

Kopie: Generalsekretär E.P.D.

Cape Town, May 6th, 1960.

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Mr. G. P. J o o s t e
Secretary for External Affairs
Department of External Affairs
Parliament Street
C a p e T o w n .

STRICTLY CONFIDENTIAL

Dear Mr. Jooste,

./• As suggested in the course of our recent conversation on the possibility for Swiss corporations and other entities to transfer their registered or head offices to the Union of South Africa in the event of international conflict, I have pleasure in remitting to you an informal memorandum giving a short description of the Swiss intentions and desiderata.

./• The memorandum summarises the equally attached texts of legislation by the Swiss Federal Council in this matter (translated into English) and explains the points which the Swiss authorities are wishing to clarify beforehand.

As you will remember, you suggested the setting up of such a memorandum to enable your Department to consult the South African authorities competent for the different matters in question so that their discussion with the Swiss Legation can be prepared.

I shall be glad to give you any additional information or explanation you may require for the study of this subject.

This information and the annexed texts are of a strictly confidential nature.

Yours sincerely,

Enclosures

F. Kappeler
Minister of Switzerland

C o n f i d e n t i a l

6/5/1960

M e m o r a n d u m

In order to protect Swiss corporations and other entities in the event and for the duration of an international crisis, some precautionary measures have been taken by the Swiss Government. They are based on past experiences and precedents created by several countries (Switzerland, the Netherlands, Belgium, Luxemburg, Poland, Norway) during the period of World War II. The new Swiss emergency legislation thus enacted comprises:

- 1) the Decree of the Swiss Federal Council Concerning the Protection of Juridic Persons, Partnership Firms and Simply Owned Firms by Measures of Conservation (of the 12th April, 1957, as amended on the 4th July, 1958);
and
- 2) the Executive Ordinance Pertaining to the Decree of the Swiss Federal Council Concerning the Protection of Juridic Persons, Partnership Firms and Singly Owned Firms by Measures of Conservation (of the 12th April, 1957).

This legislation was further supplemented by:

- 3) the Decree of the Federal Council Concerning the Protection of Securities and Similar Instruments by Measures of Conservation (of the 12th April, 1957).

All three texts are attached to this Memorandum.

The firstmentioned decree is of particular importance. It provides that Swiss corporations and other entities

" which desire to transfer their registered or head office in order to protect their property, rights

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" and interests in the event of international conflicts, may decide to transfer their registered or head office:

- a) to a place of their choice, in Switzerland or in a foreign country,
- b) to the place where the constitutional Swiss Government will have its seat, in Switzerland or in a foreign country.

The two possibilities may be combined. "

It is to be emphasized that the transfer of the registered or head office, being a purely conservatory measure, is meant to be only of temporary and transitory nature. The decision of a corporation or other entity to transfer its registered or head office will be registered by the appropriate Swiss authorities and notified by the latter to the Swiss diplomatic or consular representatives competent for the area in which the new registered or head office will be situated. However, this decision will not be immediately effective. The date on which the transfer takes effect will be fixed later by a complementary Decree of the Swiss Government. It is obvious that the Government will take a decision of such farreaching consequence only in the presence of an imminent international danger. The transfer being conceived as a provisional measure during a period of emergency, the corporations and other entities in question will, according to the Decree, remain everywhere subject to the provisions of Swiss law in force at the time when the transfer of the registered or head office takes effect (the validity of possible contrary decrees of an occupation power or a governmental body set up by such power being thus legally excluded); this particularly applies to the formation of such entities ("personal status", i.e. the legal provisions governing existence, legal character, capacity and internal organization) as well as to their statutes and partnership

agreements, except where the decree determines otherwise. However, the economic activity of the Swiss corporations and other firms at the place of the new registered or head office will, of course, be subject to the provisions of the public law in force at such place.

