

THE COMPANIES (WAR-TIME PROVISIONS) ACT, 1945.

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**THE COMPANIES (WAR-TIME PROVISIONS) ACT,
1945.***

[BURMA ACT XXV, 1945.] (1st August, 1946.)

WHEREAS it is expedient to make temporary provision for affording relief to companies adversely affected by war circumstances ;

* * * *

It is hereby enacted as follows :—

PART I.

Preliminary.

1. (1) This Act may be called the Companies (War-Time Provisions) Act, 1945. Short title,
commence-
ment and
duration.

(2) It shall come into force on such date as the President of the Union may, by notification, appoint and different dates may be appointed for different parts or sections of the Act.¹

(3) It shall remain in force until the President of the Union, by notification, declares it to be no longer in force.

2. In this Act, unless there is anything repugnant in the subject or context,— Definitions.

- (i) “authorized officer” of a company means any director, managing agent, manager or secretary or other person empowered under the charter, articles of association, regulations, bye-laws or other instrument relating to the constitution of the company, or by a special resolution of the company, to give directions in regard to the business of the company, but does not include an auditor ;
- (ii) “company” means a company as defined in the Burma Companies Act ;
- (iii) “the Court” means the Court having jurisdiction under this Act ;
- (iv) “prescribed” means prescribed by rules made under this Act ;
- (v) “Registrar” means the Registrar of Companies appointed under the Burma Companies Act, and includes any other person appointed by the President of the Union to perform any of the duties of the Registrar under this Act ;
- (vi) “war circumstances” means circumstances directly or indirectly attributable to any war in which His Britannic Majesty may be or has been engaged after the first day of September 1939 ;

* Published in Commerce and Supply Department Notification No. 12, dated the 13th October, 1945, and republished in *Burma Gazette*, 1946, Part I, page 154.

¹ Parts I, II, III, IV and VI of the Act came into force in the whole of Burma on 1st August, 1946.—See *Burma Gazette*, 1946, Part I, page 462 ; and Part V of the Act came into force in the whole of Burma on 1st August, 1947.—See *Burma Gazette*, 1947, Part I, page 367.

- (vii) Expressions used but not defined in this Act and defined in the Burma Companies Act have the meanings assigned to them in that Act.

Court having jurisdiction under Act.

3. (1) The Court having jurisdiction under this Act shall be the High Court :

Provided that the President of the Union may, by notification and subject to such restrictions and conditions as he thinks fit, empower any District Court to exercise all or any of the jurisdiction by this Act conferred upon the Court, and in that case such District Court shall, as regards the jurisdiction so conferred, be the Court in respect of all companies having their registered offices in the district.

(2) Nothing in this section shall invalidate any proceeding by reason of its being taken in the wrong Court.

Registrar to give effect to all orders and directions of Court.

4. The Registrar shall be bound to give effect to all orders passed and all directions given by the Court under this Act as if they were part of the Burma Companies Act.

PART II.

Relief to Companies affected by war circumstances.

Restriction on execution of decrees.

5. Part II of the Liabilities (War-Time Adjustment) Act, 1945, with the exception of section 8, shall apply to companies in the same way as it applies to other debtors, with the following modifications :—

(i) “ the Court ” shall mean the Court having jurisdiction under this Act, and

(ii) in section 6 for the word “ insolvency ” the words “ winding up ” shall be substituted.

Power to Court to afford relief to companies affected by war circumstances.

6. The Court may, on the application of any company which finds itself unable by reason of war circumstances to comply with any of the provisions of the Burma Companies Act or of the charter, memorandum and articles of association, regulations or bye-laws of the company or of any other law or instrument which is binding on the company, and after due notice of such application to all persons interested in such manner as may be prescribed, give directions modifying or suspending the provisions of any law, charter, memorandum and articles of association, regulations, bye-laws or other instrument as to the constitution of the company or as to the discharge of any of the powers, duties or functions of the company.

Date of operation and terms and conditions of direction under Act.

7. (1) Any direction given in pursuance of the powers conferred by section 6 may provide that such direction shall have effect from such date as may be specified therein, not being earlier than the eighth day of December, 1941, and any direction so given shall be in force for such period and shall be subject to such terms and conditions as the Court may in each case provide.

