

PART VI.—GENERAL ADMINISTRATION—

contd.

အပိုင်း ၆။ အရပ်ရပ်ဆိုင်ရာစီရင်
အုပ်ချုပ်ရေး။ ။အဆက်။

G.—COMMERCE, INDUSTRY AND MINES.

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THE STATE AID TO INDUSTRIES ACT.

[BURMA ACT XXIII, 1939.] (1st January, 1940.)

CHAPTER I.

PRELIMINARY.

1. This Act shall come into force on such date¹ as the President of the Union may, by notification, appoint in this behalf. Commence-
ment of Act.

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

- (i) " Board " means the [Board of State Aid to Industries]² constituted under section 3 and includes any committee appointed under section 12 ;
- (ii) " borrower " means an individual, company, association or body of individuals, whether incorporated or not, to whom or to which State aid has been granted under this Act :

¹ 1st January, 1940, *vide Burma Gazette*, 1939, Part I, p. 1441

² Substituted by Act XX, 1951

- (iii) "Chairman" means Chairman of the Board ;
- (iv) "company" means a company as defined in the Burma Companies Act ;
- ¹(v) "Commissioner" means the Commissioner of Division ;
- ¹(vi) "Collector" means the Collector of the district in which the industry for which State Aid is applied for is situate and includes any officer especially appointed by the President of the Union to perform the functions of a Collector under this Act ;
- (vii) "Director" means such officer or officers as may be appointed by the President of the Union to perform any of the functions of the Director of State Aid to Industries under this Act ;
- ¹(viii) "industry" means any industrial business or enterprise conducted or undertaken either by an individual or by a company, association or body of individuals, whether incorporated or not ;
- (ix) "machinery" includes plant, apparatus, tools and other appliances required for the purpose of carrying on any industrial operation or process ;
- ²(x) "Minister" means the Minister in charge of Industry [* * * *]³ ;
- (xi) "prescribed" means prescribed by rules made under this Act.

CHAPTER II.

BOARD OF STATE AID TO INDUSTRIES.

Establishment of Board of State Aid to Industries.

3. (1) For carrying out the purposes of this Act, the President of the Union shall, as soon as possible, establish a Board to be called the [Board of State Aid to Industries]⁴ consisting of the following members :—

(a) the Minister,

(b) the Director,

⁴(c) one member elected by the Union of Burma Chamber of Commerce and Industry,

⁴(d) five members appointed by the President, of whom one will be a banking expert and another a representative of cottage and small scale industries, and

⁴(e) one member elected by the Federation of Trade Organization (Burma).

(2) If the Minister is unable to attend any meeting of the Board he may, by letter in writing addressed to its Secretary, depute any person to represent

¹ Inserted by Act XLI, 1952.

² Substituted by Act XXXIII, 1946.

³ Deleted by Act¹XX, 1951.

⁴ Substituted *ibid*.

him at such meeting, and, during such meeting, such person shall be deemed to be a member of the Board but he shall not, by virtue merely of his representing the Minister, be entitled to preside at the meeting.

4. The Minister shall be the Chairman and shall preside at all meetings of the Board : provided that in his absence from any meeting the members of the Board present shall elect one of their number to preside at such meeting. The Director shall be the Secretary of the Board.

Chairman and presiding authority at meetings.

5. Four ¹ members of the Board shall form a quorum.

Quorum.

6. (1) The members of the Board shall hold office for a term of five years and may, on the expiration of such term, be re-appointed or re-elected. (2) Notwithstanding the expiration of the term of five years mentioned in sub-section (1), the appointed or elected members shall continue to hold office until the vacancy caused by the expiration of the said term has been filled : provided that no vacancy shall be allowed to remain unfilled for more than six months.

Term of office.

7. Whenever a vacancy occurs in the membership of the Board, a new member shall be appointed or elected, according as the late member was appointed or elected, and shall hold office so long as the member whose place he fills would have been entitled to hold office if such vacancy had not occurred :

Casual vacancies.

Provided that no act of the Board shall be deemed to be invalid by reason only that the number of members of the Board at the time of the performance of such act was less than the number provided by this Act.

8. (1) The President of the Union may, by notification, remove any member of the Board if he—

Removal of members.

