

N° 664.

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## ALLEMAGNE ET POLOGNE

Accord concernant le règlement des affaires de dépôts judiciaires pendantes devant les tribunaux des territoires autrefois prussiens cédés à la Pologne, signé à Dresde le 24 février 1922.

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## GERMANY AND POLAND

Agreement concerning the procedure in connection with the Legal Deposits in cases sub judice in former Prussian territories ceded to Poland, signed at Dresden, February 24, 1922.

## TEXTE POLONAIS. — POLISH TEXT.

No. 664. — POLSKO-NIEMIECKI UKŁAD<sup>1</sup> W SPRAWIE TRAKTOWANIA POZOSTAJĄCYCH W ZAWIESZENIU SĄDOWYCH DEPOZYTÓW POCHODZĄCYCH Z BYŁYCH PRUSKICH, OBSZARÓW ODSTĄPIONYCH POLSCE, PODPISANY W DREŹNIE, 24 LUTEGO 1923.

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*German and Polish official texts, communicated by the German Consul at Geneva<sup>2</sup>. The registration of this Agreement took place, July 18, 1924.*

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Rząd NIEMIECKI oraz Rząd POLSKI zgodziły się, aby zgodnie z interesami obu ludności, sądowe sprawy depozytowe, na które miało wpływ przyznanie Polsce obszarów, z wyjątkiem obszaru górnośląskiego, na podstawie upoważnienia zawartego w artykule 4 § 6 układu<sup>3</sup> niemiecko-polskiego z dnia 20 września 1920 r. w przedmiocie przejścia wymiaru sprawiedliwości, uregulować w drodze umów, których brzmienie ustaliły wspólnie Pruski i Polski Zarządy wymiaru sprawiedliwości i mianowały w tym celu swymi Pełnomocnikami :

## NIEMIECKI RZĄD :

Rzeczywistego Tajnego Radcę Legacyjnego, Dyrektora Ministerjalnego w Urzędzie dla Spraw Zagranicznych p. Karl von STOCKHAMMERN,

## POLSKI RZĄD :

Wiceprezesa Sądu Okręgowego p. Tadeusza ZAJĄCZKOWSKIEGO,

którzy po przedłożeniu swych pełnomocnictw, uznanych za sporządzone w dobrej i należytej formie, ugodzili się co do następujących postanowień :

*Artykuł I.*

## § 1.

Sprawy, w których przed przejściem wymiaru sprawiedliwości złożono w sądach, położonych w przyznanych Polsce obszarach, z wyjątkiem obszaru górnośląskiego, wartości, wymienione w § 1 pruskiej ustawy depozytowej z dnia 21 kwietnia 1913 r. (Zbiór ustaw pruskich, str. 225), załatwiać się będzie wedle następujących postanowień.

## § 2

(1) Jeżeli złożono pieniądze (§ 6 pruskiej ustawy depozytowej) wstępują w miejsce dotychczasowego urzędu depozytowego.

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<sup>1</sup> This agreement came into force March 1, 1923.

<sup>2</sup> See footnote vol. II page 60 of this series.

<sup>3</sup> Vol. IX, page 103 of this series.

<sup>1</sup> TRANSLATION.

No. 664. — GERMAN - POLISH AGREEMENT CONCERNING THE PROCEDURE IN CONNECTION WITH LEGAL DEPOSITS IN CASES *SUB JUDICE* IN FORMER PRUSSIAN TERRITORIES CEDED TO POLAND, SIGNED AT DRESDEN, FEBRUARY 24, 1922.

The GERMAN and POLISH GOVERNMENTS have agreed, in the interests of the inhabitants of both Parties, to settle cases connected with legal deposits affected by the cession of territory, except as regards Upper Silesia, in virtue of the powers conferred by Article 4, paragraph 6, of the German-Polish Agreement, concerning the Transfer of the Administration of Justice, of September 20, 1920, by means of Agreements, the texts of which have been drawn up in common by the Prussian and Polish Judicial Administrations, and have appointed as their Plenipotentiaries for this purpose :

## THE GERMAN GOVERNMENT :

Herr Karl von STOCKHAMMERN, Councillor of Legation, Councillor in the Ministry of Foreign Affairs (Wirklicher Geheimer Legationsrat, Ministerialrat im Auswärtigen Amte) ;

## THE POLISH GOVERNMENT :

M. Tadeusz ZAJACZKOWSKI, District Court Vice-President ;

Who, having communicated their full powers, found in good and due form, have agreed upon the following provisions :

*Article 1.*

## Paragraph 1.

Cases in which securities of the nature specified in Paragraph 1 of the Prussian Deposit Regulations (Preussische Hinterlegungsordnung) of April 21, 1913 (Prussian Legal Code, page 225 (Preussische Gesetzsammlung), have been deposited with the Courts in former Prussian territories ceded to Poland, with the exception of Upper Silesia, before the transfer of judicial administration, shall be dealt with according to the following provisions.

