

1924

KENYA

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C.O.  
17233

10 APR 24

Sutton, Cunnamy  
& Oliver

DATE

8th April, 1924.

CIRCULATION :-

Magadi Soda Company Ltd.

Reporting as to Order for  
compulsory liquidation.

MINUTES

The decision of the Judge in favour of compulsory liquidation creates a new position. We had some discussion yesterday morning and in the afternoon Mr. Micklem (Messrs. Cull & Co.) and Mr. D. Freshfield (Solicitor to Mr. Chester Beatty) called and discussed with Mr. Bushe, Mr. Calder and me.

We had a long talk which amounted to this: - They were prepared to proceed on either of two lines: -

A. A scheme of reconstruction, in which Messrs. Brunner Mond & Co. would take part, but without their having control.

Objections:

1. Difficulty or impossibility of actually keeping Messrs. Brunner Mond from securing control later on.

2. Impossibility of expecting Messrs. Brunner Mond to join in a scheme which

would

*Public*  
West. U.S. of S.  
*S. H. Calder*  
*14/24*  
U.S. of S.  
U.S. of S.  
Secretary of State.

Previous Paper  
*13*  
*1915*  
*should be*  
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*Stevenson*  
*saw papers*  
*of report*  
*7/21*

Subsequent Paper

*13.9.24*  
*17/45*

would not involve restriction of output in some form or other; whereas the Secretary of State's main ground for preferring the independent scheme was that the whole interest of the new Company would lie in maximum production.

3. Messrs. Brunner Mond would have every incentive to make difficulties in the negotiations so as to get Magadi closed down altogether and, if the negotiations broke down and the independent scheme revived, they would use the fact of the negotiations having been started by the other side to prejudice the chances of the independent scheme being approved by the Shareholders, etc.

B. The independent scheme to be pursued as previously contemplated, but with the added weight of a letter from the Colonial Office to the following effect -

"In view of the order for compulsory liquidation, the Secretary of State is of opinion that without further loss of time the Government must use the freedom to dispose of the property which it possesses under the terms of the lease and which was definitely established in Court last year. He is, however, prepared to give one more chance to the scheme which he has already approved for submission to the Shareholders."

and Shareholders, but if that scheme is not carried, "the Government will at once resume the lease".

Then, if the necessary assents, in spite of our letter, are not forthcoming, we step in, and the necessity for any assents disappears altogether. Messrs. Cull & Co., and those with them, would then make an offer to take on a new lease (on the same terms as are now contemplated), and all is well. They are prepared to give an undertaking that, on the case arising, they will, in fact, make such an offer: that is important, as otherwise we might be left with the property on our hands.

This alternative "B" is arrived at as a result of discussion, and it seemed to us the best arrangement that could be made. It is less arbitrary than at once taking the choice out of the hands of those now interested in the Company.

It should be explained that Messrs. Cull & Co. are not apprehensive of any large voting against their scheme, but a three-fourths vote is required in order to pass it, and it is not easy to whip up everybody. The circular sent out at the week-end will have added to the number of dissentients. With regard to that circular, we were told that Mr. Hitchcock's signature was obtained by a mis-statement of fact as to the Receiver's attitude towards the Brunner Mond scheme, but, of course, we cannot use this information.

It is obviously to the interest of the Shareholders to vote for the independent scheme if they are convinced that the alternative is that they get nothing. If the concern were sold up no one would

would get anything except the Debenture-holders, and they could only hope for the scrap value of the plant and the branch railway. As regards the railway, the legal position is difficult and not free from doubt, but it is at least clear that, if the Government exercise the right which, on the liquidation of the Company, it possesses, to buy the railway, they would have to pay the cost price, i.e., the sum of £800,000. That seems conclusive against Government working of the concern, even if there were no other objection.

Mr. Micklem and Mr. Freshfield were told that the matter would be laid before the Secretary of State, but that it must be borne in mind that the order of the Court left <sup>him</sup> them free to take what action they <sup>he</sup> thought best, regardless of past negotiations.

We recommend the second alternative "B", but it is necessary to point out that it involves, once more, a decision of the Secretary of State to exclude Messrs. Brunner Mond from the business; for the same reason as before, that their interests and the full development of the Magadi are incompatible. It will be understood that Messrs. Cull & Co. have made absolutely no overtures to Messrs. Brunner Mond & Co., and that it is not necessary for the latter to ever know that the alternative of a joint scheme has been suggested.

If the Secretary of State agrees generally, we shall have to go into details. For example, as to instructing our Solicitor, taking Counsel's opinion, and no doubt making it clear to the Companies Department of the Board of Trade that we are "in possession". It will be necessary to set out categorically the conditions already contained in the various letters

on which the new Company could be allowed to have the lease.

