

Note for Cabinet.The Dockyard

There appear to be only three alternatives for resolving the Bailey-U.K. Government question:-

- (a) continuation of the court action;
- (b) settlement out of court;
- (c) expropriation.

2.(a) would take years and the Dockyard could not afford to stand still in the meantime. Furthermore, there is no certainty that the British Government would win the action, and in fact the indications are that the British Government is not anxious to pursue it.

(b) is clearly a remote prospect in view of Baileys unwillingness to accept a reasonable settlement. Here again, time is not on our side.

(c) therefore seems to be the only course left which would achieve the desired result.

3. The British Government favours expropriation by Malta legislation of the company's assets and the liquidation of the company. This would involve an amendment of the constitution (supported by a two-thirds majority in the House), in order to exclude the right otherwise conferred by section 38 (1) of the Constitution for compensation to be determined by an independent court or tribunal (with the right of appeal therefrom).

4. The British Government are prepared to assume liability for half the amount of compensation, for any debts due to the shareholders or Directors of the Baileys or any of their associated companies and for the full costs of the winding-up. In effect this would leave the Malta Government liable to half the cost of compensation (of the order of £3 million) which liability, the British Government suggest, could be conveniently met from the profits eventually accruing to Malta Drydocks.

5. Assuming expropriation, it does not appear, prima facie that there are any serious legal difficulties in the course proposed by the British Government. The financial aspect does not, however, appear to be satisfactory as it stands. 'On paper', at least, the Drydocks would be left with a sizeable debt, to be repaid possibly out of future profits, and bearing in mind that the next step would be to decide on the manner in which the Dockyard would henceforth be run, no consortium could reasonably be expected to show much interest in taking over the running of a concern saddled from the very outset with such large financial liabilities.

6. It appears that the principle of expropriation could only be acceptable if the British Government were to accept liability for all costs, as indeed it is morally their obligation to do so, thus allowing the Malta Drydocks to revert to the Malta Government "free and unencumbered". Indeed, it is reasonable to expect the British Government to accept this in return for the Malta Government undertaking to "pull their chestnuts out of the fire" for them. Expropriation is a serious step, and is bound to be looked at in askance by foreign investors. However, the fact that the British Government would itself be supporting such a step against its own nationals and that this is clearly a matter of such vital national importance as to justify practically any action, should prevent any undue damage to Malta's image as a good investment area.

9th August, 1966.