## Paragraph 2.

(1) In the case of deposits of money (paragraph 6 of the Prussian Deposit Regulations) there shall henceforth be substituted for the Deposit Offices hitherto competent :

(1) for deposits in the custody of Deposit Offices within the venue of the Provincial High Court (Oberlandesgericht) at Posen, the Court of First Instance (Amtsgericht) at Meseritz.

<sup>1</sup> Translated by the Secretariat of the League of Nations.

(2) for deposits in the custody of Deposit Offices within the venue of the Provincial High Court (Oberlandesgericht) at Marienwerder, the Court of First Instance (Amtsgericht) at Marienwerder,

(3) for deposits in the custody of the former Court of First Instance (Amtsgericht) at Soldau, the Court of First Instance at Allenstein.

(2) The same shall apply in the case provided for in paragraph 8 of the Prussian Deposit Regulations, if the medium of payment deposited was converted into cash before the transfer of judicial administration.

(3) The provisions of paragraphs (1) and (2) shall, however, not apply if the deposit was made after January 25, 1919, at Deposit Offices in that part of the former Province of Posen which was occupied by Poland before the coming into force of the Treaty of Versailles. In such cases, the Polish Court which has taken the place of the former German Court shall be competent as Deposit Office.

### Paragraph 3.

In the case of securities, other documents, articles of value or media of payment within the meaning of paragraph 8 of the Prussian Deposit Regulations, which were not converted into cash before the transfer of judicial administration, the Polish Court which has taken the place of the former Prussian Court shall be competent as Deposit Office, unless at the time of the transfer of judicial administration the securities were deposited in offices not situated in territory ceded to Poland. In such case the Courts named in paragraph 2, paragraph 1, shall take the place of the Deposit Offices hitherto competent.

### Paragraph 4.

(1) The Deposit Office hereafter competent under paragraphs 2 and 3 shall, on application being made, hand over the deposit to a Deposit Office of the other State, unless otherwise laid down in the following provisions.

(2) Those entitled to make such application are :

(a) the depositor, or

(b) the other parties concerned jointly, if the depositor is not entitled to withdraw the deposit or if the deposit had been made for the purpose of finally discharging a liability.

(3) If, under the regulations in force at the time of the transfer of sovereignty, a particular authority is competent to submit an application for the surrender of a deposit in accordance with paragraph 15 of the Prussian Deposit Regulations, the deposit shall likewise be handed over, in accordance with paragraph 1, on the application of the competent authority of the other State. The competence of the authority making the application shall be examined in each case by the Deposit Office to which it is made, regard being had to the transfer of sovereignty and the Treaties concluded between the German Reich and Poland. Should the competence of the authority making the application be based upon one of the German-Polish Agreements concerning the Transfer of the Administration of Justice, of September 20, 1920, or April 12, 1922, the said authority shall certify, when making such application, that there are no grounds for transferring the proceedings pending before it to any Judicial Authority of the other State either in the normal course of procedure or in cases in which such proceedings may be transferred at the request of the parties or persons concerned, because a request for such transfer has been made by the latter within a month after the application was submitted.

(4) The Deposit Office shall only be required to surrender the deposit if the application or claim is submitted to it not later than December 31, 1925.

(5) The Parties concerned shall be notified of the issue of an Order concerning the handing over of the deposit.

## Paragraph 5.

(1) Should it come to the knowledge of the Deposit Office in the cases mentioned in paragraph 4 that a third party lays claim to the object deposited, the Deposit Office shall make the handing over of the deposit conditional on the consent of such third party. The Deposit Office may, however, require the third party to substantiate his claim or to prove its validity by taking legal proceedings within a given period, in default whereof the deposit shall be handed over without his consent. The period allowed shall be adequate, but as brief as possible. The Deposit Office shall issue such an order if requested to do so by the Authority of the other State applying for the transfer of the deposit.

(2) In criminal cases, deposits shall be surrendered only with the consent of the Public Prosecutor's Office (Staatsanwaltschaft) in accordance with whose instructions the criminal proceedings are pending or are to be continued in virtue of the German-Polish Agreements concerning the Transfer of the Administration of Justice, of September 20, 1920, or April 12, 1922.