- (a) refuses to act or becomes incapable of acting as a member of the Board ;
- (b) is declared insolvent ;
- (c) is convicted of any such offence or is subjected by a criminal Court to any such order as in the opinion of the President of the Union implies a defect of character which unfits him to continue to be a member of the Board ;
- (d) without excuse sufficient in the opinion of the President of the Union, is absent without the consent of the Board from more than four consecutive meetings of the Board ; or
- (e) contravenes the provisions of section 10.

(2) The President of the Union may fix a period during which any person so removed shall not be eligible for re-appointment or re-election.

¹ Substituted by Act XX, 1951.

Travelling
and other
allowances.

9. The members of the Board and the members of the committees appointed under section 12 shall be paid such travelling and other allowances, for attending meetings of the Board or for performing any duty assigned to them by the Board for the purposes of this Act, at such rates and subject to such conditions as may be prescribed.

Interested
member
not to be
present at
meetings.

10. No member of the Board shall be present at a meeting of the Board when the question under consideration is one in which he has a pecuniary interest. A member who has such an interest shall, if he is present at the meeting, declare it to the Board.

In case of any question arising whether a member has or has not a pecuniary interest, the decision of the Chairman shall be final.

Power to
invite
persons for
consultation.

11. (1) The Board shall have power to invite for consultation on any particular question persons specially qualified to advise thereon or having special knowledge of local conditions in the area where the industry concerned is situate.

(2) At any meeting of the Board, the Chairman may invite any person for consultation on any particular question :

Provided that any person invited under sub-section (1) or (2) shall not have the right to vote.

Power to
appoint
committees.

12. The Board shall have power to appoint committees for performing such duties as it may assign to them.

Documents
and refer-
ences to be
furnished to
President.

13. If the President of the Union so directs, the Secretary of the Board shall forward to the President of the Union any document and prepare and submit any report relating to the work of the Board.

Power of
Board to
make regula-
tions.

14. (1) The Board may make regulations, not inconsistent with this Act, in regard to the following matters, namely :—

- (i) the time and place of its meetings ;
- (ii) the manner in which notice of meetings shall be given ;
- (iii) the conduct of proceedings at meetings ;
- (iv) the division of duties among the members of the Board ;
- (v) the appointment, duties and procedure of committees appointed under section 12 ;
- (vi) generally, the carrying out of all or any of the purposes of this Act.

(2) Any regulation made under sub-section (1) which is repugnant to the provisions of any rule made under section 42 shall, to the extent of such repugnancy, but not otherwise, be void.

Super-
session of
Board.

15. If at any time it appears to the President of the Union that the Board is not properly performing the duties imposed upon it by or under this Act, the President of the Union may, after considering any explanation offered

by the Board, by an order in writing specifying the reasons for so doing, dissolve the Board, and shall thereupon establish a new Board in the manner indicated in section 3.

CHAPTER II-A.¹

ISSUE OF LOANS.

¹ 15A. (1) For the carrying out of all or any of the purposes of this Act the Commissioner shall, in accordance with the instructions issued under section 43, have the power to sanction the grant of aid without reference to the President of the Union :

Power to grant loans.

Provided that no such grant of aid exceeds kyats four thousand in value.

(2) The Commissioner may delegate to the Collector of each district under his control to exercise the power conferred on him by sub-section (1).

¹ 15B. If the President of the Union so directs the Commissioner or the Collector shall forward to the President of the Union any document and prepare and submit any report relating to the grant of aid or the recovery of loans.

Documents and reports to be furnished to the President.

CHAPTER III.

GENERAL PROVISIONS REGARDING THE GIVING OF STATE AID.

16. State aid may be given to—

- (a) a new or nascent industry ;
- (b) an industry to be newly established in an area where such industries are undeveloped ;
- (c) a cottage industry ; or
- (d) an industry which needs revival or development by modern methods :

Industries to be aided.

Provided that no State aid shall be given to any company which at the date of the coming into force of this Act ² was not engaged in the Union of Burma in the branch of the industry for which State aid is sought unless—

- (a) the company is incorporated by or under the laws of the Union of Burma, and
- (b) not less than one half of the members of its governing body are [citizens of the Union], ³ and
- (c) the company gives such reasonable facilities for the training of [citizens of the Union] ³ as may be prescribed.

¹ Inserted by Act XLI, 1952.

² 1st January, 1940.

³ Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

Forms of
State aid.

