

MEMORANDUM FOR THE CABINET  
BY THE HON. PRIME MINISTER

The Future of the Malta Dockyard

Hon. Ministers are requested to consider the accompanying draft of an Aide Memoire for transmission to the British Government setting out the views of the Malta Government regarding the future of the Malta Dockyard.

20th September, 1957.

L-ARKIVI NAZZJONALI TA' MALTA

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AIDE-MEMOIRE

THE FUTURE OF THE MALTA DOCKYARD

Following correspondence between the Malta Government and the U.K. Government on the future of the Malta Dockyard, enquiries were made by the Malta Government, and subsequently by Lord Robens, in order to establish how far, apart from other considerations, action under section 37(1) of the Constitution of Malta could be considered as practicable. Those enquiries have revealed that the use of the powers given by that section would entail conditions which are unacceptable to both Governments.

There is another consideration which militates against an amendment of the Constitution with the object of depriving the Baileys of their right to have the compensation fixed by the Courts. It is feared that any such step, particularly as it would be directed against a company whose shareholders are non-Maltese, could have an adverse effect on prospective investors and could damage Malta's prospects of economic development.

It is therefore felt that, while the procedure to be adopted should provide a quick and legally effective method of transferring the Dockyard undertaking to a new company, freed from the disputes and liabilities which beset it and prevent its normal development, the action to be taken ought to conform to the requirements of section 33 of the Constitution of Malta.

It is realised that such an action might mean a higher amount of compensation. It is to be trusted, however, that the Courts will award an amount which is fair in the circumstances, and neither of the two Governments should object to the payment of what may in fairness be due to the Baileys. What is important is that an end should be put to the present disputes and that any claim for compensation and all other claims of the Baileys as well as the debts due to other creditors should be dealt with in such a way as not to delay the transfer to the new company of the assets necessary for the proper running of the Yard freed from the consequences of those disputes or those claims.

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The form nationalisation should take had been discussed in earlier papers on the subject. The proposals then put forward, however, had been made in the context of legislation under section 87(1) and since the action now being contemplated would be taken under section 73, it will be necessary to depart somewhat from those proposals.

Bearing in mind the main objects of the whole exercise, it is difficult to envisage legislation under section 73 which would simply take the form of a transfer of assets. As long as the Baileys are the shareholders of the Company it would not be possible to dispose of the disputes with the Baileys without their consent, and it would be, to say the least, difficult to divorce the assets from the liabilities. It appears therefore essential that the Baileys should, in the first place be deprived of their shares. Thereafter the procedure could, with slight modifications, follow the lines of the original U.K. Government proposal.

The proposals of the Government of Malta with respect to the legislative measures and the financial arrangements to be adopted, may be summarised as follows (details to be studied at a later stage)

#### PART I. Legislative Measures

On a day to be appointed by or under the Act of nationalisation, and with effect from such date, the shares in Bailey (Malta) Limited would be transferred to the Government of Malta against the payment of such compensation as may be determined by the Courts - such compensation could be payable, if necessary, by instalments.

By virtue of the same Act

(a) the assets of the Company necessary for the carrying on of the dockyard as an undertaking, such as the lease, the plant, machinery and stocks, trade debts and similar assets, would vest in a new company - which could be called e.g. Malta Drydocks Limited. They would so vest free of all liabilities other than normal trade debts and, in particular of all liabilities to the U.K. Government and the Baileys

(b) . . . .

(b) the company would be wound up and provision made for the appointment of a liquidator to liquidate the company's remaining assets and to meet the claim of all creditors (other than the ordinary trading creditors whose debts would be discharged by Malta Drydocks Limited) under powers and procedure and out of additional funds to be established or provided for in the Act itself;

(c) a creditors' indemnity fund would be created to meet all undisputed liabilities of the Company and all claims proved against the liquidator, as well as the costs of the winding up.

There could be, under the proposed procedure, no ground for complaint by the Baileys (whether as shareholders or as creditors) or by the other creditors in respect of any of the main features of the proposal viz. the nationalisation of the shares, the winding up of the company and the transfer of the assets to a new company. The Baileys would be paid adequate compensation for their shares and they would thus have no further interest in the company when this is wound up. Moreover, although the main assets of the Company would be transferred to a new company, that loss to the creditors (including the Baileys) would be more than made good by the establishment of the creditors' indemnity fund.

As regards the proceedings between the Attorney General and the Company, these could be dealt with in one of two possible ways the dispute could be settled by the Company following the transfer of shares to the Malta Government prior to its being wound up - in which case there would appear to be the need for a time lag between the transfer of the shares and the winding up of the Company - or it could be settled by the liquidator. It seems preferable not to involve the liquidator, and it is therefore suggested that following the transfer of the shares to the Malta Government, the Attorney General and the Company should agree that - in view of the winding up of the company contemplated in the legislation and in view of the fact that the U.K. Government did in fact make further loans in excess of the amount specified in the claim - both the claim and the counter claim would have lost all point and should be withdrawn with effect from the date of the winding up.

## PART B. Financial Arrangements

As stated in Part A of this paper, it is proposed that the compensation for the shares in Bailey (Malta) Limited should be established by the Courts. It has also been stated that this might mean that a higher amount may have to be paid to the Baileys than would have been payable if action were taken under section 37 of the Constitution though this need not necessarily be the case. In any case, action under that section is impracticable, and therefore the financial arrangements must take account of a commitment which will not become known until the Courts have made their award.

It is strongly felt that whatever may be the amount ultimately due to the Baileys, no part of it should be borne by the Malta Government. That payment is necessary to settle disputes in which they are not directly involved and for which they gave no cause and in order to remove from the scene a group for whose presence or activities they can in no way be held responsible. In the circumstances the Malta Government expects the U.K. Government to underwrite the financial commitments which the nationalisation of the Dockyard, on the lines outlined above, would involve.

As regards the creditors' indemnity fund and the costs of the winding up, the U.K. Government have already recognised that it would be difficult for the Malta Government to accept liability for any debts due to shareholders or directors of the Baileys or to any of their associated companies. For this and other reasons the U.K. Government have accepted liability for that fund, which would, inter alia, also liquidate the Company's bank overdraft, as well as liability for the full costs of the winding up.

As regards the U.K. loan to the Baileys it is the considered view of the Malta Government that that loan should not only be written down but should be written off. It is felt that the reasons already given in previous papers on the subject need not be repeated. What may be recalled is the Joint Mission's recommendation that the Dry Docks should

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revert to Malta "free to operate on a commercial basis" this recommendation would be at variance with the maintenance of any part of such a charge on the Dockyard's assets.

As soon as arrangements on the above lines are made between the two Governments, the Malta Government would be prepared, in the absence of other practicable solutions, to present to the House the legislation required to nationalise the Dockyard under section 33 of the Constitution.