



The Hongkong Government Gazette Extraordinary.

Published by Authority.

MONDAY, NOVEMBER 30, 1914.

The following Notification is published,

By command,

CLAUD SEVERN,
Colonial Secretary.

LEGISLATIVE COUNCIL.

No. 470.—The following Bill, which is substituted for the Bill published in the *Gazette Extraordinary* of the 2nd November, 1914, will be introduced at an early meeting of the Legislative Council :—

A BILL

ENTITLED

An Ordinance to amend the Alien Enemies (Winding up) Ordinance, 1914, and to provide for the protection of public officers in certain cases.

BE it enacted by the Governor of Hongkong, with the advice and consent of the Legislative Council thereof, as follows :—

1. This Ordinance may be cited as the Alien Enemies Short title. (Winding up) Amendment Ordinance, 1914, and shall be read and construed as one with the Alien Enemies (Winding up) Ordinance, 1914, (hereinafter called the Principal Ordinance).

Amendment of Ordinance No. 28 of 1914, s. 2. **2.** Section 2 of the Principal Ordinance is amended by the substitution of a comma for a full stop after the words "His Majesty" in the definition of "alien enemy" and by the addition to the said definition of the following words:—

"and includes every body corporate incorporated or established in the territory, or within the jurisdiction, or under the laws, of any sovereign or state that is at war with His Majesty, and includes every firm which has, or which at any time since the outbreak of war has had, a partner or an office in the territory of any sovereign or state that is at war with His Majesty."

Amendment of Ordinance No. 28 of 1914, s. 4. **3.** Section 4 of the Principal Ordinance is amended as follows:—

(a.) by the repeal of the words "in writing under the hand of the Colonial Secretary" in sub-sections (1) and (2), and by the substitution therefor of the words "by any officer duly authorised in that behalf";

(b.) by the addition of the following sub-section after sub-section (2):—

"(3.) No person shall without the permission of the Governor pay any money or part with any property whatsoever to or for the benefit of any alien enemy, or in any way deal with any property for the benefit of an alien enemy, whether such alien enemy be within or without the Colony."

(c.) By renumbering sub-sections (3) and (4) as (4) and (5).

Amendment of Ordinance No. 28 of 1914, s. 5 (7). **4.** Sub-section (7) of section 5 of the Principal Ordinance is amended as follows:—

(a.) by the substitution of the word "trade" for the word "business" in the third line thereof;

(b.) by the insertion of the words "together with the goodwill of such trade and every part thereof," after the word "enemy" at the end of the third line thereof;

(c.) by the insertion of the following words between the word "trade" and the word "and" in the fifth line thereof:—

"or any branch of such trade outside the Colony";

(d.) by the insertion of the words "for valuable consideration" between the word "assigned" and the word "to" in the seventh line thereof;

(e.) by the insertion of the following words between the word "liquidator" and the word "provided" in the tenth and eleventh lines thereof:

"and in particular the appointment of a liquidator of the trade of an alien enemy under the provisions of this Ordinance shall not alter vary or affect in any way any liability or obligation of any com-pradore of any such trade as existing immediately before the appointment of the liquidator, nor shall such appointment operate to discharge any surety of any such com-pradore in respect of any such liability or to give him or any person who has mortgaged pledged charged assigned or given any property to secure any such com-pradore any rights such surety or person would not otherwise have had whether in respect of any personal obligation or of any property mortgaged pledged charged assigned or given as security or otherwise."

Amendment of Ordinance No. 28 of 1914, s. 5 (8). **5.** Sub-section 8 of section 5 of the Principal Ordinance is amended in the first line thereof by the insertion of a comma after the word "proceedings" and by the insertion

of the following between the word "proceedings" and the word "which":—

"except proceedings in bankruptcy against
"an alien enemy."

6. Sub-section (11) of section 5 of the Principal Ordinance is repealed.

Repeal of
Ordinance
No. 28 of
1914, s. 5
(11).

7. The following sub-sections are added after sub-section (10) of section 5 of the Principal Ordinance:—

Addition of
new sub-
sections to
section 5 of
Ordinance
No. 28 of
1914.