17. The forms of the State aid, which may be given subject to such conditions as the President of the Union may think fit, include the following, namely:—

- (a) the grant of a loan ;
- (b) the grant, sale or lease of land, raw materials, fire-wood, water or any other property of the [State] ;¹
- (c) payment of a subsidy for the conduct of research ;
- (d) the supply of machinery on the hire-purchase system ;
- (e) the purchase of shares ;
- (f) the guarantee of a minimum return on the whole or part of the capital of a joint stock company invested in the industry :

Provided that every recipient of State aid shall make such provision for the training of apprentices as the President of the Union may prescribe.

Applications
for State aid.

² 18. (1) Applications for State aid shall normally be made to the Commissioner of the Division in which the industry for which State aid is applied for is situate and shall contain such information as may be prescribed.

(2) The Commissioner may, if so required, direct the Collector of each district to receive applications for State aid on his behalf.

(3) Applications for State aid, if the value of State aid applied for exceeds kyats four thousand, may be made direct to the Director.

(4) The Commissioner, Collector or Director shall, in respect of applications for State aid exceeding kyats four thousand, act in accordance with the rules made, and the instructions issued, under this Act.

Reference to
Board.

² 19. The President of the Union may refer such applications for State aid or such proposals to grant State aid exceeding kyats four thousand, as he thinks fit, to the Board for advice.

Duty of
Board re-
garding
references
made to it.

20. It shall be the duty of the Board—

- (a) to report to the President of the Union, after such enquiry, if any, as it deems necessary or as may be required by this Act, on applications for State aid that may be referred to it for advice by the President of the Union ;
- (b) to advise the President of the Union on any matter that may be referred to it.

CHAPTER IV.

PROVISIONS REGULATING THE GRANT OF STATE AID OTHERWISE THAN BY THE SUPPLY OF MACHINERY ON THE HIRE-PURCHASE SYSTEM.

Repayment
of loans.

21. (1) Every loan granted under this Act shall be made repayable by instalments within such period from the date of the actual advance of the loan

¹ Substituted by the Union of Burma (Adaptation of Law) Orders, 1948.

² Substituted by Act XLI, 1952.

or, when the loan is advanced in instalments, from the date of payment of the last instalment, and shall bear interest at such rate, and payable in such manner, as may be fixed by the order granting the loan.

(2) The period fixed as aforesaid shall not exceed twenty years unless the President of the Union, by general or special order, extends the same.

22. (1) No loan shall be granted to any industry of an amount exceeding [two-thirds]¹ of the net value of the assets of the industry after the deduction of the value of all encumbrances existing at the time when the application is made.

Limitation of amount of loans.

(2) The valuation of the assets under sub-section (1) shall be made by such person and in such manner as may be prescribed.

23. Every loan granted to an industry shall be secured by a mortgage or floating charge upon the whole of the assets of such industry, subject to any encumbrances existing at the time when the loan is granted, and by collateral security, if any, as may be prescribed.

Security for repayment.

24. When an application for a loan has been made, the applicant and, during the currency of the loan, the borrower shall be bound—

Inspection and returns.

- (a) to comply with any general or special order of the Director relating to the inspection of the premises, buildings, machinery and stock-in-hand of the industry ;
- (b) to permit the inspection of all accounts relative to the industry ;
- (c) to furnish full returns of all products manufactured or sold, both as regards description and quantity ;
- (d) to maintain such special accounts and to furnish such statements as the Director may from time to time require ; and
- (e) to submit the accounts of the industry to such audit as the Director may prescribe.

25. If the Director, after the inspection provided for in section 24, is not satisfied that the money lent is being applied for the purpose or purposes for which the loan was granted, or that the conditions on which the loan was granted are being fulfilled, he shall bring the matter to the notice of the Board. The Board may, notwithstanding anything in the deed executed in connection with the loan, declare that the loan is immediately repayable, in which case it shall give notice of such declaration to the borrower.

Penalty default applying loan.

26. If at any time during the currency of the loan the value of the security falls below the outstanding balance of the loan, the Director may, with the concurrence of the Board, either proceed to recover so much of such balance as is not adequately covered by the then existing value of the security or accept such additional or collateral security as he may deem sufficient.

Adjustment of security during currency of loans.

27. If the borrower fails to comply with any order under clause (a) of section 24, or does not permit or obstructs the inspection of the accounts relative to the industry, or makes default in respect of any of the particulars

Recovery of loans.

¹ Substituted by Act XLI, 1952.

specified in clauses (c), (d) and (e) of the said section, or if the borrower disposes of any of the profits in contravention of the provisions of section 31, the Director shall bring the matter to the notice of the Board. The Board may, after considering any representation the borrower may make within such time as may be prescribed, proceed to recover the loan.