(2) Any direction given in pursuance of this Part may be varied or revoked by a subsequent direction made in like manner.

8. Nothing contained in this Part shall be deemed to authorize the Court to pass any order for the extinguishment of any claim against a company.

Claims against company not to be extinguished.

PART III.

Adjustment of Liabilities.

9. Any company which is in financial difficulties owing to war circumstances may apply to the Court for the settlement of an equitable and reasonable scheme of arrangement with its creditors under this Part :

Company may apply for scheme of arrangement.

Provided that an application shall not be made by a company under this Part unless a special resolution within the meaning of the Burma Companies Act has been passed by the company resolving that the application be made.

10. No application for a scheme of arrangement under this Part shall be entertained unless the Court is satisfied that principal object of the company is to carry on a business for profit, and that the object of the application is to enable the company to carry on or recover that business ; and the Court shall, in considering whether it is practicable and proper to deal with the affairs of a company under this Part, have regard to the constitution and history of the company and the means of the members and officers thereof.

Circumstances under which application under section 9 may be entertained.

11. (1) Where a company makes an application under this Part for a scheme of arrangement and the Court is satisfied that—

Procedure on application for scheme of arrangement.

(a) the company is unable to pay its accrued debts or will be unable after payment of its accrued debts (if any) to meet, as they fall due, any future liabilities in respect of obligations already incurred, or is in such a position that, if it is required to pay the accrued debts and to meet any such future liabilities as they fall due, it would have no reasonable prospect of preserving or recovering the business of the firm, and (a) the position of the company is due to war circumstances, the Court shall cause notice of the application to be served on all the creditors of the company, who have debts provable in a winding-up of the company by the Court, in such manner as may be prescribed, and

(i) if the company and a majority in number and value of such creditors assent to a scheme framed for the purpose, shall approve the same ;

(ii) when no scheme to which the company and a majority in number and value of such creditors assent can be effected, the Court may approve any scheme which appears to it to be equitable and reasonable.

(2) A scheme approved under sub-section (1) shall, subject to the following provisions of this Part, be binding on the company and on all the creditors on whom notice was served under sub-section (1) :

Provided that where any of the said creditors has a debt which would be entitled to priority if the company were wound-up, a scheme of arrangement

shall not be approved unless the creditor assents thereto or the scheme secures the payment of the debt with the like degree of priority.

What a scheme of arrangement may provide for.

12. A scheme of arrangement approved under this Part may provide for the composition of debts, the postponement of payment of debts, the assignment or charging of any property of the company in favour of the creditors, and the management of the company's business or the disposal of any part of its property, and may, with the assent of the other parties thereto, vary the terms of any lease, mortgage or contract to which the company is a party.

Extension or revocation of scheme when creditor not served with notice.

13. Where it appears that a scheme of arrangement approved under this Part is not binding on any creditor by reason of the fact that he has not received due notice of the application under sub-section (1) of section 11, that creditor or any creditor who is bound by the scheme may apply to the Court to extend the scheme, with such variations as may be necessary, to the creditor not bound thereby, or to revoke the scheme, and the Court may, if it thinks fit, extend or revoke the scheme accordingly.

Enforcement of scheme.

14. Any scheme of arrangement approved under this Part may be enforced by the Court on the application of the company or of any creditor bound thereby, and any disobedience of an order of the Court made on any such application shall be deemed to be a contempt of Court and shall be punishable accordingly.

Revocation of scheme.

15. If the company fails to comply with an approved scheme, or if it appears to the Court that the scheme cannot for any sufficient reason proceed without undue delay or without injustice to the creditors or to the company, or that the company is guilty of any act or omission which would constitute an offence under this Act or has in any respect failed to act in complete good faith towards its creditors, the Court may, if it thinks fit, on the application of any creditor bound by the scheme or, if the ground is injustice to the company, on the application of the company, revoke the scheme, but without prejudice to the validity of anything done in the meantime.

Revocation not to affect new scheme.

16. The revocation of an approved scheme by the Court shall be without prejudice to the making of a new scheme of arrangement, and the Court may give such directions as it thinks fit with respect to the making of a new scheme.

Government to be bound by this Part.