"(11.) Every liquidator shall be entitled to retain out of the assets of the trade, or out of the personal assets, of the alien enemy whose trade or personal affairs respectively he has been appointed to wind up, the expenses incurred by the liquidator in the course of such winding up, including (a) the rent of any business premises formerly occupied by such alien enemy which shall accrue while such premises are occupied by the liquidator for the purpose of such winding up, (b) audit fees, and (c) any money which may be advanced by the liquidator for the purposes of such winding up, and also a sum of money equal to two and a half per cent. on the total assets realised or brought to credit by the liquidator, as remuneration for his loss of time and trouble.

(12.) In case the assets of any such trade, or the personal assets of any such alien enemy, shall be or become insufficient to meet all the corresponding liabilities, such assets shall be applied in the following order of priority:—

Firstly, the expenses incurred by the liquidator in the course of such winding up, including (a) the rent of any business premises formerly occupied by such alien enemy which shall accrue while such premises are occupied by the liquidator for the purpose of such winding up, (b) audit fees, and (c) any money which may be advanced by the liquidator for the purposes of such winding up.

Secondly, a sum of money equal to two and a half per cent. on the total assets realised or brought to credit by the liquidator, to be retained by him as remuneration for his loss of time and trouble.

Thirdly, all sums of money due to secured creditors up to the value of their respective securities.

Fourthly, the salary or wages of any clerk or servant in respect of services rendered since the 31st day of July, 1914, less any sum of money due by such clerk or servant to such alien enemy, or to the compradore of such alien enemy.

Fifthly, all sums of money due to the Crown.

Sixthly, all other liabilities rateably *pari passu* whether due to persons within or without the Colony: Provided that in the case of the winding up of any trade formerly carried on in the Colony by an alien enemy which was a branch of a trade carried on also outside the Colony, such liabilities in the opinion of the liquidator arise out of transactions entered into by or on behalf of such branch within the Colony and are not liabilities which would ordinarily have been discharged by branches of such trade outside the Colony.

(13.) In case the nett assets of any such trade, or the nett personal assets of any such alien enemy, after deducting the value of all securities held by secured creditors, shall be or become insufficient to satisfy the total sums of money which the liquidator is entitled under sub-section (11) of this section to retain, every secured creditor shall be liable to pay to the

liquidator such proportion of the sum by which the nett assets as above defined are insufficient for the purpose aforesaid as the value of his security may bear to the total assets realised or brought to credit by the liquidator.

- (14.) The accounts of every such liquidator with respect to any such winding up shall be audited in such manner as the Governor may direct.
- (15.) Every person who shall, without lawful excuse, refuse to hand over to a liquidator on demand any keys, safe, office furniture, account books, cheque books, or other things of any nature whatsoever, of which he may be in possession, and which may have been used in connection with or which may relate to the trade or personal affairs of the alien enemy whose trade or personal affairs respectively such liquidator has been appointed to wind up, and every person who shall, without lawful excuse, in any way obstruct any liquidator in taking possession of any premises occupied by or on behalf of such alien enemy immediately before the appointment of such liquidator, shall be deemed to commit an offence against this Ordinance.
- (16.) Notwithstanding anything in this Ordinance contained, the Governor shall have power, in any case where it shall appear to him that the remuneration of any liquidator under the foregoing provisions would be inadequate, to award to such liquidator such remuneration as he shall think fit, and thereupon such liquidator shall be entitled to retain such increased remuneration out of the assets of the trade, or out of the personal assets, of the alien enemy whose trade or personal affairs respectively he has been appointed to wind up: Provided that nothing in this sub-section shall be construed as affecting the rights of any secured creditor of such alien enemy."

Renumbering of Ordinance No. 28 of 1914, s. 5 (12).

8. Sub-section (12) of section 5 of the Principal Ordinance is renumbered as sub-section (17).

Amendment of Ordinance No. 28 of 1914, s. 6.

9. Section 6 of the Principal Ordinance is amended by the substitution of the word "formerly" for the word "previously" in the third line of sub-section (1) and by the addition of the following sub-section:—

"(4.) The prohibition referred to in sub-section (1) of this section, and the presumption referred to in sub-section (3) of this section, shall apply in the case of every trade, and in the case of every part of every trade, carried on by any alien enemy at any time after the 31st December, 1913, unless the person carrying on such trade or part of such trade shall prove to the satisfaction of the magistrate or the court or the jury as the case may be that such trade or part of such trade was *bonâ fide* assigned or parted with or abandoned by the alien enemy before the 5th August, 1914."

Amendment of Ordinance No. 28 of 1914, s. 10.

