

Chief, EE
 Chief of Station, Germany
 Operational/CADORY

Document No. _____	31 AUG 1955
No Change In Class. <input checked="" type="checkbox"/>	
<input type="checkbox"/> Declassified	
Class. Changed to: TO S C	
Next Review Date: 09/10/10	INFO: Chief, BO
Auth: KR 73-3	
Date: 09 OCT 1955	EL J-

Amendment to DTLINEN Administrative Plan

Refs: A. EGQM 25148, 19 July 1955
 B. EGQA 62906, 27 May 1955

1. _____ has examined the new proposal discussed in Reference A and advises as follows:

a. The method suggested by the Administrative Plans Officer for securing KUBARK's title to DTLINEN personal property (movable) by chattel mortgage/promissory note execution is not generally employed under German law. Mortgage/promissory note transactions are used under German law only for real as opposed to personal property (movable). (Comment: Wherever "personal property" is used, it is meant in its legal sense, but as to DTLINEN it refers to its movables). However, a comparable method, using slightly different legal instruments is legally feasible and sound. The procedure would be to draft a loan contract (Darlehensvertrag) along with a separate document (Sicherheitsübereignung) purporting to secure the indebtedness. The Sicherheitsübereignung is more in the nature of a pledge with a lease back of the personal property, e.g. the debtor transfers the title of the personal property to the creditor and the creditor then grants permission to the debtor to use the property, subject to a condition subsequent which is default. The title to the personal property reverts to the debtor upon performance of the loan contract.

b. In some respects such an arrangement is more readily enforceable than a mortgage - it needs no formal foreclosure proceedings, mere notice suffices. On the other hand a Darlehensvertrag is a "personal" contract (between the KUBARK lawyer and the DTLINEN Vorstand based on the latter's resolution), it is not negotiable and is therefore subject to all "equitable defenses." (Comment: By this term we mean all those defenses excluded as to a holder in due course of a negotiable instrument.) If, to elaborate, the DTLINEN Vorstand should, at the time of a future liquidation, insist that there was a private agreement between the lawyer and the DTLINEN Vorstand that they need not turn back the personal property, long litigation with doubtful outcome would result. Thus it may be seen that the efficacy of the loan contract/pledge arrangement depends upon the Vorstand refraining from interposing a defense of failure or want of consideration. The main value of the loan contract/pledge arrangement - given the cooperation of the Vorstand - is against third parties, e.g. real or alleged creditors and the German Red Cross, which normally receives

DECLASSIFIED AND RELEASED BY
 CENTRAL INTELLIGENCE AGENCY
 SOURCE METHODSEXEMPTION 3828
 NAZI WAR CRIMES DISCLOSURE ACT
 DATE 2007

DTLINEN (Organ)
 32-724-1-1750

SECRET

EGQA-67311

page 2

the remaining property of liquidated non-profit corporations after all claims and possessory liens by real creditors have been satisfied. Possessory liens by third parties incurred by the debtors may also prejudice recovery of the personal property.

c. The loan contract/pledge arrangement requires a Vorstand resolution in accordance with the articles of incorporation. Secure engineering of such a resolution could be attempted in the manner proposed for the promissory note in paragraph 4 of Ref A. The efficacy of this arrangement cannot be tested, however, until the time of liquidation of DTLINEN. At that time, the cooperation of the Vorstand will again be required, as discussed in b above.

2. While the loan/pledge procedure is legally feasible and will aid to some extent in protecting KUBARK equity in DTLINEN personal property, we want to emphasize that it is not foolproof. There appears to us no foolproof method to protect KUBARK equity in this property at this late stage, when DTLINEN association records indicate that the property was bought originally from association funds. In the last analysis, full recovery of KUBARK equity depends upon the good will of the Vorstand at the time of liquidation, as well as on the then prevailing security considerations which must determine the extent to which the KUBARK lawyer can press his case. The obvious advantage of the loan/pledge procedure over the method suggested in Ref B is in its greater simplicity and ease of implementation.

3. We submit the above for your consideration and further comments. We should like to point out, however, that for the time being so many other more significant problems exist in connection with DTLINEN that above hardly deserves a priority for action at this time. In view of this situation and the fact that the value of the personal property involved is and always will be debatable, it is somewhat academic whether we should push for implementation of the proposed solution. Please advise.

APPROVED:]

Distribution:

3-EE

2-BOB

30 August 1955

* Para 4 of the Articles of Incorporation makes the annual membership meeting responsible for the "discharge of the Vorstand from his responsibility." Technically, the above resolution is thus subject to ex post facto concurrence by the membership.

SECRET