*Wes*

11 April, 1924.

I agree. The picture which is conjured up by this proposal for a joint scheme of the wolf and lamb lying down together is touching, but I think impracticable. As a matter of fact, I only gathered it was put forward to meet the possibility either of our not being willing to use our power to force through <sup>W. Chester</sup> Colonel Beatty's scheme, or our being unable to do so. There is no doubt that we are in a very strong position to force that scheme through either by <sup>in</sup>pressing the shareholders with the necessity of agreeing to it if they are to get anything at all, or, if Brunner Mond having acquired a proportion of the shares and being satisfied if <sup>he</sup> he wrecks the undertaking, the shareholders still do not agree, by selling the lease to a new Company.

On the whole I think we shall be able to get our way, but I do not say that there are no difficulties. There is for example a serious question, depending on a difficult point of law, whether if the official Receiver is hostile to our proposals, or if the shareholders appoint an outside liquidator, as they will be entitled to do, who is hostile, he will not be able to apply to the Court for relief against the forfeiture of the lease. If he could our weapon would not be destroyed, because such relief could only be granted on terms, but would obviously be very much blunted. All this, however, has got to be worked out in detail without solicitors and if we get authority to

proceed

proceed in this way, if it is possible, we should then proceed to consider the whole programme in detail.

H.F.B. 12/4

S. R.S.

I do not have this thought  
in J. Stevenson's mind as  
fully envisaged, and possibly  
partially.

I am all for the 2nd  
alternative "B" if you agree  
generally we will proceed to  
work out details without delay.

Secretary of State

I have given my full consideration to the situation as it stands today, and I am reluctantly forced to conclude that the best course is to make an agreement with the Brunner Mond interests. It should not be impossible to insist upon the mine being worked to an annual tonnage, I do not think we should accept any financial consideration if it is not. Failure to mine the stipulated quantity should cancel the arrangement. The weakness of my attitude lies in the fact that local Colonial opinion

opinion is in favour of Brunner Mond. We have done our best to prevent this, we must now do our best to ensure that this natural asset of the Colony is worked to the best advantage. Subject to the limitations of agreement I have cited I would advise a new reconstruction scheme with Brunner Mond taking part. It might be advisable for you to see Chester Beatty before deciding.

*[Handwritten signature]*  
20. 4. 1924

SUTTON, OSWALDEN & OLIVER.

E. O. OLIVER,  
R. H. OSWALDEN.

TELEGRAPHIC ADDRESS: "OSWALDEN, LONDON"

INCORPORATED IN 1899, LONDON WALL,  
ENGLAND. NO. 2212

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C.O.  
17233  
10 APR 24

3 & 4, GREAT WINCHESTER STREET,  
LONDON, E.C.2.

1462/24

8th April, 1924.

Sir,

Magadi Soda Company Limited.

We beg to report that the adjourned hearing of the petition by the Board of Trade for compulsory winding up of the Magadi Soda Co. Ltd. was heard by Mr. Justice Eve today.

Sir Douglas Hagg K.C. appeared on behalf of the debenture holders to the amount of 28,000, and also a large number of shareholders, and pressed very hard for a compulsory order.

No other parties were heard except Counsel for the Company and the Receiver for the debenture holders, and Mr. Dighton Pelleck on your behalf.

Mr. Pelleck made a short statement in accordance with his instructions but intended to withdraw the Judge on the general question later in the proceedings. The Judge, however, made the compulsory order without hearing any arguments.

We are privately informed that the Company intend to appeal, though we doubt whether an appeal would serve any useful purpose. The solicitors acting for the

-2-

Receiver hinted, however, that they did not appear of getting a scheme of reconstruction through in spite of the compulsory order. They stated that the subjects were backed by Messrs. Brummer Mend & Co. whose only object was to get into the reconstruction scheme. It was suggested that some alternative scheme might be worked allowing Messrs. Brummer Mend & Co. participation as a compromise.

You will understand that this information is not sufficiently definite to be absolutely reliable but we pass it on to you in case it may be of interest.

We will, of course, report anything further of importance which may come to our knowledge.

-- We return the original instructions to Mr. Dighton  
 -- Pelleck and the circular from Mr. Davies and others dated 4th April 1924 as requested.

We have the honour to be,

Sir,

Your obedient servants,

The Under Secretary of State,  
 Colonial Office.