(3) No deposit shall be handed over in virtue of paragraph 4, if the object deposited or the claim submitted to the Deposit Office for the surrender of the deposit is connected with an estate in respect of which bankruptcy proceedings are pending in the State where the Deposit Office is situated.

## Paragraph 6.

The deposit shall be handed over in virtue of paragraph 4 :

- (a) in cases in which, in accordance with paragraph 2 or paragraph 3, the German courts named in paragraph 2, paragraph 1, are henceforth competent, to the Polish Deposit Offices mentioned in the application or request,
- (b) in cases in which, in accordance with paragraph 2 or paragraph 3, a Polish Court is henceforth competent as Deposit Office, to the Courts (Deposit Offices) mentioned in paragraph 2, paragraph 1, due regard being paid to the former Prussian judicial organisation.

## Paragraph 7.

In the cases governed by paragraphs 4-6, the deposit shall be handed over to the Deposit Office by the other State under the same legal conditions as applied at the time when the order concerning the handing over of deposits was issued. More especially, the rights of third parties, who contest the surrender of entire deposits to the depositor or other persons entitled thereto, shall not be affected by this surrender of the deposit, without prejudice to the provisions of paragraph 5, paragraph 1. This shall also apply in the case of liens acquired in virtue of distraint. In so far as such liens are based on a title admitting of merely provisional execution or, according to the provisions of the law, only give temporary security to the creditor, decisions likely to affect the ultimate confirmation of these rights given by the Courts of the State surrendering the deposit after it has been handed over shall be treated by the Deposit Office of the State taking over the deposit as decisions of its national Courts.

## Paragraph 8.

(1) The Courts named in paragraphs 2, 3 and 6 shall alone be competent for all decisions devolving upon Deposit Offices in virtue of the Prussian Deposit Regulations.

(2) Any appeal against the decisions of the Polish Deposit Office hereafter competent shall, in accordance with paragraph 3 of the Prussian Deposit Regulations, be submitted through the regular official channels to the Polish Offices, to which it is henceforth subordinate.

(3) Appeals pending at the time of the coming into force of this Agreement shall be handed over for decision, if, under the provisions of the Agreement, a Court of the other State is competent as Deposit Office, to the superior authority responsible for hearing such appeal.

Paragraph 9.

(1) The declarations referred to in paragraph 14, paragraph 1, sub-paragraph 1, of the Prussian Deposit Regulations may also be made and inserted in the record of the proceedings before a Court Registrar of the other State in the language admitted by the said Court.

(2) The same shall apply to the claims mentioned in paragraph 4 of this Agreement for the handing over of deposits to a Deposit Office of the other State.

(3) Should a Deposit Office make use of the right conferred under paragraph 18 of the Prussian Deposit Regulations, the authentication of the signature or the official attestation of the documents may also be carried out in the territory of the other State. Certification of the authenticity of the signature of such documents where required by the general regulations shall only be demanded if legitimate doubts exist as to the authenticity of such signature.

Paragraph 10.

(1) Should the deposit be or have been the subject of legal proceedings, the decisions of the German or Polish Court by which judgment was given shall be held to be legal decisions within the meaning of paragraph 14, paragraph 1, sub-paragraph 2 of the Prussian Deposit Regulations.

(2) Should the legal proceedings have been instituted after the transfer of judicial administration, decisions of a Court belonging to the other State shall have force of law in respect of the Deposit Office, if, when the proceedings were first instituted there was no Court which had local competency in the matter, or there was a Court which only had competency in regard to the property (§ 23 of the German Rules of Civil Procedure). The local competency of a Court within the country shall be recognised by the Deposit Office, if it is proved by the application itself or by the documents submitted in support thereof, or if the contesting party contends that it has been established. The contesting party shall be heard unless it is considered that the claim should be rejected for other reasons, or unless hearing is impossible on material grounds.

Paragraph 11.

Polish Authorities shall be regarded as competent Authorities within the meaning of paragraph 14, paragraph 1, sub-paragraph 3, and paragraph 15 of the Prussian Deposit Regulations, if they are competent to hear cases in consequence of the transfer of sovereignty or in accordance with the provisions of the Agreements already concluded or to be concluded at some future date between the German Reich and Poland.

Paragraph 12.

A Court of the other State shall be held to be a Court of Chancery ((Vormundschaftsgericht) within the meaning of paragraph 21 of the Prussian Deposit Regulations, if the competency of such Court rests upon the provisions of the German-Polish Agreements concerning the Transfer of the Administration of Justice of September 20, 1920, or April 12, 1922, or if the person affected by the proceedings is a national of the other State and trusteeship (guardianship) is not established within the country.