Cases of urgency occurring under section 25 or section 26 or section 27.

28. In cases of urgency the Director may, instead of bringing any matter to the notice of the Board under section 25 or section 26 or section 27, consult the Chairman and with his concurrence take such action as the Board is empowered to take under section 25 or section 26 or section 27, as the case may be :

Provided that action taken under this section shall be brought to the notice of the Board at the earliest possible opportunity and shall be subject to revision by the Board.

Exemption in certain cases.

29. The President of the Union may, by notification, exempt State aid to cottage industries, or State aid the value of which does not exceed Rs. 2,000, from all or any of the provisions of section 24 or section 26.

Guarantee of minimum return.

30. The conditions of a guarantee by the State of a minimum return on the whole or part of the capital of a joint stock company shall be—

- (a) that the industry shall be subject to the conditions of section 24 in respect of inspection, returns and accounts ;
- (b) that a minimum portion of the authorized capital of the industry to be fixed according to the circumstances of each case has been subscribed and paid in cash ;
- (c) that no such guarantee shall in any case extend beyond a period of five years ;
- (d) that during the period to which the guarantee extends the President of the Union may impose on such persons as he considers to be directly concerned in the promotion of the company a condition that if they transfer any of their shares without the previous consent in writing of the President of the Union, they shall be liable jointly and severally to refund to Government any sums paid to the company in fulfilment of the guarantee ;
- (e) that the President of the Union shall be entitled to recover the whole or any part of the sum paid on account of such guarantee with interest at the rate specified in the agreement, provided that the President of the Union is satisfied that the company is paying or is able to pay interest or a dividend upon the capital shown as paid up in excess of such rate as may be fixed in the agreement :

Provided that the sum recoverable by the Government after the close of any one year shall not exceed a sum equal to half the net profits made by the company in that year in excess of the sum required for the payment of the interest or dividend at the rate fixed in the agreement.

31. (1) No borrower shall pay any dividend or distribute or take any profit until proper amounts have been set aside for obsolescence or depreciation of machinery and buildings, calculated at such rates as the President of the Union may prescribe, and for the payment of interest on debentures or loans.

Disposal of profits when conditions on which State aid is given are not fulfilled.

(2) No borrower shall pay any dividend or distribute or take any profits in excess of such percentage rate upon the amount of the capital of the enterprise as the President of the Union may from time to time fix.

(3) The balance, if any, of the profits, after setting aside the amounts required by sub-section (1) to be set aside and paying dividends or distributing or taking profits at such percentage rate as may have been fixed under sub-section (2), shall be carried to a reserve fund to be utilized in such manner as the President of the Union may approve.

CHAPTER V.

SUPPLY OF MACHINERY ON THE HIRE-PURCHASE SYSTEM.

32. No machinery shall be supplied by the Government on the hire-purchase system unless the applicant therefor deposits with the Director such percentage of the cost thereof as may be prescribed, and furnishes such security for the unpaid portion of such cost in the same manner as for a loan granted under this Act.

Percentage of cost to be deposited by hirer.

33. When an application for the supply of machinery on the hire-purchase system is allowed, the Director shall, subject to and in accordance with rules that may be made under this Act, make an order specifying the following particulars, namely :—

Particulars to be specified in order when application is allowed.

- (a) the amount of each instalment of rent to be paid for the hire of the machinery and the number of such instalments to be paid before the machinery shall become the property of the hirer ;
- (b) the amount of interest, if any, to be paid with each instalment of rent on the remaining unpaid instalments ;
- (c) the dates on which and the manner in which the aforesaid payments shall be made ; and
- (d) such other particulars as may be prescribed.

34. Until the hiring is terminated in the manner hereinafter provided, the following provisions shall apply, namely :—

Conditions of supply of machinery on the hire-purchase system.

