out of the property, rights or interests 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 subject thereto shall hold and deal with the said property, rights or interests, and the proceeds thereof and the sums received by him in such manner as the Treasury shall direct;

(8) The Administrator may sue and be sued by the name of the Administrator of Italian Property; and no action brought shall abate or be affected by any change in the person nominated as Administrator;

(9) Every document purporting to be a certificate, direction or other instrument issued by the Administrator or to be signed by him or by any other person authorised by him shall be received in evidence and shall be deemed to be such certificate, direction or instrument without further proof unless the contrary is shown, and 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;

(10) A certificate signed by the Administrator or any person authorised by him that an order or other instrument purporting to be made or issued by the Treasury or the Board of Trade is so made or issued shall be conclusive evidence of the facts so certified.

2. 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 Annex XVI of the Treaty 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.

3. 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 Annex XVI of the Treaty shall be the period ending the 15th day of September, nineteen hundred and forty-eight.

4.—(1) There shall be imposed on rights or interests with respect to industrial property acquired before the coming into force of the Treaty, by the Government or nationals of Italy such limitations, conditions and restrictions as the Board of Trade may deem necessary in the national interest and may prescribe and any transfer or other dealing with any industrial property so acquired as aforesaid effected since the 11th day of June, 1940, shall, if and so far as it is inconsistent with any limitations, conditions or restrictions so imposed, be void.

(2) So far as may be necessary for the purpose of Article 79(4) of the Treaty, Sections 1(2) and 2 of the Patents, Designs, Copyright and Trade Marks (Emergency) Act, 1939, shall in relation to the Government of Italy and Italian nationals, continue in force as if reference therein to an enemy or an enemy subject included references to the Government of Italy and an Italian national.

(3) The Comptroller-General of Patents, Designs and Trade Marks shall have power to refuse any application for the grant of a patent for any invention relating to any article of the nature specified in Annex XIII C of the Treaty, being an invention referred to in paragraph 6 of Annex XVA of the Treaty or to revoke a patent for any such invention provided that he shall not exercise that power adversely to an applicant or patentee without giving the applicant or patentee an opportunity of being heard, if the applicant or patentee so requires.

5.—(1) For the purposes of the provisions of this Order—the expression “the Dominions” means a Dominion within the meaning of the Statute of Westminster, 1931, except Newfoundland, but including India, Pakistan and Ceylon and also including any territory administered by the Government of that Dominion. The expression “nationals” in relation to any State includes the Sovereign or former Sovereign and the subjects or citizens of that State and any body of persons constituted or incorporated according to the laws of that State or of any of its colonies or Protected Territories and in the case of a Protected Territory includes a British protected person.

(2) The Interpretation Act, 1889, applies for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

6.—(1) If any person, for the purpose of obtaining any authority or sanction under this Order, or in giving any information for the purposes of this Order or any Vesting Order, knowingly or recklessly makes a statement which is false in a material particular, he shall be guilty of an offence against Section 1 of the Act.

(2) Where any offence against Section 1 of the Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, he, as well as the body corporate, shall be deemed to be guilty of that offence, and shall be liable to be proceeded against and punished accordingly.

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

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

(3) In the application of this Order to any part of His Majesty's dominions or Protected Territories (except the Dominions) any reference to “Board of Trade” or “Treasury”, “property, rights or interests” and “Administrator” shall be construed respectively as a reference to the Governor or Officer administering the Government of the territory in question, the property, rights or interests within that territory, and the Administrator appointed for that territory.

(4) In its application to the Channel Islands, this Order shall have effect subject to the following modifications:

- (a) References to the Trading with the Enemy Act, 1939 shall be construed as references to that Act as extended to the Channel Islands by the Trading with the Enemy (Channel Islands) Order in Council, 1940(1);
- (b) in sub-paragraph (d) of paragraph (5) of Article 1 references to the Court shall be construed as references to the Royal Court of Jersey or the Royal Court of the Bailiwick of Guernsey, as the case may be, and rules for regulating the procedure under that sub-paragraph may be made, as regards Jersey, by the Superior Number of the Royal Court, and, as regards the Bailiwick of Guernsey, by the Royal Court of that Island;
- (c) For clause (iii) of sub-paragraph (h) of paragraph (5) of Article 1, there should be substituted the following clause—
“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 and rules made, and all forms prescribed, 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 or rules shall come into force until so registered.

(5) In its application to the Isle of Man, in sub-paragraph (d) of paragraph (5) of Article 1 references to the Court shall be construed as references to the High Court of Justice in the Isle of

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Man and rules for regulating the procedure under that sub-paragraph may be made as regards the Isle of Man by the Governor.

(6) In its application to Northern Ireland, in sub-paragraph (d) of paragraph (5) of Article 1 references to the Court shall be construed as references to the High Court of Justice in Northern Ireland and rules for regulating the procedure under that sub-paragraph may be made as regards Northern Ireland by the Lord Chief Justice of Northern Ireland.

8. This Order shall come into operation on the 2nd day of February, 1948.
9. This Order may be cited as the Treaty of Peace (Italy) Order, 1948.

E. C. E. Leadbitter