

C.O.
11546

EAST AFR PROJ
11500

25
COLONY

Tel
65

1916

8 Mch.

previous Paper
254
1072

Messrs Schauer Weller & Co

not liquidated as they are British Company, but
Control has been applied under T.E. Order 1915.
In view of shareholders being mainly enemy,
Subject propose to take power to liquidate in
accordance with recommendations of your Council

~~Mr. Barclay~~
Mr. Reed

as Company would
appear, from the
analysis given in
my memo on 3524
to be well within
the principle of the
UK legislation of
S.1(1) of the Amendment Act
1916 carried on wholly or
mainly for the benefit of
or under the control
of enemy subjects.
As however it is a U.K
company about which

copy sent to 14 March 46
Pt. reminder to Sept 46 by
ST reminder - 24 Nov 46
Ans to case 16 Dec 46

Subsequent Paper.
58356

we have had corr
with 155 + W.O. (ph
not here) - he should
perhaps

? Consult 136

Send copy con 400

I will dit for Cousin if
the ph are returned
to me.

CB

9/3/16

HK

9/3/16

at once

H. J. G.

9/11/16

1546

No. 20 Copy

C. O.
11546

357

Telegram

The Deputy of the Governor of the East African Protectorate to the Secretary of State for the Colonies.

(Received Colonial Office 6.6.p.m. 8th March, 1916)

14-14



3522

No. 65. Your telegram 23rd February, Schauer and Welter not liquidated because they are British Company but Controller has been appointed under Trading with the Enemy Ordinance 1915 Section 4. In view of shareholders being mainly enemy subjects propose to take power to liquidate in accordance with recommendations of your committee.

BOWRING

Secretary of State

THE EASTERN TELEGRAPH COMPANY, LIMITED

Sender's Name

11546
 LONDON STATIONS -
 353

ELECTRA HOUSE,
 FINCHBURY PAYMENT, E.C.
 11, OLD BRIDAL STREET, E.C.
 8, LEADENHALL STREET, E.C.
 20, MINDING LANE, E.C. (MARK
 26, MARK LANE, E.C. BRIDGE

37, HOLBORN VIADUCT, E.C.
 44, STRAND, W.C.
 41 & 42, PARLIAMENT STREET, S.W.
 FOREIGN AUCTION MALL, COVENT GARDEN, W.C.
 THE BAL TIC, ST. MARY AXE, E.C. (4408 A)
 6, DENMAN STREET, BOROUGH, S.E. (2942)

ISSUED FROM
 42, PARLIAMENT
 STREET, S.W.

No. 8 MAR 1916

The following TELEGRAM Received at

From *Nairobi*

Foreign No. *29* No. of Words *29*

Dated *8* Time *10.30*

REMARKS
89

Chapelries London
Unbedding Schauer
Weller not because they are
backings are british
company but controller
under trading
ordinance 1915
silver grey
being made

WORDS SHOULD BE REPEATED

Doubtful words should be distinctly repeated. See Rule Book.
 No inquiry respecting this Telegram can be attended to without the production of this Copy.

THE EASTERN TELEGRAPH COMPANY, LIMITED

359

RECEIVED
TELEGRAM
STREET, S.A.

189

1916

Handwritten text, likely a telegram message, including the word "London" at the bottom.

REPLIES SHOULD BE ORDERED *Via Eastern*

Useful words should be carefully repeated. See Rule Book.
The company can be contacted about the production of the code.



11546/E.A.P.

892

Downing Street,

14 March, 1916

6524-14
msd 58256

Sir,

DRAFT.

With reference to the letter from

this Department of the 3rd of January

regarding the action taken by the authori-

ties in the East Africa Protectorate with

regard to Messrs Schagur, Welter and

Company, Limited, I am directed by

Mr Secretary Bonar Law to inform you

that on the 23rd of February he addressed

a telegram to the Governor of the

Protectorate directing him to put into

operation ~~the~~ the recommendations

contained in the report of the Interde-

partmental Committee as to liquidation

of enemy firms, in which the Board of

Trade signified their concurrence in

their

THE SECRETARY

Commercial D
BOARD OF TRADE.

MINUTE.

- Mr. Tennyson 11.3.16
- Mr. *Rain* / 3
- Mr. *S*
- Sir G. Fiddes
- Sir H. Just
- Sir J. Anderson
- Mr. Steel-Maitland
- Mr. Bonar Law

Gov. E.A.P. tel. (11546)

copy wa. y
refer
4/2
B.

copy to Mr. ...

their letter of the 4th Jan. †

†
No. 2324/100.

