

Serial Number 1952/80



TREATY OF PEACE (JAPAN) REGULATIONS 1952

FREYBERG, Governor-General

ORDER IN COUNCIL

At the Government House at Wellington, this 30th day of
April 1952

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to section 2 of the Treaty of Peace (Japan) Act 1951, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

REGULATIONS

1. (1) These regulations may be cited as the Treaty of Peace (Japan) Regulations 1952.

(2) These regulations shall be deemed to have come into force on the 29th day of April 1952 (being the date of the coming into force for New Zealand of the Treaty of Peace with Japan).

2. So far as they are by their nature capable of so doing, the provisions of the Protocol to the Treaty of Peace with Japan signed on the 8th day of September 1951 (hereinafter referred to as the Protocol), set out in the Schedule hereto, shall be and have effect as law.

3. The period to be allowed within which presentation of negotiable instruments for acceptance or payment or notice of non-acceptance or non-payment or protest may be made under paragraph 2 of Part C of the Protocol shall be from the commencement of these regulations up to and including the 30th day of April 1953.

SCHEDULE

PROTOCOL

THE Undersigned, duly authorized to that effect, have agreed on the following provisions for regulating the question of Contracts, Periods of Prescription and Negotiable Instruments, and the question of Contracts of Insurance, upon the restoration of peace with Japan:

CONTRACTS, PRESCRIPTION AND NEGOTIABLE INSTRUMENTS

A. Contracts

1. Any contract which required for its execution intercourse between any of the parties thereto having become enemies as defined in Part F shall, subject to the exceptions set out in paragraphs 2 and 3 below, be deemed to have been dissolved as from the time when any of the parties thereto became enemies. Such dissolution, however, is without prejudice to the provisions of Articles 15 and 18 of the Treaty of Peace signed this day, nor shall it relieve any party to the contract from the obligation to repay amounts received as advances or as payments on account and in respect of which such party has not rendered performance in return.

2. Notwithstanding the provisions of paragraph 1 above, there shall be excepted from dissolution and, without prejudice to the rights contained in Article 14 of the Treaty of Peace signed this day, there shall remain in force such parts of any contract as are severable and did not require for their execution intercourse between any of the parties thereto, having become enemies as defined in Part F. Where the provisions of any contract are not so severable, the contract shall be deemed to have been dissolved in its entirety. The foregoing shall be subject to the application of domestic laws, orders or regulations made by a signatory hereto which is an Allied Power under the said Treaty of Peace and having jurisdiction over the contract or over any of the parties thereto and shall be subject to the terms of the contract.

3. Nothing in Part A shall be deemed to invalidate transactions lawfully carried out in accordance with a contract between enemies if they have been carried out with the authorization of the Government concerned being the Government of a signatory hereto which is an Allied Power under the said Treaty of Peace.

4. Notwithstanding the foregoing provisions, contracts of insurance and reinsurance shall be dealt with in accordance with the provisions of Parts D and E of the present Protocol.

B. Periods of Prescription

1. All 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, involving nationals of the signatories hereto who, by reason of the state of war, were unable to take judicial action or to comply with the formalities necessary to safeguard their rights, irrespective of whether these periods commenced before or after the outbreak of war, shall be regarded as having been suspended, for the duration of the war in Japanese territory on the one hand, and on the other hand in the territory of those signatories which grant to Japan, on a reciprocal basis, the benefit of the provisions of this paragraph. These periods shall begin to run again on the coming into force of the Treaty of Peace signed this day.* The provisions of this paragraph shall be applicable in regard to the periods fixed for the presentation of interest or dividend coupons or for the presentation for payment of securities drawn for repayment or repayable on any other ground, provided that in respect of such coupons or securities the period shall begin to run again on the date when money becomes available for payments to the holder of the coupon or security.

2. Where, on account of failure to perform any act or to comply with any formality during the war, measures of execution have been taken in Japanese territory to the prejudice of a national of one of the signatories being an Allied Power under the said Treaty of Peace, the Japanese Government shall restore the rights which have been detrimentally affected. If such restoration is impossible or would be inequitable the Japanese Government shall provide that the national of the signatory concerned shall be afforded such relief as may be just and equitable in the circumstances.

C. Negotiable Instruments

1. As between enemies, no negotiable instrument made before the war shall be deemed to have become invalid by reason only of failure within the required time to present the instrument for acceptance or payment, or to give notice of non-acceptance or non-payment to drawers or endorsers, or to protest the instrument, nor by reason of failure to complete any formality during the war.

* Date of coming into force of Treaty for New Zealand: 29 April 1952.

2. Where the period within which a negotiable instrument should have been presented for acceptance or for payment, or within which notice of non-acceptance or non-payment should have been given to the drawer or endorser, or within which the instrument should have been protested, has elapsed during the war, and the party who should have presented or protested the instrument or have given notice of non-acceptance or non-payment has failed to do so during the war, a period of not less than three months from the coming into force of the Treaty of Peace signed this day* shall be allowed within which presentation, notice of non-acceptance or non-payment, or protest may be made.

3. If a person has, either before or during the war, incurred obligations under a negotiable instrument in consequence of an undertaking given to him by a person who has subsequently become an enemy, the latter shall remain liable to indemnify the former in respect of these obligations, notwithstanding the outbreak of war.