- (a) the hirer shall pay punctually and without demand the instalments of rent and amount of interest specified in the order referred to in section 33 ;
- (b) the hirer shall retain the machinery in his own possession in good and serviceable order and condition, and shall not without the previous written consent of the Director make any addition thereto

or alteration therein, or remove the machinery or any part thereof from the premises specified in the application for the supply thereof ;

- (c) the machinery shall remain the sole and absolute property of the State¹, and any transfer thereof, or assignment of any right, title or interest therein, or the creation of any mortgage, encumbrance or any other charge thereon, by the hirer shall be void as against the State¹ unless it has been made with the previous written consent of the Director ;
- (d) the machinery shall bear a metal plate in the prescribed form, and any person who wilfully removes or defaces such plate shall be liable to a fine not exceeding Rs. 500. It shall be presumed until the contrary is proved that machinery bearing such metal plate is the property of the State¹ hired out under this Act ;
- (e) the hirer shall permit the Director, or any person authorized by the Director in this behalf, to inspect the machinery at all reasonable times, and the Director or such other person shall have all such powers of entry as may be necessary for the purpose of making an inspection ;
- (f) in addition to the foregoing conditions, the hirer shall be bound by such other conditions consistent therewith as may be prescribed by rules or as may be imposed by the Board in any particular case.

Consequences of default by hirer.

35. If the hirer makes default in paying the rent of the machinery or any sum payable as interest or any other charge due from him or fails to comply with any of the conditions which are contained in or may be imposed under section 34, the Director may, with the concurrence of the Board, after giving sixteen days' notice, terminate the hiring, and he or any other officer authorized by him in this behalf may thereupon enter the premises in which the machinery is for the time being kept, whether such premises belong to the hirer or not, and seize and take away the same.

Option of hirer to purchase machinery seized for default.

36. (1) If the machinery is seized under section 35, the hirer shall have the option, to be exercised within one month after seizure or such longer period as may be allowed by the Director in this behalf, of purchasing the same by payment to the Director of the unpaid balance of the cost thereof, together with such other amounts as may be due, and the cost of and the expenses incidental to such seizure and removal.

(2) If within the period specified in sub-section (1) the hirer does not exercise the option of purchase, the Director shall proceed to dispose of the machinery.

Liability of hirer on termination of hiring under section 35.

37. If the Director terminates the hiring under section 35 and the hirer does not purchase the machinery under section 36, the hirer shall not be entitled to the refund of the sum deposited by him under section 32 or to the refund or remission of any payment made by or due from him during the

¹ Substituted by the Union of Burma (Adaptation of Laws) Order 1948.

hiring, and shall be liable to pay such amount, if any, as the Director may determine in respect of any loss caused by the disposal of the machinery under sub-section (2) of section 36.

38. When, after credit has been given for the amount deposited under section 32, the hirer has paid in full all the instalments of rent mentioned in clause (a) of section 34 and the amount of interest, costs and other charges payable by him, he shall become the owner of the machinery and shall thereupon remove from the same the metal plate mentioned in clause (d) of section 34 :

Termination of hiring on payment of cost of machinery.

Provided that, if at any time during the hiring the hirer pays in advance the remaining instalments of rent, the interest payable in respect thereof shall be remitted.

CHAPTER VI.

SUPPLEMENTAL.

39. Notwithstanding anything contained in this Act, the President of the Union may, by the appointment of Directors or otherwise, exercise such control over the conduct of the industry to which the State aid has been given as shall suffice in his opinion to safeguard the interests of Government, provided that such right has been expressly reserved by agreement at the time the aid was granted.

Government control of State aided industry.

40. Subject to encumbrances existing at the time of the issue of the loan, all arrears of money payable to the Government under this Act, including interest chargeable thereon and costs incurred, if any, may be recovered as arrears of land-revenue.

Recovery of money due.

41. (1) The decision of the Board as to whether the conditions laid down in or under the provisions of this Act have been satisfied shall be final, and no suit shall be brought in any civil Court to set aside or modify any order made thereunder.

Finality of decision of Board and bar of suits and proceedings in civil and criminal Courts.

(2) No prosecution, suit or other proceeding shall lie against any Government officer or any authority vested with powers under this Act for anything in good faith done or intended to be done thereunder.

42. The President of the Union may, after previous publication, make rules¹ consistent with this Act for the carrying out of all or any of its purposes.

Power to make rules.

² 43. The President of the Union may, after previous publication, issue instructions consistent with this Act and the rules made thereunder for the carrying out of all or any of the purposes of this Act.

Power of the President to issue instructions.

² 44. Notwithstanding anything contained in this Act, the President of the Union may revise, alter or rescind the orders of the Commissioner or Collector relating to the grant of State aid or the recovery of any loan issued under this Act.

Power of the President to revise, etc.

¹ For such rules see *Burma Gazette*, 1940, Part I, p. 1304.

² Inserted by Act XLI, 1952.