*Letter from [unclear]*

The attached circular has been issued to shareholders of Magadi Soda Company urging them to support a request for compulsory liquidation in the Court tomorrow. As it is desirable in the interests of the reconstruction scheme of Messrs. Cull and Co. that a compulsory order should not be made at the present time and as it appears probable that the Secretary of State's decision in favour of that scheme may be misrepresented in Court, it is considered desirable that our solicitor should instruct Mr. Dighton Pollock to appear in Court tomorrow and oppose the motion for compulsory liquidation.

Of the signatories to the circular Mr. Robert L. Carter is a member of Sheppards, who are brokers to Messrs. Brunner Mond; Mr. R. A. Hitchcock is a member of Kitcat and Aitken, a firm of brokers who bought Magadi soda shares when the Brunner Mond scheme was under consideration and who have been selling out since it was turned down; the International Financial Society are a group of trust companies, whose brokers are Sheppards.

It is proposed that if Mr. Dighton Pollock is given an opportunity of a general explanation of the position he should say that the scheme underwritten by Messrs. Cull and Company was approved by the Secretary of State and the Kenya Government; that later Messrs. Brunner Mond and Company came forward with an alternative scheme which provided for a Government director, and that the Kenya Government was willing to give its approval to that alternative scheme subject to certain safeguards;

safeguards; that the Kenya Government's points were put to the representative of Messrs. Brunner Mond at a meeting at which reference was made to certain other points on which the Secretary of State wished to ascertain what Messrs. Brunner Mond's views would be; that the offers of Messrs. Brunner Mond did not fully meet the wishes of the Colonial Government or the Secretary of State. On the other hand the promoters of the alternative scheme have given what appear most satisfactory assurances that the property will be worked to its fullest capacity; the full working of the property is the condition which must weigh chiefly with the Secretary of State in the interests of Kenya Colony and the development of its resources.

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It may be that Mr. Dighton Pollock will not be afforded an opportunity of making such a statement and will have to confine his remarks to the question of a compulsory order. In that event it is proposed that he should say that if a compulsory order is granted it would be the duty of the Secretary of State to proceed with the forfeiture of the lease on behalf of the Kenya Government; that Government would then hold the property until it would be leased to a company prepared to put up the necessary working capital and give guarantees satisfactory to the Secretary of State that the property would be developed to its fullest capacity. The Secretary of State can thereby secure the interests of Kenya Colony but the interests of the shareholders in the present Magadi Soda Company will

be affected. The Secretary of State has so far refrained from proceeding with the forfeiture of the lease, in order to see if a scheme of reconstruction could be arranged which safeguarded the interests of both Kenya Colony and the existing shareholders.



112, GRESHAM HOUSE,

LONDON, E.C. 2.

4th April, 1924.

DEAR SIR OR MADAM,

MAGADI SODA COMPANY, LIMITED.

As Shareholders and Debenture holders in the above-named Company, we desire to draw the attention of our fellow Shareholders and Debenture holders and of the Creditors to certain facts in connection with the present position of the liquidation of this Company, which to us seem to be of the highest importance.

As you will no doubt remember, at the time that the proposal for liquidation was put forward in January last a scheme was also outlined for the formation of a new Company in which the Debenture holders, Creditors and Shareholders of the old Company would respectively receive Debentures, Preference Shares and Ordinary Shares in the new Company, as follows:—The present First Debenture holders, First Debentures in the new Company to an amount equal to their present holdings; the Second Debenture holders and Creditors, Preference Shares in the new Company to an amount equal to 75 per cent. of their present Debentures or unsecured debts; and the Ordinary Shareholders and Deferred Shareholders, one 5s. Ordinary Share for every £1 nominal value of Ordinary Shares and for every 5s. nominal value of Deferred Shares now held by them, such new Ordinary Share to be credited as 1s. 6d. paid, with a liability of 3s. 6d. per share. If the Shareholder did not wish to take up this liability his share would be taken by the Underwriters and he would get nothing.

At the first meeting this scheme was criticised, but no vote was taken upon it. The liquidation was not carried, but it was announced that an alternative scheme was under consideration, which involved no assessment upon Shareholders, but which would limit their interest in the profits to a fixed interest, the balance of profits, if any, being taken by the group which was putting forward this alternative scheme.

At the second meeting of Shareholders, held in February, the resolution in favour of voluntary liquidation was carried, and a Committee of Shareholders was appointed to act with the Liquidator.