2. This telegram directed the Governor to report whether he had already appointed a liquidator to Messrs Schaeur, Welter and Company, and whether he saw any objection to the application of the Committee's recommendations to them. In reply to this a telegram has been received from the Governor, a copy of which is enclosed. Mr Bonar Law would be glad to be informed whether the Board of Trade see any objection to the recommendations of the Committee being applied in the case of this company.

3. In this connection I am to observe that the Secretary of State understands from information received from the Protectorate that Messrs K. Schaeur and M. Welter referred to in the Board of Trade's letter of the 21st of December, C. 44524, are both enemy subjects, while it appears that the same is true of H. Dautzenberg.

4. Mr Bonar Law assumes that as the business of the Company appears to be carried on solely in the East Africa Protectorate

it would not be possible for the Board to take any action against it under section 1 (1) of the Trading with the Enemy (Amendment) Act 1914.

I am, Sir,
Yours faithfully,
A. D. B. A. D.



Report of the Committee on the Liquidation

An inter-departmental Committee, consisting of G.V. Piddes, K.C.M.G., C.B., (Colonial Office) Chairman; Mr E.R.H. Blackwell, C.B. (Home Office); Mr H. Fountain, C.M.G. (Board of Trade); Mr E.J. Turner, (India Office); Mr C. Tennyson, C.M.G., (Colonial Office); Mr H.W. Malkin and Mr R.T. Nugent (Foreign Office); with Mr J.R.W. Robinson (Colonial Office) as Secretary, was appointed by the Secretary of State to consider the policy of the liquidation of enemy firms in the British Colonies and Protectorates. The Committee met on the 2nd and 6th of December and submit the following unanimous report.

We have considered the questions submitted to us in the Colonial Office letters of the 9th November (49333) and the 29th November (53784) in the light of a Memorandum prepared in the Colonial Office, a copy of which is annexed to this report. We have come to the conclusion that from every point of view it is desirable to substitute for the conservative system of liquidation described in the earlier of these letters, a complete system of liquidation which will include the sale of the good-will, trade-marks, land and buildings (whether freehold or leasehold) and other permanent assets of the firms affected. In Ceylon, where the local Government has hitherto been content to rely on a system of control, we think a system of liquidation on the lines suggested should be introduced in steps.

steps being taken to secure that Messrs Freudenberg and Company's milling operations are continued in competent hands for the benefit of the Colony: 553

In the early stages of the war when the deportation and internment of enemy subjects for military reasons rendered the introduction of a system of liquidation necessary, the conservative system which was introduced was not unsuitable to the circumstances. No one could have foretold at that date how long the war was likely to last and, had it ended rapidly, a complete liquidation of the derelict businesses would have been unnecessary. Moreover, the fact that many of the more important houses affected possessed at the outbreak of war heavy accumulations of stocks rendered a gradual disposal of these necessary for the protection of the local markets and the non-enemy creditors. Now, however, that stocks are to a great extent disposed of, and the war is being protracted, it is obviously

undesirable that the local Governments should remain for an indefinite period burdened with the maintenance of the permanent assets of the liquidated firms.

Moreover, to postpone the sale of these assets much longer, will be to deprive the goodwill and trademarks of all their value. This would be an injustice to creditors where there is a deficiency of assets, and may also, in many cases, prove an injustice to enemy owners themselves who may not be in a position to resume their trading operations in British territory after the war.

A further consideration with regard to the sale of trademarks is that such sale is necessary for the protection of the British manufacturer whose joint interest in the mark of "face plait" referred to in the memorandum annexed is rendered useless so long as the enemy owner is prevented from trading. The interest of the enemy owner in the mark is inseparable in law from the goodwill of his business, and while the goodwill remains in abeyance the mark cannot properly be used on goods selected and distributed by another trader.

