CHAPTER 132

DISTRIBUTION OF GERMAN ENEMY PROPERTY ORDINANCE*

To provide for the collection and realisation of German enemy property and for the distribution of the proceeds thereof; and for purposes connected with the matters aforesaid.

(20th April, 1951)

ORDINANCE I of 1951, as amended by Ordinance II of 1951; Legal Notice 46 of 1965; Act LVIII of 1974; Legal Notice 148 of 1975; Act XIII of 1983; and Legal Notice 409 of 2007.

Short title.

1. The short title of this Ordinance is the Distribution of German Enemy Property Ordinance.

Interpretation. *Amended by: II. 1951.2; LVIII. 1974.68.*

2. (1) In this Ordinance the following expressions have the meanings hereby respectively assigned to them, that is to say:

"German enemy debt" means -

(*a*) any sum due at the passing of this Ordinance in respect of an obligation incurred before the 3rd September, 1939, which on that day was an obligation of any of the following persons -

(i) the German State;

(ii) any individual who on that day was a German national resident in Germany;

(iii) any body of persons (whether corporate or unincorporate) which on that day was a body incorporated or constituted in or under the laws of Germany;

to any of the following persons -

(iv) the Maltese Imperial Government and the Government of Malta;

(v) any British subject or British protected person resident or carrying on business on that day in Malta;

(vi) any body of persons (whether corporate or unincorporate) which on that day was a body incorporated or constituted under the laws in force in Malta;

except that where any person or body of persons specified in sub-paragraph (v) and (vi) hereof carried on business on the said day both in and outside Malta, any sum attributable to the business carried on outside Malta shall be excluded;

(*b*) any sum, not included in paragraph (*a*) hereof, being -

**See* also the Distribution of German Enemy Property Ordinance (Chapter 139).

(i) a sum due at the passing of this Ordinance in respect of any bond of the German External Loan, 1924, or the German Government International 5½ *per centum* Loan, 1930, being a bond enfaced in accordance with the Supplementary Agreement for the execution of article 2 of the Anglo-German Transfer Agreement of the 1st July, 1938;

(ii) a sum due on the 7th May, 1945, in respect of any bond of the Austrian Government International Loan, 1930, or the Austrian Government Credit Anstalt Bonds, 1936, being a bond enfaced as aforesaid;

(iii) a sum due on the 7th May, 1945, in respect of any bond of the Austrian Government International Guaranteed Loan 1933-53, or the Austrian Government Guaranteed Conversion Loan, 1934-59, which was in the beneficial ownership of a British holder (within the meaning of article 4 of the said Anglo-German Transfer Agreement) on the 1st July, 1938; or

(iv) a sum due at the passing of this Ordinance in respect of any bond of the Konversionskasse 4 *per centum* Sterling Bonds;

"German enemy property" means property which, on such day as may be appointed by an order made under section 3 of this Ordinance is, or at any time thereafter becomes, subject to control under section 8 of the Trading with the Enemy Ordinance, 1939*, being property, or the proceeds or income of property, which on or at any time after the 3rd September, 1939, belonged to, or was held or managed on behalf of -

(*a*) the German State;

(*b*) any individual who, on the said 3rd September, 1939, or at any time thereafter was a German national resident in Germany or in any territory under the sovereignty of a State which on or at any time after the said day was at war with His Majesty the King;

(*c*) any individual who was a German national on or at any time after the said day and -

(i) was included among the persons specified in any order made under subsection (2) of section 3 of the Trading with the Enemy Ordinance, 1939*, or

(ii) was a person whose property became subject to control under section 8 of the said Ordinance at a time when he was not an enemy within the meaning of the said Ordinance;

(*d*) any body of persons (whether corporate or

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unincorporate) which on or at any time after the said day was a body incorporated or constituted in or under the laws of Germany; and

(*e*) any body of persons (whether corporate or unincorporate) which on or at any time after the said day was controlled by any such individual or body as is mentioned in paragraph (*b*), paragraph (*c*) or paragraph (*d*) hereof;

"German national" does not include any person who acquired German nationality by reason of the inclusion in the German State after the 1st March, 1938, of any territory not comprised therein on that day;

"Germany" means territory comprised in the German State on the 1st March, 1938;

"Malta" has the same meaning as is assigned to it in section 124 of the Constitution;

"order" means an order made by the President of Malta and published in the Government Gazette;

"property" means immovable or movable property, and includes any estate or interest in immovable or movable property, any money, any negotiable instrument, debt or other right of action or incorporeal movable, and any other right or interest whether in possession or not;

"Trading with the Enemy Ordinance, 1939" means the Trading with the Enemy Ordinance, 1939*, as amended by or under any other Ordinance.

(2) For the purposes of this Ordinance a person who at any time was resident in Germany shall be deemed to have been a German national at that time unless it is proved to the satisfaction of the administrator within such time and in such manner as may be prescribed by an order made under section 3 of this Ordinance, that he was not a German national at that time.

(3) For the purposes of this Ordinance, property which or the right to transfer which, is vested in the Custodian of Enemy Property appointed under section 8 of the Trading with the Enemy Ordinance, 1939*, and property which, by virtue of any order made under the said section 8, cannot be dealt with without the consent of the President of Malta, shall be deemed to be subject to control under the said section 8.

Collection, realization and distribution of German enemy property. *Amended by: LVIII. 1974.68.*

3. (1) The President of Malta may by order make provision for the collection and realization of German enemy property and for the distribution of the proceeds thereof, to such extent as may be prescribed by the order, to persons who establish claims in respect of German enemy debts.