## Paragraph 13.

An authority of the other State shall be held to be a Controlling Authority (Aufsichtsbehörde) within the meaning of paragraph 22 of the Prussian Deposit Regulations, if, in consequence of the transfer of sovereignty or in accordance with the provisions of the Agreements already concluded or to be concluded at some future date between the German Reich and Poland, they are competent to exercise control.

## Paragraph 14.

In the cases coming under paragraph 28, paragraph 2, sub-paragraph 2, of the Prussian Deposit Regulations, limitation orders (Ausschlussurteile) issued by Courts of the other State within their own jurisdiction shall be binding on the Deposit Office. Limitation orders shall be notified to the Deposit Office even when the latter belongs to the other State.

## Paragraph 15.

(1) Should the Deposit Office be notified of any obstacle to the surrender of a deposit arising out of the terms of this Agreement after the despatch of the order to the pay-office, paragraph 23 of the Prussian Deposit Regulations shall be applicable.

(2) The same shall apply to any obstacle to the handing over of a deposit arising out of paragraphs 4, 5 and 7 of this Agreement.

## Paragraph 16.

(1) Whenever, in accordance with the provisions of this Agreement, a Polish Office is competent hereafter, or becomes competent in the future in lieu of a Prussian Office, or *vice versa*, the State taking over the deposits shall assume in relation thereto the functions of the State surrendering them.

(2) The assumption of functions shall date, in the case of paragraph 3, from the coming into force of this Agreement, and in the case of paragraph 4 from the publication of the order concerning the transfer of deposits. The State surrendering the deposits shall at the same time be released from all liability in respect thereof towards the persons entitled to receive them, but shall, in cases coming under paragraph 4, remain responsible for them to the State taking them over, until their complete and regular transfer has been effected.

(3) The transfer of liability to the State taking over the deposits shall not affect the rights of the parties concerned or of third parties as against the State surrendering them, in so far as such rights are based upon the Law of August 1, 1909 (Preussische Gesetzsammlung (Prussian Legal Code, p. 691), concerning the liability of the State and other bodies for neglect of duty on the part of officials in the exercise of public authority, or the rights of the said parties as against the officials themselves.

(4) Similarly, legal proceedings instituted against the Deposit Office surrendering the deposits shall not be invalid by reason of the fact that, in consequence of the publication of the order concerning the handing over of deposits, a Deposit Office of the other State has become competent, unless the State surrendering the deposits has been released from all obligations towards the other State.

## Article 2.

(1) Paragraphs 4, 5 and 7 of Article 1 shall likewise apply to all deposits which have been or may be made at whatever date, at Deposit Offices within the present territory of the German Reich, with the exception of the Upper Silesian Plebiscite Area, or after the transfer of judicial administration at Deposit Offices of the Polish Republic, with the exception of the Upper Silesian

Plebiscite Area, and which have reference to some matter connected with judicial administration which, in virtue of the German-Polish Agreements of September 20, 1920, and April 12, 1922, concerning the Transfer of the Administration of Justice, has been or may be transferred to a Judicial Authority of the other State. The deposit shall in such cases be surrendered to the Deposit Office of the other State named in the application or petition. Paragraphs 8 to 16 of Article 1 shall also apply, in so far as they may be appropriate.

(2) The same procedure shall apply in the case of deposits which have reference to some matter concerning judicial administration which has been or may be transferred to a Judicial Authority of the other State, even if such transfer is not effected in virtue of the aforesaid Agreements concerning the Transfer of the Administration of Justice.

### Article 3.

#### Paragraph 1.

The following provisions shall apply in respect of the handing-over of deposits to the other State or their surrender to the parties entitled to receive them.

#### Paragraph 2.

(1) In the case of cash deposited before July 15, 1919, in the part of the former Province of Posen occupied by Poland before the coming into force of the Treaty of Versailles, the deposit shall be presumed to have been made in German currency and in the case of cash deposited subsequently the deposit shall be presumed to have been made in Polish currency, unless the certificate of deposit contains evidence to the contrary.

(2) The parties concerned may also submit documents or bring forward witnesses or experts to rebut this presumption.

#### Paragraph 3.

(1) Cash (paragraphs 1 and 6 and paragraph 8, paragraph 2 of the Prussian Deposit Regulations) shall, according as it is deposited in German or Polish currency, be handed over in the same currency to the Deposit Offices of the other State.

(2) The State taking over the deposit shall only convert it into foreign currency if one of the parties concerned makes a request to that effect and if all the other parties consent thereto.

