



**BERMUDA
1981 : 72**

PROTECTION OF TRADING INTERESTS ACT 1981

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[29 December 1981]

[preamble and words of enactment omitted]

Short title

1 This Act may be cited as the Protection of Trading Interests Act 1981.

Interpretation

2 (1) In this Act —

"Minister" means the Minister of Finance;

"overseas country" means any country or territory outside the United Kingdom or Bermuda other than one for whose international relations Her Majesty's Government in the United Kingdom is responsible.

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(2) References in this Act to the law or a court, tribunal or authority of an overseas country include, in the case of a federal state, references to the law or a court, tribunal or authority of any constituent part of that country,

(3) References in this Act to a claim for, or to entitlement to, contribution are references to a claim or entitlement based on some enactment or a rule of law.

Overseas measures affecting Bermudian trading interests

3 (1) If it appears to the Minister—

(a) that measures have been or are proposed to be taken by or under the law of any overseas country for regulating or controlling international trade; and

(b) that those measures, in so far as they apply or would apply to things done or to be done outside the territorial jurisdiction of that country by persons carrying on business in the United Kingdom or in Bermuda, are damaging or threaten to damage the trading interests of Bermuda, or of the United Kingdom,

the Minister may by order direct that this section shall apply to those measures either generally or in their application to such cases as may be specified in the order.

(2) The Minister may by order make provision for requiring, or enabling the Minister to require, a person in Bermuda who carries on business there to give notice to the Minister of any requirement or prohibition imposed or threatened to be imposed on that person pursuant to any measures in so far as this section applies to them by virtue of an order under subsection (1).

(3) The Minister may give to any person in Bermuda who carries on business there such directions for prohibiting compliance with any such requirement or prohibition as aforesaid as he considers appropriate for avoiding damage to the trading interests of the United Kingdom or of Bermuda.

(4) The power of the Minister to make orders under subsection (1) or (2) shall be subject to negative resolution procedure under the Statutory Instruments Act 1977 [*title 1 item 3*].

(5) Directions under subsection (3) may be either general or special and may prohibit compliance with any requirement or

prohibition either absolutely or in such cases or subject to such conditions as to consent or otherwise as may be specified in the directions; and general directions under that subsection shall be published in such manner as appears to the Minister to be appropriate.

(6) In this section "trade" includes any activity carried on in the course of a business of any description and "trading interests" shall be construed accordingly.

Documents and information required by overseas courts and authorities

- 4 (1) If it appears to the Minister —
- (a) that a requirement has been or may be imposed on a person or persons in Bermuda to produce to any court, tribunal or authority of an overseas country any commercial document which is not within the territorial jurisdiction of that country or to furnish any commercial information to any such court, tribunal or authority; or
 - (b) that any such authority has imposed or may impose a requirement on a person or persons in Bermuda to publish any such document or information,

the Minister may if it appears to him that the requirement is inadmissible by virtue of subsection (2) or (3), give directions for prohibiting compliance with the requirement.

- (2) A requirement such as is mentioned in subsection (1)(a) or (b) is inadmissible —
- (a) if it infringes the jurisdiction of Bermuda or is otherwise prejudicial to the sovereignty of her Majesty in the United Kingdom or in Bermuda; or
 - (b) if compliance with that requirement would be prejudicial to the security of the United Kingdom or of Bermuda or to the relations of the Government of the United Kingdom or of Bermuda with the Government of any other country.
- (3) A requirement such as is mentioned in subsection (1)(a) is also inadmissible —
- (a) if it is made otherwise than for the purposes of civil or criminal proceedings which have been instituted in the overseas country; or
 - (b) if it requires a person to state what documents relevant to any such proceedings are or have been in his possession, custody or power or to produce for the purposes of

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any such proceedings any documents other than particular documents specified in the requirement.

(4) Directions under subsection (1) may be either general or special and may prohibit compliance with any requirement either absolutely or in such cases or subject to such conditions as to consent or otherwise as may be specified in the directions; and general directions under that subsection shall be published in such manner as appears to the Minister to be appropriate.

(5) For the purposes of this section the making of a request or demand shall be treated as the imposition of a requirement if it is made in circumstances in which a requirement to the same effect could be or could have been imposed; and

- (a) any request or demand for the supply of a document or information which, pursuant to the requirement of any court, tribunal or authority of an overseas country, is addressed to a person in Bermuda; or
- (b) any requirement imposed by such a court, tribunal or authority to produce or furnish any document or information to a person specified in the requirement,

shall be treated as a requirement to produce or furnish that document or information to that court, tribunal or authority.

(6) In this section "commercial document" and "commercial information" means respectively a document or information relating to a business of any description and "document" includes any record or device by means of which material is recorded or stored.

Offences

5 (1) Subject to subsection (2), any person who without reasonable excuse fails to comply with any requirement imposed under section 3(2) or knowingly contravenes any directions given under section 3(2) or under section 4(1) commits an offence:

Punishment—

- (a) on conviction on indictment: a fine of such amount as the court thinks appropriate;
- (b) on summary conviction, a fine of \$3,000.

