

MEMORANDUM FOR CABINET BY THE MINISTER OF TRADE,
INDUSTRY AND AGRICULTURE ON PROPOSED AMENDMENTS
TO THE COMMERCIAL PARTNERSHIPS ORDINANCE, 1962

On 3 June, 1967 this Ministry submitted a memorandum to Cabinet on a number of amendments to the Commercial Partnerships Ordinance.

On the 29th November, 1967, Cabinet approved the recommendations but on the 7th December the letter-minute signifying the Cabinet's approval was returned to the Secretary to Cabinet at his own request as the Cabinet's decision had been reversed.

On the 31 January 1968, the Secretary to Cabinet was requested a copy of the letter signifying Cabinet's approval but he evaded the issue and sent instead a copy of the remarks by the Deputy Crown Advocate General. (Copy enclosed)

This Ministry strongly objects to interference in policy matters. Policy is laid down by the Minister and recommendations are naturally submitted and it is up to the Crown Advocate General to draft legislation to implement such policy.

If the Crown Advocate General feels that 'ad hoc' legislation would meet the case, then he should draft it forthwith but in the meantime the undisputed amendments should go through.

As regards the case in point, the amendment was suggested because it was considered as the only way to obtain quick results and it has its equivalent in Sec. 109 of the U.K. Companies Act on which our Ordinance is modelled. This was pointed out in the original memorandum and this Ministry re-iterates the view therein expressed that the method adopted is immaterial provided the result is efficient and expeditious.

The position obtaining at present is ludicrous to the extreme and Government has been forced to use the Exchange Control Regulations for purposes completely foreign to the Exchange Control - and this, quite rightly, with the absolute disapproval of the legal officers.

As regards the points raised by Deputy Crown Advocate General it is opportune to point out that:

Whilst there is certainly no objection against 'ad hoc' legislation - this was pointed out from the outset - this Ministry demands quick results. The claim that company law is not the proper place for regulating such matters cannot be accepted as the U.K. Companies Act carries such a provision.

Admittedly the problem is not simple and that is why a bureaucratic solution has been suggested. The Services run-down was a bureaucratic decision imposed on this country and the solution warrants highhanded action.

7th March, 1968.

The scope of the certificate is not to regulate trade. This is catered for by the Police by the application of non-discriminatory laws and regulations. The object of the amendment is to have discriminatory powers vested in the Minister to allow him to safeguard existing employment for Maltese nationals and to protect existing Maltese business from competition by foreigners.

The amendment has been suggested for limited liability companies only.

Firms and individuals need not fall under its scope as entry permits and work permits afford sufficient protection. Partnerships could be a loophole but their popularity with foreigners is extremely limited and may therefore be exempted.

On the other hand limited liability companies, being Maltese corporate citizens, lend themselves to abuse and it is desired to exercise control over them. Control will be exercised on all companies and certificates will be granted or withdrawn according to circumstances i.e. transfer to or from foreigners.

The Memorandum in question was carefully worded and it required a policy ruling by Cabinet in order to enable the law officers to prepare the necessary legislation as they thought fit.

March, 1968

mlp/ma