Assuming that the proposed change of policy is to be adopted, it becomes important to consider what debts of the firms concerned should be paid and to what extent the liquidations should be regarded as abolishing the liquidated firms indebtedness. With regard to the first of these points, we understand that it has hitherto been laid down that the claims of non-enemy creditors are to be paid if possible in full irrespective of those of enemy creditors, no provision being made for these latter by way of dividend or otherwise. We see no reason for advocating a different system in connexion with the complete liquidation now recommended. In the great majority of cases we understand that the establishments liquidated are merely agencies of enemy houses elsewhere, so that the enemy creditor will have his remedy against the head office independently of the liquidation. In the few cases where the firm liquidated is an independent establishment the claims of enemy creditors may well be left to the consideration of their own Government after

the war. Any balance
 claims of British, all
 be retained until the
 the same footing as money.
 Custodian under the Trading

With regard to the
 liquidations should be regard
 indebtedness of the liquidated
 the present system of partial li
 affect the unsatisfied undebted
 business. This of course i
 as the goodwill and capital
 allowed to remain unreali
 policy which we recommen
 a change ~~should~~ be made
 after the completion of
 be allowed to be brough
 concerned against the li
~~against any of the members or~~
~~against any official or other~~
 liquidation for any debt incurra
 liquidation.

We would add that we do not
 the liquidations should extend to the
 of the individual partners.

Our attention was also draw
 in certain colonies (notably Hongkong)
 remain liable for the carrying out of
 in existence at the date of the liquida
 any power of dissolution. We understand
 these contracts are still not complete
 should not we think be kept open mer
 of the completion of these contrac
 should be given to liquidators s

other party to the contract to prove in the liquidations for any damage which he may suffer through the disclaimer and all uncompleted contracts should immediately be disclaimed, except such as relate to goods which have actually been shipped to the Colony from the United Kingdom or elsewhere but have not yet been delivered.

In conclusion we desire to draw attention to the statements contained in the memorandum as to the credit facilities extended to the German firms in Hongkong by the London Acceptance system of the Discount Banks. We think it of great importance that, if this has not already been done, the competent authority should call the attention of the British Discount Houses and Banks concerned to the Far Eastern Trade to the remarks on this subject in Mr. Ainscough's report to the Board of Trade. Opinion steps should at once be taken to secure that the London Acceptance system is in the future extended to all traders and that foreign traders are never again allowed to secure, by a misuse of the facilities afforded by British financing houses, an unfair advantage over their British competitors.

Since the above report was drafted the Law Commission's opinion of the 5th December with regard to the distribution of the assets of liquidated enemy firms in West Africa has been brought to our notice. The substance of that opinion appears to be as follows:-

- (1) That the assets of any branch in any British dependency in West Africa of an enemy firm may be applied in satisfaction of any debt created either by that branch or by its head office in enemy territory or by another branch of the same office in any other British dependency or in allied or neutral territory or in territory occupied by Great Britain or any of her allies, whether that debt be owing to the head office or to a

a firm situated in a British dependency or in
or neutral territory or in any territory occupied
at Britain or any of her allies; but that
creditor should only be admitted to prove in the
ation in respect of any balance of his debt which
have failed to recover after proceeding his
against the enemy debtor in enemy territory. 337

) That after all claims which may be admitted
accordance with the above principles against the
of the various branches of the same enemy firm
ferent British dependencies in West Africa have
liquidated so far as the assets of the various
es allow any surplus funds remaining from such
ations should be pooled so far as may be required
the debts due by the liquidated firms in respect
ch satisfactory proofs have been lodged but which
not been satisfied.

We do not think that this opinion affects
principles upon which our report is based, but
report will, of course, have to be read subject
decision which may be taken as a result of the
on.

(SD) G. V. FIDDES.

Chairman.

(for the Committee).

17th December, 1915.

anson.

ecretary.

MEMORANDUM

The policy of liquidation was adopted in its present form partly because the enemy houses in British Colonies and Protectorates were found to be in almost all cases merely agencies of head offices in Germany and were entirely under the direction of their head offices, so that it was almost impossible (in the early conditions of war organization) to prevent communications passing between the two, partly because it was found necessary for military reasons to intern or deport all enemy subjects and it therefore became incumbent on the local Governments to take some measures for the protection of the assets of the businesses thus left derelict and of the interests of their non-enemy creditors. A contributory cause was the attitude of native populations, who were unable to understand how our enemies could be allowed to carry on business as though no war were in existence. In certain cases a gradual realization of assets under supervision was necessitated by the long credit system of the German firms. The native traders were heavily indebted to them at the outbreak of war and it was feared that if these debts were left outstanding the enemy firms would realize them wholesale at the end of the war in a way which might mean ruin to many of the native debtors. The policy being mainly consequential upon the policy of internment

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internment and deportation did not aim expressly at the extermination of German trade in the British territory affected. In fact its object was rather to liquidate what may be termed the fluid assets of the firms in question, such, e.g., as their existing stocks and book debts, and to preserve, so far as could be done without cost to the Government their good-will, trade-marks, land and buildings and other permanent assets such as shipping, to get rid of which might have meant the extirpation of the firms concerned. It was thought desirable, having regard to modern views on the question of the confiscation of enemy property on land and to the possibility of reprisals by Germany, to avoid anything which might look like confiscation.