(2) No person who is neither a British citizen nor a Commonwealth citizen possessing Bermudian status, nor a body corporate incorporated in the United Kingdom or Bermuda shall be guilty of an offence under subsection (1) by reason of anything done or omitted outside Bermuda in contravention of direction given under section 3(3) or section 4(1).

(3) No proceedings for an offence under subsection (1) shall be instituted in Bermuda except by or with the consent of the Director of Public Prosecutions.

[Section 5 subsection (3) amended by 1999:8 s.2 & Sch 1 effective 1 April 1999]

Restriction on evidence on commission

6 A court in Bermuda shall not make an order under any provision of law for giving effect to a request issued by or on behalf of a court or tribunal of an overseas country if it is shown that the request infringes the jurisdiction of Bermuda or is otherwise prejudicial to the sovereignty of Her Majesty in Bermuda; and a certificate signed by or on behalf of the Minister to the effect that it infringes that jurisdiction or is so prejudicial shall be conclusive evidence of that fact.

Restriction on enforcement of overseas judgments

7 (1) A judgment to which this section applies shall not be registered under the Judgments (Reciprocal Enforcement) Act 1958 [*title 8 item 71*] and no court in Bermuda shall entertain proceedings at common law for the recovery of any sum payable under such a judgment.

(2) This section applies to any judgment given by a court of an overseas country, being —

- (a) a judgment for multiple damages within the meaning of subsection (3);
- (b) a judgment based on a provision or rule of law specified or described in an order under subsection (4) and given after the coming into force of the order; or
- (c) a judgment on a claim for contribution in respect of damages awarded by a judgment within paragraph (a) or (b).

(3) In subsection (2)(a) a judgment for multiple damages means a judgment for an amount arrived at by doubling, trebling or otherwise multiplying a sum assessed as compensation for the loss or damage found to have been sustained by the person in whose favour the judgment is given.

(4) The Minister may for the purposes of subsection (2)(b) make an order in respect of any provision or rule of law which appears to him

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to be concerned with the prohibition or regulation of agreements, arrangements or practices designed to restrain, distort or restrict competition in the carrying on of business of any description or to be otherwise concerned with the promotion of such competition as aforesaid.

(5) The power of the Minister to make orders under subsection (4) shall be subject to negative resolution procedure under the Statutory Instruments Act 1977 [*title 1 item 3*].

(6) Subsection (2)(a) applies to a judgment given before 29 December 1981 as well as to a judgment given on or after that date but this section does not affect any judgment which has been registered before that date under the provisions mentioned in subsection (1) or in respect of which such proceedings as are there mentioned have been finally determined before that date.

Recovery of awards of multiple damages

8 (1) This section applies where a court of an overseas country has given a judgment for multiple damages within the meaning of section 7(3) against —

- (a) a British citizen or Commonwealth citizen possessing Bermudian status; or
- (b) a body corporate incorporated in the United Kingdom or in Bermuda; or
- (c) a person carrying on business in Bermuda,

(in this section referred to as a "qualifying defendant") and an amount on account of the damages has been paid by the qualifying defendant either to the party in whose favour the judgment was given or to another party who is entitled as against the qualifying defendant to contribution in respect of the damages.

(2) Subject to subsections (3) and (4), the qualifying defendant shall be entitled to recover from the party in whose favour the judgment was given so much of the amount referred to in subsection (1) as exceeds the part attributable to compensation; and that part shall be taken to be such part of the amount as bears to the whole of it the same proportion as the sum assessed by the court that gave the judgment as compensation for the loss or damage found to have been sustained by that party bears to the whole of the damages awarded to that party.

(3) Subsection (2) does not apply where the qualifying defendant is an individual who was ordinarily resident in the overseas

country at the time when the proceedings in which the judgment was given were instituted or a body corporate which had its principal place of business there at that time.

(4) Subsection (2) does not apply where the qualifying defendant carried on business in the overseas country and the proceedings in which the judgment was given were concerned with activities exclusively carried on in that country.

(5) A court in Bermuda may entertain proceedings on a claim under this section notwithstanding that the person against whom the proceedings are brought is not within the jurisdiction of the court.

(6) The reference in subsection (1) to an amount paid by the qualifying defendant includes a reference to an amount obtained by execution against his property or against the property of a company which (directly or indirectly) is wholly owned by him; and references in that subsection and subsection (2) to the party in whose favour the judgment was given or to a party, entitled to contribution include references to any person in whom the rights of any such party have become vested by succession or assignment or otherwise.

(7) This section shall, with the necessary modifications, apply also in relation to any order which is made by a tribunal or authority of an overseas country and would, if that tribunal or authority were a court, be a judgment for multiple damages within the meaning of section 7(3).

(8) This section does not apply to any judgment given or order made before 29 December 1981.

Enforcement of overseas judgment under provision corresponding to section 8

(1) If it appears to him that the law of an overseas country provides or will provide for the enforcement in that country of judgments given under section 8, the Governor acting in his discretion may by Order provide for the enforcement in Bermuda of judgments given under any provision of the law of that country corresponding to that section.

(2) An Order under this section may apply, with or without modification, any of the provisions of the Judgments (Reciprocal Enforcement) Act 1958 [*title 8 item 71*].

[Amended by:

1999 : 8]