(2) Without prejudice to the generality of the preceding subsection, an order under this section may make provision as to

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the following matters:

(*a*) the appointment of an administrator for the purposes of the order, and the conferring and imposing on that administrator of such powers and duties as may be prescribed by the order;

(*b*) the transfer and vesting of German enemy property to and in the administrator; and the discharge of any person specified in the order from liability in respect of things done or omitted to be done in relation to property transferred from him to the administrator;

(*c*) the manner and time in which claims in respect of German enemy debts are to be put forward and the furnishing and verification of information in connection with any such claims, including the production of books and documents;

(*d*) the determination, as respects any such claims, of the question whether the claim is established for the purposes of the order and of the amount of the claim;

(*e*) the distribution from time to time of the proceeds of the realization of German enemy property to persons whose claims in respect of German enemy debts have been established for the purposes of the order;

(*f*) the charging of fees to persons making claims in respect of German enemy debts, and the recovery of those fees by deduction from the amount to be distributed as aforesaid or otherwise;

(*g*) the disposal of sums in the administrator's hands which, by reason of a failure to discover the whereabouts of persons to whom the sums ought to be distributed or for any other reason it is not practicable to distribute;

(*h*) the transfer to Her Majesty's Government in the United Kingdom of the net surplus, if any, remaining out of the proceeds of German enemy property after all accepted claims against the same by creditors in Malta have been settled.

(3) The administrator appointed under this section shall be known under the name of Administrator of German Enemy Property, and is in this Ordinance referred to as "the administrator".

(4) Without prejudice to the generality of the preceding provisions of this section, an order made under this section may -

(*a*) exclude from the application of the order such classes of claims as may be prescribed by the order;

(*b*) differentiate between different classes of claims, as respects the priority in which payments are to be made and the extent of the payments;

(*c*) make provision for enabling proceeds of German enemy property which belonged to, or was held or managed on behalf of, a particular person or body of

persons to be distributed to persons establishing claims in respect of debts due from that person or body.

(5) The President of Malta may by further orders prescribe forms for the purposes of any order made under this section and in particular for the making of claims and the furnishing of information.

(6) Notwithstanding anything in this section, the President of Malta may give a direction to the administrator requiring him to transfer to or for the benefit of any person specified in the direction any German enemy property, or the proceeds of any German enemy property, to which that person would have been entitled but for the operation of the Trading with the Enemy Ordinance, 1939*, or any order made thereunder, and the administrator shall comply with any such direction.

(7) Where any German enemy property, on or at any time after the 3rd September, 1939, belonged to, or was held or managed on behalf of, a German company, and it appears to the President of Malta that the company was on the said day controlled directly or indirectly, by a Maltese company, the President of Malta may treat that property for the purposes of the last preceding subsection, to such extent as the President of Malta thinks fit having regard to the extent of the interest of the Maltese company in the German company, as property to which the Maltese company would have been entitled but for the operation of the Trading with the Enemy Ordinance, 1939*, or any order made thereunder.

In this subsection, the expression "German company" means a body incorporated in, or under the laws of, Germany, and the expression "Maltese company" means a company formed under the laws of Malta.

Offences.
Amended by: L.N. 46 of 1965; LVIII. 1974.68; L.N. 148 of 1975; XIII. 1983.5; VIII. 1990.3; L.N. 409 of 2007.

4. (1) If any person who -

(*a*) is prohibited by or under an order made under the preceding section from dealing with any German enemy property otherwise than with the consent of the administrator, or

(*b*) is required by or under such order to transfer German enemy property to the administrator or otherwise to deal with that property in accordance with the directions of the administrator,

contravenes or fails to comply with the prohibition or requirement, he shall be guilty of an offence under this section.

(2) Any person who -

(*a*) without reasonable excuse, fails to comply with any requirement made by or under any such order to furnish information or to produce books or documents, or

(*b*) in giving information for the purpose of any such order

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knowingly or recklessly makes a statement which is false in a material particular,

shall be guilty of an offence under this section.

(3) Any person who is guilty of an offence under this section shall be liable -

(*a*) on conviction by the Court of Magistrates sitting as a court of criminal judicature to a fine (*multa*) not exceeding two hundred and thirty-two euro and ninety-four cents (232.94) or to imprisonment for a term not exceeding three months or to both such imprisonment and such fine; or

(*b*) on conviction on indictment to a fine (*multa*) not exceeding one thousand and one hundred and sixty-four euro and sixty-nine cents (1,164.69) or to imprisonment for a term not exceeding two years or to both such imprisonment and such fine.

(4) Where any offence under this section has been committed by a body corporate, every person who at the time of the commission of the offence was a director, general manager, secretary or other similar officer of the body corporate, or was purporting to act in any such capacity, shall be deemed to be guilty of that offence unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.

(5) Before criminal proceedings in respect of an offence under this section are initiated, the Attorney General may direct -

(*a*) that the proceedings be instituted before a Court of Magistrates sitting as a court of criminal inquiry, and, on the record of the inquiry having been sent to the Attorney General by the said court, the Attorney General may either file in the Criminal Court an indictment against the accused person or refer the case back for trial on the same records by the same Court of Magistrates sitting as a court of criminal judicature; or

(*b*) that the proceedings be instituted before a Court of Magistrates sitting as a court of criminal judicature; but at any time in the course of the proceedings before sentence is passed, he may request that the person accused be tried on indictment by the Criminal Court and, on such request being made, the Court of Magistrates shall continue the proceedings as a court of criminal inquiry for the trial of the offence charged by the Criminal Court.

(6) Without prejudice to the provisions contained in subsection (5) of this section, any applicable provision of the Criminal Code shall apply in respect of offences under this section.

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Orders.

5. Any power under this Ordinance to make orders shall

include a power to revoke or vary any orders made in pursuance of that power.