10. Section 10 of the Principal Ordinance is amended as follows:—

- (a.) by the substitution of the word "affect" for the word "effect" in the second line thereof;
- (b.) by the substitution of a colon for the full stop at the end thereof, and by the addition thereto of the following:—

"Provided that where a liquidator has
 "been appointed to wind up the
 "affairs of any trade formerly carried
 "on in the Colony by an alien enemy
 "or to wind up the personal affairs
 "of any alien enemy no proceedings in

“bankruptcy shall be brought or be
 “maintained against any such alien
 “enemy so long as the appointment
 “of such liquidator, or of any person
 “appointed as liquidator in succes-
 “sion to such liquidator, shall remain
 “in force.”

11. No alien enemy shall be entitled to present a bankruptcy petition against himself.

No alien enemy to be entitled to present a bankruptcy petition against himself.

12. All the amendments made by this Ordinance in the Principal Ordinance shall be deemed to have been made in the Principal Ordinance immediately upon the coming into operation of the Principal Ordinance.

Amendments made by this Ordinance to be deemed to have been made upon the commencement of the Principal Ordinance.

13. No legal proceeding of any kind, except criminal proceedings by way of indictment where such shall lie, shall be brought or be maintained by any person whatsoever against any public officer in respect of any direction or permission *bonâ fide* given or refused in execution or intended execution or enforcement or intended enforcement of the Principal Ordinance or of this Ordinance or of any power conferred by either of the said Ordinances, whether such permission have been or may be given or refused before or after the commencement of this Ordinance.

Protection of public officers.

Objects and Reasons.

The object of this Bill is to fill up certain lacunæ in the express provisions of the Principal Ordinance in order the better to carry out its spirit and general intention, and to make the law clearer on certain points on which the construction of the Principal Ordinance might possibly give rise to some question. The main provisions of the Bill are as follows :—

It is expressly prohibited to pay any money, or part with any property, to or for the benefit of an alien enemy, or in any way to deal with any property for the benefit of an alien enemy.

It is expressly provided that the property over which the liquidator will have control shall include any property within the Colony which may have been employed in or in connection with any branch of the alien enemy's trade outside the Colony, *e.g.*, goods belonging to the Canton branch of a firm established at Canton as well as in the Colony.

It is expressly provided that the appointment of a liquidator shall not affect any liability of a compradore or his sureties as existing immediately before such appointment.

It is provided that where a liquidator has been appointed no proceedings in bankruptcy may be brought against the alien enemy in question, and that no alien enemy shall be entitled to present a bankruptcy petition against himself.

The Principal Ordinance provided for the payment of the liquidators' expenses and remuneration in case of the insolvency of the alien enemy's trade or personal estate, but failed to provide for such payment in case of solvency. This omission is now rectified.

It is provided that where the trade which is being wound up is a branch of a trade carried on also outside the Colony, the liabilities to be discharged by the liquidator shall be confined to liabilities arising out of the transactions entered into by or on behalf of the Hongkong branch.

Power is given to the Governor to award a higher remuneration in any special case where the usual remuneration of 2½% shall appear to him inadequate. This, however, will not affect the position of secured creditors.

It is made clear that the expenses of the liquidator shall include money advanced by him for the purpose of the winding up.

As it is essential for any winding up to be undertaken that the payment of the expenses and remuneration of the liquidator shall be certain, those payments are placed in case of insolvency in priority over the payment of secured creditors, and it is provided that secured creditors shall be liable to contribute to such expenses and remuneration in proportion to the value of their respective securities.

Express provision is made for the auditing of liquidators' accounts.

It is declared to be an offence against the Ordinance to refuse to hand over to a liquidator on demand any keys, account books, etc., relating to the trade or personal affairs of the alien enemy whose trade or personal affairs the liquidator has been appointed to wind up.

It is provided that the prohibition against carrying on the trade of an alien enemy shall apply in the case of every trade, or part of a trade, carried on by any alien enemy at any time after the 31st December, 1913, unless the person carrying on such trade shall prove that it was assigned, parted with, or abandoned, by the alien enemy before the 5th August, 1914.

All the amendments are made retrospectively.

Provision is made for protecting public officers from actions in respect of permissions *bonâ fide* given or refused in execution of their powers under the Principal Ordinance or the amending Ordinance.

J. H. KEMP,
Attorney General.