The Liquidator and Committee of Shareholders approved, as more favourable to the Company and those interested in it, the alternative scheme above mentioned,

which was put forward, we are informed, by Messrs. Brunner, Mond & Co. Limited, who, with other British Alkali makers, have been in the past the principal competitors of the Company. Shortly put, this scheme was to give to the First Debenture holders Debentures of the new Company of equal amount to their present holdings; to the Second Debenture holders and Creditors, First Preference Shares of the new Company, carrying interest at 6 per cent. to an amount equal to 75 per cent. of their present Debentures or unsecured debts; and to the Ordinary and Deferred Shareholders in respect of every £1 nominal value of such shares in the old Company held by them, one £1 Second Preference Share in the new Company, plus £1 3s and carrying interest at the rate of 6 per cent. Messrs. Brunner, Mond & Co. Limited were to offer to subscribe at once for 250,000 £1 Ordinary Shares, payment to be made in cash. They were to have power to appoint the Board but were to be subject to the initiative of the Debenture holders having a vote thereon, and the Shareholders' Committee and Liquidator being satisfied that in their hands the operations of the Company would be conducted to the best advantage, and that the competition, which was the real cause of the misfortunes of the old Company, would be eliminated. It was agreed to recommend the alternative scheme to the Court and the Creditors and Shareholders.

Messrs. Brunner, Mond & Co.'s scheme was in due subject to an examination of the books and records of the Company and to their being satisfied as a result of such investigation that the proposed alternative scheme was one which formed the basis of a liquidation of the Company, and that, in the event of its being adopted on the 14th March, 1924, the proposed alternative scheme would be put forward to the Court and the Creditors and Shareholders.

The proposed alternative scheme was in due subject to an examination of the books and records of the Company and to their being satisfied as a result of such investigation that the proposed alternative scheme was one which formed the basis of a liquidation of the Company, and that, in the event of its being adopted on the 14th March, 1924, the proposed alternative scheme would be put forward to the Court and the Creditors and Shareholders.

The proposed alternative scheme was in due subject to an examination of the books and records of the Company and to their being satisfied as a result of such investigation that the proposed alternative scheme was one which formed the basis of a liquidation of the Company, and that, in the event of its being adopted on the 14th March, 1924, the proposed alternative scheme would be put forward to the Court and the Creditors and Shareholders.

The effect of this decision, if it be maintained, will be to involve the reconstructed Magadi Company from the outset in competition in the Far East, its natural market, with the British Alkali makers, with the probable result (judging from the past) that the reconstructed Company will lose its new capital and again fall into liquidation, and we are convinced that the success of the Company, and the advantage of the Shareholders, Debenture holders, Creditors and Colonial Government, can only be secured by the operations of the Company being free from the competition of the British Alkali makers.

It is so obviously more to the interests of the Creditors and Shareholders to have Messrs. Brunner, Mond & Co.'s scheme adopted, that we feel that the Colonial Secretary has not appreciated the true facts of the case, or that he is under some misconception as to the effect of that scheme. In our opinion, it is desirable that the original scheme should not be proceeded with hastily, or without every consideration being given to every possible alternative.

In these circumstances we propose to appear in Court on Tuesday next the 26th April in support of the petition for the Compulsory Liquidation of the Company. Our object in pressing for a compulsory winding-up order is that the Official Receiver, as Liquidator, may be given an opportunity of looking into the whole matter and choosing the scheme of reconstruction most favourable to the Shareholders, Debenture holders and Creditors, and most likely to ensure the success of the New Company in the future (whether that scheme is one of the two which have been put forward or perhaps some other new and different arrangement), and may make all necessary and proper representations to the Colonial Secretary.

We shall be glad if any Debenture holders, Shareholders, or Creditors, who are in agreement with us and have not already taken steps to be represented, will fill in the enclosed form and send the same to us c/o Messrs. Blyth, Dutton, Hartley & Blyth, 112, Gresham House, Old Broad Street, E.C. 2, so as to reach us by Monday, or at latest Tuesday morning next.

Yours faithfully,

G. A. KNOWLES,  
ROBERT L. CARTER,  
R. A. FITCHCOCK,  
INTERNATIONAL FINANCIAL SOCIETY, LIMITED,  
Per W. J. ELDRIDGE,  
Secretary.

To G. A. KNOWLES, Esq.,

c/o MESSRS. BLYTH, DUTTON, HARTLEY & BLYTH,

112, GRESHAM HOUSE

OLD BROAD STREET, E.C. 2.

DEAR SIR,

I am in agreement with the views expressed in your circular letter of the 4th April inst., and I authorise you to instruct Counsel to appear for me in Court, at the adjourned hearing or hearings of the Winding-up Petition in support of your policy, on the understanding that I am not to be involved in any personal liability for costs. My holding in the Company is

Please state  
holding or  
interest.

\_\_\_\_\_ Ordinary £1 shares.

\_\_\_\_\_ Deferred 1s. shares.

£\_\_\_\_\_ Debentures.

*Full Name* \_\_\_\_\_

*Address* \_\_\_\_\_

*Dated* April, 1924.