The three parts of the Empire principally affected by the liquidation policy were

- (1) The Eastern Colonies
- (2) West Africa
- (3) East Africa

In (1) and (2) the policy was initiated in the late autumn and early winter of 1914. In East Africa the first steps towards a Government liquidation were taken in the early part of the present year, and the actual liquidations are only now beginning to be carried out. In each of these districts local conditions vary considerably.

- (1) The Eastern Colonies

By far the most important of these for the present purpose is Hong Kong, which has a large German business community intimately connected with the German houses in China, the Hong Kong establishments being

being in most cases branches or agencies of head offices in China or in enemy territory. 370

The majority of these houses depended very largely on the importation of English goods and they also enjoyed profitable agencies for German products such as aniline dyes.

They also enjoyed remarkable credit facilities from British financing houses, the course of trade being, generally speaking, that known as the London acceptance system, according to which the ~~Head~~ office in Germany drew six months' bills against each consignment on a London discount house which were immediately discounted by the discount house on the market. In the ordinary way, the shipping documents being sent out to the German houses in Hong Kong with a letter of lien attached for the German firms signature. This letter bound the German house to keep the goods and their proceeds of sale separate from all others, in trust for the discount house and to remit the amount of the bill before its due date. It has been established that in almost all cases (whether or not with the connivance of the discount houses) this trust was ignored by the German house who proceeded to sell the goods to Chinese dealers on long credit, thus in effect reducing the discount house to the position of an ordinary unsecured creditor. Generally speaking the Hong Kong houses appear to be solvent though they do not seem to have made larger profits than British houses

houses in Hongkong, their position being 371
to the more important offices of the same firm.
China. There were, however, at the outbreak of war
very large stocks in Hongkong belonging to these
firms and there were also forward contracts for large
amounts of goods from Lancashire.

In order to avoid excessive dislocation of
trade it was thought desirable not to hurry the
realisation of stocks unduly, and not to repudiate
current contracts, and in consequence these liquidations
have in very few cases yet been completed.
Indeed the delay has led to a good deal of criticism
from British traders and attention has been drawn
to the fact that in this Colony the liquidations
have been entrusted to British firms working on
commission.

Apart from other considerations which appear
to make the substitution of a complete for a con-
servative system of liquidation desirable at the
present time, and which will be mentioned later,
issue of the Trading with the Enemy, China, etc.
Proclamations of June 25th and September 24th
introduced a new element with regard to the Hongkong
firms. The attack on German trade in China which
these Proclamations were designed to promote has
made the Hongkong policy of conservative liquidation
appear rather inconsistent and has moreover raised
question whether it would not be desirable also to
put an end to the German houses in Hongkong, in
that these may not serve as foundations from which
Germany can re-organise her trade after the cessation
of hostilities.

Next

Next to Hongkong in importance as a centre of German trade are the Straits Settlements. Details with regard to the organization of enemy trade in this Colony are scarce. The most important firm is that of Behm, Meyer and Company which was a limited Company registered in Singapore without a Head Office in enemy territory but acting as the Head Office of numerous establishments throughout the East. This company is in liquidation under the policy above described, while its Batavian and Siamese branches have apparently organised themselves as separate companies. There are also three or four other German houses which are known to be in liquidation.

Singapore is the principal port of trans-shipment for Siam and the above considerations arising out of the Trading with the Enemy, China, etc. Proclamations apply to the Straits Settlements in the same way though not to the same degree as to Hongkong.

Of the German houses in Ceylon by far the most important, is that of Freudenberg and Company. This firm has no Head Office in enemy territory, and it possesses oil mills of great importance to the welfare of the Colony. Having regard to the importance of keeping these mills going, the Governor did not recommend the introduction of the liquidation policy in Ceylon, and the business of Freudenberg and Company and other enemy houses has been put in charge of Government controllers. It should however be stated that Messrs. Freudenberg carry on a large import business.

business from Europe, as well as the business of the mills, which are devoted to the manufacture of local produce. Even if the suggested change of policy³⁷³ is not applied to Messrs. Freudenberg's there would appear to be no reason why these two portions of the business should not be treated differently, the import business being wound up on the Hong Kong principle, and the mill left in operation under a controller.