(3) Should the surrender of the deposit in accordance with paragraph 1 not be effected in the currency of the State taking it over, the Deposit Office shall send a written notification of the receipt of the deposit to such persons concerned as are known, together with a note to the effect that, unless an application is submitted in accordance with paragraph 2, the surrendered deposit must be treated in the future as money which does not bear interest and is not cash (paragraph 8 of the Prussian Deposit Regulations).

(4) In the case of deposits handed over to the Polish State, the notification referred to in paragraph 3 shall be accompanied by a declaration to the effect that, in the event of conversion into Polish internal currency, interest on the deposit will in future only be allowed if an application for interest is made through a Public Savings Bank; such application shall be granted even if submitted by only one of the parties concerned.

#### Paragraph 4.

The provisions of paragraph 3, paragraph 1, shall apply to the surrender of deposits to the parties entitled to receive them, unless cash was deposited between January 25 and December 31, 1919, in that part of the former Province of Posen which was occupied by Poland before the coming



into force of the Treaty of Versailles and the surrender of the deposits to such parties is effected directly, without their being first transferred to the other State. In such cases the Polish State shall be at liberty to surrender to its own nationals in Polish money a deposit effected in German currency the amount to be paid being calculated at the rate of exchange of the day on which the deposit was received. The rate employed for this purpose shall be the average rate, to be fixed by the Posen Chamber of Commerce, of the official quotations for Polish bank-notes on the Berlin, Danzig and Warsaw Stock Exchanges on the day in question or on the last preceding day upon which these Exchanges were open.

Paragraph 5.

Securities and articles of value shall be surrendered intact, unless changes have necessarily been effected, in accordance with legal provisions, during the period of their administration.

*Article 4.*

Paragraph 1.

(1) The German and Polish judicial authorities shall give each other all possible legal assistance in cases coming under this Agreement.

(2) Documents and relevant papers used in matters relating to deposits shall be handed over to the Deposit Office hereafter competent under Article 1, paragraphs 2, 3 and 6.

Paragraph 2.

(1) No fees, stamp duty or costs shall be levied in respect of the transfer of a deposit under the terms of Article 1, paragraph 4, or in respect of the granting of legal assistance under the terms of Article 3, paragraph 2.

(2) In cases in which a deposit passes or is to be handed over under the provisions of this Agreement to a Deposit Office of the other State, no fees, stamp duty or costs shall be levied up to the date of such passing or handing over.

Paragraph 3.

(1) Regulations restricting the export of capital, or prohibiting or imposing taxes in connection with payments to foreign countries by the Contracting States, already issued or issued hereafter, shall not apply to the surrender of deposits to Deposit Offices of the other State.

(2) In order to facilitate a speedy settlement, the Polish State will not make use, in connection with the deposits dealt with in this Treaty, of any right of administration which it may possess.

Paragraph 4.

The date of the transfer of the administration of justice within the meaning of this Agreement shall, in respect of that part of the former Province of Posen which was occupied by Poland before the coming into force of the Treaty of Peace, be January 1, 1920, and in respect of other territory be the day upon which the Transfer Protocol of the Court (Deposit Office) is executed.

*Article 5.*

## Paragraph 1.

The provisions of this Agreement shall only apply to deposits made with Courts of First Instance (Kreis Courts).

## Paragraph 2.

Should special difficulties not dealt with in the above provisions arise in individual cases in the application of the present Agreement, the Prussian and Polish Judicial Administrations shall be at liberty to conclude special Agreements for the settlement of such cases.

## Paragraph 3.

The present Agreements regarding competence and procedure in the settlement of cases *sub judice* concerning deposits leave undetermined the question which State is to bear the burden of the repayment of sums deposited in the form of cash before the transfer of sovereignty. This point will be decided on the occasion of the general financial settlement.

## Paragraph 4.

(1) Should deposits have been handed over by one of the Contracting Parties, before the coming into force of this Agreement, to the parties entitled to receive them, the matter shall not be reopened, and the same shall apply in the case of costs already collected. Nor shall there be any subsequent transfer of such deposits in accordance with Article 1, paragraph 4; the financial settlement between the Contracting Parties shall be governed by paragraph 3 of this article.

(2) Lists showing the deposits handed over in accordance with paragraph 1 shall be exchanged between the Contracting Parties.

*Article 6.*

This Treaty shall come into force on the expiration of the calendar month in which it is signed.

In faith whereof, the Plenipotentiaries have signed this Treaty and have affixed their seals thereto.

Done in a German and a Polish copy, at Dresden, on February 24, 1923.

K. VON STOCKHAMMERN.

TADEUSZ ZAJACZKOWSKI.