17. This Part shall, subject to such exceptions and modifications as may be prescribed by the President of the Union by notification in this behalf, apply in relation to debts and liabilities due to or incurred towards the Government, property in which the Government has an interest, leases, mortgages and contracts entered into with the Government, proceedings by the Government, and the exercise of remedies by the Government, in the same manner as it applies to subjects :

Provided that nothing in this section shall be taken as affecting the prosecution of any criminal proceeding.

18. Where a scheme of arrangement is approved under this Part, every deed, conveyance, assignment or other instrument relating solely to property which was the property of the company on the date of the approval of the scheme and which, after the execution of the instrument, is or remains the property of the company or the property of a trustee appointed for the purposes of the scheme, shall be exempt from stamp duty.

Exemptions
from stamp
duty.

PART IV.

Reconstruction of Records.

19. (1) Where any document or record pertaining to a company has been damaged, lost or destroyed in Burma through war circumstances, it shall be lawful for the company or an authorized officer thereof to take such measures as it or he may deem necessary or expedient for the purpose of reconstructing such document or record from such information as may be available.

Company
may
reconstruct
record
damaged,
lost or
destroyed.

(2) For the purpose of reconstructing any document or record within the meaning of sub-section (1) the company or authorized officer thereof shall have power to call for any document or any information from any person, and may require that any such information shall be given in the form of an affidavit.

(3) If any person refuses to produce or furnish any document or information in his possession or to swear any affidavit in connection therewith, when required so to do under the provisions of sub-section (2) by any company or authorized officer thereof he shall, notwithstanding anything contained in this Act, be precluded subsequently from questioning in any manner the correctness of any document or record which has been reconstructed under the provisions of this Part in so far as it affects his interest in the company.

20. (1) Any document or record which has been reconstructed in pursuance of this Part shall be submitted to the Registrar for his approval.

Validity of
reconstructed
record.

(2) On such approval being obtained the document or record so reconstructed shall, except as otherwise provided by this Act, be deemed to be a correct copy of the original document or record, and may be used for all purposes for which the original might have been used ; and any action taken or any payment made thereunder shall be deemed to be as valid and effectual as if such action or payment had been taken or made under the original document or record.

21. If any question arises as to whether a document or record has been damaged, lost or destroyed as the result of war circumstances the question shall be referred to the Registrar and his decision thereon shall be final.

Decision of
dispute
whether
document
has been
damaged, lost
or destroyed.

PART V.

Transfer of Shares.

22. (1) Where on an application for the registration of a transfer of shares in a company the company has reason to believe that such alleged transfer is not a genuine transfer of the right to the shares, or is fraudulent or

Power of
company to
decline to
register

transfer of
shares and to
refer matter
to decision
of Registrar.

collusive or is open to suspicion on any other ground, or where the information given to the company by the parties to the transfer is insufficient to enable the company to effect the registration thereof, the company may decline to register the transfer; and in all cases where it so declines to register a transfer it shall refer the matter with a statement of the facts of the case and its own opinion thereon to the Registrar for his decision:

¹ Provided that where the impediment to registration of the transfer of shares is due to omissions or mistakes which do not raise any suspicion of fraud or collusion and which are capable of rectification by the parties to the transfer, it shall be lawful for the company to return the application for rectification without reference to the Registrar, but the return of such application for rectification shall not be delayed for more than three months from the date of the receipt of the application without the previous sanction of the Registrar.

(2) Any order passed by the Registrar in any matter referred to him in pursuance of sub-section (1) shall be binding on the company and on all persons interested in the transfer.

Subsequent
transfers of
shares how
to be dealt
with.

23. Where the transfer of a share in a company has been registered in pursuance of this Part, nothing in this Act shall apply to a subsequent transfer of the said share effected after the date of such registration and any application for the registration of such subsequent transfer shall be disposed of as if this Act had not been passed.

PART VI.

Miscellaneous.

False
statement or
omission by
director, etc.

24. If any director, managing agent, manager, or other officer of a company knowingly makes any false statement, or omits to state any material fact, for the purpose of securing the assent of the creditors to a scheme of arrangement under Part III or the exercise in favour of the company of any power of the Court under this Act, he shall be liable on conviction to imprisonment for a term which may extend to two years, or to a fine which may extend to two thousand rupees, or to both.

Fraudulently
disposing of
property
after
approval of
scheme.