The purpose of these measures is a double one:

1. Maintain, during a period of war, the Swiss character of the firms concerned; conserve the property and the assets they own for the benefit of the Swiss nation and its future economic development; prevent an occupation power from seizing such property and assets, especially to the extent as they are located outside of Switzerland.
2. Create the necessary legal conditions in order to prevent that Swiss property and assets situated outside of Switzerland be treated, in the event of an occupation of the Swiss territory by a belligerent, as enemy property by the authorities of the adverse powers.

To this latter effect, provision is made that persons remaining within the area of Switzerland can act as curators of property left on Swiss territory, but will have no authority whatsoever over the assets outside the territories occupied by enemy forces or in the power of the enemy or of his allies. The powers and authority of such persons are suspended ipso jure as from the date on which the transfer of the registered or head office takes effect and as long as these persons cannot exercise their powers and authority at the new registered office. This provision and other measures are intended to prevent any act coerced by the occupying forces to have any validity whatever elsewhere.

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The Swiss Government would be desirous to know to what extent the newly created Swiss concept of a transfer of the registered or head office of Swiss corporations and other entities might be recognized and accepted under present legislation of the Union of South Africa, should Swiss firms, in times of emergency, choose the territory of the Union as a place of temporary refuge. Similar inquiries are being made in some other countries. The main points to be clarified are the following:

- I. Would it be possible to recognize to all companies created or organized in or under the laws of Switzerland the right to transfer temporarily and to remove, without liquidation and without re-organization, their registered or head offices to and from the territory of the Union of South Africa in the event and for the duration of an international crisis, provided that said temporary transfers of registered or head offices are effected in accordance with the Decree of the Swiss Federal Council concerning the Protection of Juridic Persons, Partnership Firms and Singly Owned Firms by Measures of Conservation, of the 12th April, 1957, as amended on the 4th July, 1958?
- II. Could Swiss companies that temporarily transfer their registered or head offices from Switzerland to the Union of South Africa in accordance with the aforementioned provisions remain possessed, if they were so endowed upon their formation, of the corporate personality of their origin, and could their personal law continue to be governed by the laws of Switzerland, as in force at the time when such transfer takes effect? It would be assumed that all corporations and other entities which shall have so transferred temporarily their registered or head offices from Switzerland to the Union of South

Africa shall, for the duration of such transfer, have their residence (commercial domicile) in the latter State. It is understood that such corporations and other entities, while they are so resident, would be subject, for their economic activity, to all laws of the Union of South Africa.

- III. What would be the position of Swiss corporations and other entities temporarily transferred to the Union of South Africa with respect to the controls and requirements of an eventual **E n e m y P r o p e r t y l e g i s l a t i o n**? As was already pointed out, the Swiss Decree provides for an automatic suspension, as from the date on which the transfer of the registered or head office takes effect, of all powers and authorities of persons remaining at the original registered or head office. The firms will be directed and managed by those persons only who can exercise their powers and authorities at the new registered or head office. Any influence or coercion by a possible enemy is thus excluded. The Swiss authorities therefore trust that the Swiss corporations and other entities so transferred to the Union of South Africa would not be considered and treated as enemy firms.
- IV. Swiss firms, even while temporarily transferring their registered or head office abroad, would, in principle, remain subject to Swiss fiscal authority. On the other hand, if they choose to take refuge in the Union of South Africa, they would become chargeable to the taxes of the Union. This would result in a double taxation. While this technical question should not constitute an obstacle to an understanding on the more general problem of the transfer of registered or head office, as provided for in the Swiss emergency legislation, the consideration

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of possible solutions might nevertheless prove useful. The Swiss authorities would like to submit, in this connection, that the levying of taxes of the Union of South Africa in the case of Swiss firms moving temporarily to the Union might possibly be restricted to the income which they derive from South African sources. On its side, Switzerland would, in such case, exclude from the basis upon which its taxes are imposed all profits or gains from sources within the territory of the Union of South Africa.

- V. Finally, if the temporary transfer of the registered or head office of Swiss firms to the Union of South Africa would appear feasible, additional thought might be given to the visa requirements for Swiss personnel in connection with such transfer.

The Swiss Government would be very grateful to the Government of the Union of South Africa for an expression of its views on the above questions.

Enclosures