D. Insurance and Reinsurance Contracts (Other Than Life) Which Had Not Terminated Before the Date at Which the Parties Became Enemies

1. Contracts of Insurance shall be deemed not to have been dissolved by the fact of the parties becoming enemies, provided that the risk had attached before the date at which the parties became enemies, and the Insured had paid, before that date, all moneys owed by way of premium or consideration for effecting or keeping effective the Insurance in accordance with the Contract.

2. Contracts of Insurance other than those remaining in force under the preceding clause shall be deemed not to have come into existence, and any moneys paid thereunder shall be returnable.

3. Treaties and other Contracts of Reinsurance, save as hereinafter expressly provided, shall be deemed to have been determined as at the date the parties became enemies, and all cessions thereunder shall be cancelled with effect from that date. Provided that cessions in respect of voyage policies which had attached under a Treaty of Marine Reinsurance shall be deemed to have remained in full effect until their natural expiry in accordance with the terms and conditions on which the risk had been ceded.

4. Contracts of Facultative Reinsurance, where the risk had attached and all moneys owed by way of premium or consideration for effecting or keeping effective the Reinsurance had been paid or set off in the customary manner, shall, unless the Reinsurance Contract otherwise provides, be deemed to have remained in full effect until the date at which the parties became enemies and to have been determined on that date.

Provided that such Facultative Reinsurances in respect of voyage policies shall be deemed to have remained in full effect until their natural expiry in accordance with the terms and conditions on which the risk had been ceded.

Provided further that Facultative Reinsurances in respect of a Contract of Insurance remaining in force under clause 1 above shall be deemed to have remained in full effect until the expiry of the original Insurance.

5. Contracts of Facultative Reinsurance other than those dealt with in the preceding clause, and all Contracts of Excess of Loss Reinsurance on an "Excess of Loss Ratio" basis and of Hail Reinsurance (whether facultative or not), shall be deemed not to have come into existence, and any moneys paid thereunder shall be returnable.

6. Unless the Treaty or other Contract of Reinsurance otherwise provides, premiums shall be adjusted on a *pro rata temporis* basis.

7. Contracts of Insurance or Reinsurance (including cessions under Treaties of Reinsurance) shall be deemed not to cover losses or claims caused by belligerent action by either Power of which any of the parties was a national or by the Allies or Associates of such Power.

8. Where an insurance has been transferred during the war from the original to another Insurer, or has been wholly reinsured, the transfer or reinsurance shall, whether effected voluntarily or by administrative or legislative action, be recognized and the liability of the original Insurer shall be deemed to have ceased as from the date of the transfer or reinsurance.

9. Where there was more than one Treaty or other Contract of Reinsurance between the same two parties, there shall be an adjustment of accounts between them, and in order to establish a resulting balance there shall be brought into the accounts all balances (which shall include an agreed reserve for losses still outstanding) and all moneys which may be due from one party to the other under all such contracts or which may be returnable by virtue of any of the foregoing provisions.

* Date of coming into force of Treaty for New Zealand: 29 April 1952.

10. No interest shall be payable by any of the parties for any delay which, owing to the parties having become enemies, has occurred or may occur in the settlement of premiums or claims or balances of account.

11. Nothing in this part of the present Protocol shall in any way prejudice or affect the rights given by Article 14 of the Treaty of Peace signed this day.

E. Life Insurance Contracts

Where an insurance has been transferred during the war from the original to another Insurer or has been wholly reinsured, the transfer or reinsurance shall, if effected at the instance of the Japanese administrative or legislative authorities, be recognized, and the liability of the original Insurer shall be deemed to have ceased as from the date of the transfer or reinsurance.

F. Special Provision

For the purposes of the present Protocol, natural or juridical persons shall be regarded as enemies from the date when trading between them shall have become unlawful under laws, orders, or regulations to which such persons or the contracts were subject.

FINAL ARTICLE

The present Protocol is open for signature by Japan and any State signatory to the Treaty of Peace with Japan signed this day, and shall, in respect of the matters with which it deals, govern the relations between Japan and each of the other States signatory to the present Protocol as from the date when Japan and that State are both bound by the said Treaty of Peace.*

The present Protocol shall be deposited in the archives of the Government of the United States of America which shall furnish each signatory State with a certified copy thereof.

T. J. SHERRARD,
Clerk of the Executive Council.

* Protocol signed on behalf of New Zealand on 3 October 1951. Date of coming into force of Treaty and Protocol for New Zealand: 29 April 1952.

EXPLANATORY NOTE

[*This note is not part of the regulations, but is intended to indicate their general effect.*]

In connection with the Japanese Peace Treaty (which came into force for New Zealand on 29 April 1952) a Protocol was signed containing provisions for regulating a number of legal questions relating to contracts, periods of prescription, negotiable instruments, and contracts of insurance.

These regulations give the provisions of the Protocol as far as possible the force of law in New Zealand.

Regulation 3 fixes the period ending with 30 April 1953 as the period to be allowed under paragraph 2 of Part C of the Protocol for the presentation or protesting of negotiable instruments or for the giving of notice of non-acceptance or non-payment.

Issued under the authority of the Regulations Act 1936.
Date of notification in *Gazette*: 1st day of May 1952.
These regulations are administered in the Department of Justice.