25. If any company, after the approval of a scheme of arrangement, fraudulently sells, removes or disposes of any part of its property, every director, managing agent, manager or other officer of the company who knowingly and wilfully carries out, authorizes, permits or connives at such sale, removal or disposal shall be liable on conviction to imprisonment for a term which may extend to two years, or to a fine which may extend to two thousand rupees, or to both.

¹ This proviso was inserted by Act XIX, 1948.

26. The costs of any proceedings under this Act before the Court or the Registrar shall be in the discretion of the Court or the Registrar, as the case may be :

Costs of proceedings under Act.

¹ Provided that neither the Court nor the Registrar shall make an order for costs against a company except costs for advertisements in the newspapers unless, in the opinion of the Court or the Registrar, as the case may be, the company has without due cause or justification attempted to avail itself of the provisions of this Act.

27. During such period as may be prescribed by the President of the Union by notification in this behalf, nothing contained in the Burma Companies Act or in this Act or in any other law for the time being in force shall require any company to give effect to any transfer of shares therein or to make payment of any dividend that has fallen due.

Company not to be compelled to give effect to transfer of shares or to pay dividends.

27A. (1) Any company which was, prior to the 31st day of December, 1941, registered under the law in Burma and which, after the aforesaid date, was subsequently registered in the United Kingdom, or India, or in any British Dominion or Colony or in any British Protectorate or in any Territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Britannic Majesty and is being exercised by His Britannic Majesty's Government in the United Kingdom, may apply to the Registrar appointed under the Burma Companies Act for the re-registration of the company under the Burma Companies Act; and where any such company is re-registered in accordance with the provisions hereof, such company shall, for the purposes of the Burma Companies Act, be deemed to have been duly registered from the date on which it was originally registered in Burma prior to its registration in the United Kingdom or India, or in any British Dominion or Colony or any British Protectorate or in any Territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Britannic Majesty and is being exercised by His Britannic Majesty's Government in the United Kingdom, as the case may be.

Re-registration under Burma Companies Act of companies previously registered in Burma but subsequently registered in the United Kingdom, or India or in any British Dominion, etc.

(2) The President of the Union may prescribe the circumstances and conditions under which the re-registration of a company may be effected, and where the circumstances or conditions have been so prescribed, the re-registration shall be made only when such conditions and circumstances are properly conformed to.

28. The President of the Union may make rules determining the manner in which and the conditions subject to which the Registrar shall exercise his powers under this Act.

Power to President to make rules.

29. (1) The High Court may make rules for carrying into effect the provisions of this Act.

Power to High Court to make rules.

¹ Substituted by Act XIX, 1948.

² Inserted by Act XXIX, 1946.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide—

- (a) for the form and contents of applications under section 6 or section 9 ;
- (b) for the giving of notice to creditors and others and the form and contents of such notices ;
- (c) for the manner of proof of debts and the method of valuing securities, debts and liabilities, including future and contingent liabilities ;
- (d) for the fees to be paid on applications in connection with proceedings on applications ; and
- (e) generally for the procedure to be adopted in proceedings under this Act.

Bar to
jurisdiction
of civil
Courts.

30. Except as otherwise provided in this Act, no civil Court shall have jurisdiction in any matter which the Registrar is empowered by or under this Act to determine or shall take cognizance of the manner in which the Registrar exercises any power vested in him by or under this Act.

Saving of
right of suit.

31. Except as provided by Parts II and III, nothing contained in this Act and nothing done under or in accordance with this Act shall be deemed to preclude any person from instituting a suit or other proceeding in any competent Court under any law for the time being in force for establishing any right or claim against any company to which such person may deem himself to be presently entitled.

Protection
for acts done
in good
faith.

32. Except as provided by this Act, no suit or other legal proceeding shall lie against any company or any person in respect of anything which is in good faith done or intended to be done under the provisions of this Act.

Definition of
"Company"
as respects
certain
sections of
this Act.

33. The definition of "Company" in section 2 shall, as respects sections 2, clause (i), 3, 5 to 8, 19 to 21, 26 and 28 to 32, be deemed to include a society registered under the Societies Registration Act and a Provident Insurance Society registered under the Provident Insurance Societies Act ;

and in the application of section 6 to such societies, the words "the Burma Companies Act" therein shall be construed as meaning the Societies Registration Act or the Provident Insurance Societies Act, as the case may be.