In all the Eastern Colonies above mentioned a very important feature is that of the trade-mark. In Hong Kong certain trade-marks both registered and unregistered have been used by the German importers on goods manufactured in Lancashire. These marks appear to be either the sole property of the German importer or the joint property of the British manufacturer and the German importer. Instructions have been given that the employment of these marks in the Colony is to be prevented, since they cannot properly be transferred without the good-will of the enemy business with which they have been connected. Moreover to allow their continued use under present conditions would be merely to keep them before the public for the ultimate benefit of the German trader. Moreover, it was hoped that by definitely preventing their use British manufacturers might be encouraged to attempt to supersede them by the introduction of new marks. There can be little doubt that the difficulties which have arisen in connection with these marks have caused considerable interference with the British

expert

business from Europe, as well as the business of the mills, which are devoted to the manufacture of local produce. Even if the suggested change of policy is not applied to Messrs. Freudenberg's there would appear to be no reason why these two portions of the business should not be treated differently, the import business being wound up on the Hong Kong principle, and the mill left in operation under a controller.

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export

export of piece goods to Hong Kong.

In Ceylon and the Straits Settlements the import business appears to be carried on principally by means of "face plaits". These are combinations of (1) a trade mark belonging to the British manufacturer (2) a trade mark belonging to the German importing house (3) a quality number indicating the quality of the goods. Steps have been taken to enable the British manufacturer to use his own trade-mark with the quality number, formerly part of the face plait, and a new mark belonging to the British agent who will supersede the German importing house.

Should it be determined to turn these liquidations into complete liquidations the German enemy's marks would be sold with his good-will and the difficulties indicated above would disappear.

(2) West Africa.

The special features of the German West African houses are (1) that all the local houses appear to be mere agencies of Head Offices in enemy territory, all contracts with the United Kingdom export houses being made by the Head Office; (2) that in many cases the same Head Office has agents in several different British West African territories and also in French West African territory and in the German West African Colonies now under British occupation. It seems likely that some of the branches in British territory may prove insolvent and questions have arisen as to how the assets of each branch should be distributed. At present acting under the advice of Sir John Simon and Lord Buckmaster, we have directed that only debts arising out of contracts with the local branches

are

are to be met; that no distinction is to be made between British and other non-enemy creditors; and that no attempt is to be made to pool the assets of different branches in British territory of the same Head Office in Germany. An effort has however been made to secure a reversal of the Law Officers' decision, with a view to making the assets of each branch available for the payment of debts contracted with the Head Office, and this may result in a pooling of the assets of different branches of the same office.

The trade-mark question does not appear to be of much importance in West Africa, no applications having been received for leave to use enemy trade marks on British manufactures. Moreover land and buildings there are of less value than in Hong Kong where the available land is much more restricted. Also the trade both German and English is in much fewer hands.

(3) In East Africa (East Africa Protectorate, Uganda, Nyasaland and Zanzibar) liquidation is as yet hardly begun. In Uganda there are practically speaking no German firms and those in the East Africa Protectorate and Zanzibar are comparatively few. In Zanzibar however where almost all the local trade is in the hands of four or five large German traders, examination of the affairs of these firms shows in almost all cases large credit balances of assets including large amounts of debts from native traders. A peculiar feature is also the close proximity of German

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East

stated in the third paragraph of my despatch refer
to above; and the award will be made retrospectively
to the 1st of September, 1918.

4. I shall be glad if this decision can be
brought to the notice of all European officers of
Government of Zanzibar, and published in the Govern-
ment Gazette.

I have the honour to be,

Sir,

Your most obedient,
humble servant,

(Signature)

~~50~~

The Secretary
Commercial Dep.
Provincial
Board of Trade.

divd 58356

24 Nov. 1916

Sir,

I am & to refer

22/11/16.
Permanence 22.11.16.
Bottleday 23.11.16.

the letter from this Dep^t of
the 14th of March; and
whether the Board of Trade
would see any objection
the application of the
recommendations of the
Interdepartmental Committee
as to liquidation of energy
firms to the case of the
firm of Messrs Schauer

Wells & Co in the
2: he Board has not
and to inform whether the
Board is now in a position
to supply the information
to furnish him with the
views on the other points
mentioned in the letter