SCHEDULE OF DOCUMENTS

1. Fax dated 16 March 1995 from Pat Wall to Thomas McCann S.C.

2. Letter dated 21 March 1995 from Pat Wall to Fergal O'Dwyer.

3. Letter dated 31 March 1995 from Pat Wall to Fergal O'Dwyer attaching Counsel's Opinion dated 27 March 1995.

4. Fax dated 7 April 1995 from Alvin Price to Daphne Tease.

5. Letter dated 2 May 1995 from Pat Wall to Fergal O'Dwyer.

6. Letter dated 11 May 1995 from Terry O'Driscoll to Fergal O'Dwyer, attaching fax dated 10 May 1005 from Peter van der Hoeven/Andrew Casley to Pat Wall/Terry O'Driscoll and draft legislation.

7. Letter dated 12 May 1995 from Alvin Price to Daphne Tease with first draft of the Memorandum and Articles of Association of Marjove Limited and Lotus Green Limited and draft special resolutions attached.

8. Fax dated 23 May 1995 from Terry O'Driscoll/John P Kelly to Peter Van Der Hoeven/Andrew Casley.

9. Letter dated 23 May 1995 from Brendan Heneghan to Daphne Tease attaching (1) draft Loan Agreement undated between Drake Ireland Limited and Lotus Green Limited.

10. Fax dated 25 May 1995 from Brendan Heneghan to Daphne Tease, attaching (1) draft Marjove Limited minutes with handwritten notes thereon; stock transfer form of Marjove Limited; stock transfer form of Lotus Green Limited; stock transfer form of Marjove Limited; stock transfer form of Lotus Green Limited.

11. Handwritten note regarding meeting with Pat O'Brien on 25 May 1995.

12. Tax notes re Exampleco.

13. Letter dated 7 June 1995 from Alvin Price to Fergal O'Dwyer.

14. Letter dated 7 June 1995 from Alvin Price to Fergal O'Dwyer.

15. Fax dated 7 June 1995 from Terry O'Driscoll to Fergal O'Dwyer, enclosing fax dated 7 June 1995 from Peter van der Hoeven to Pat Wall/Terry O'Driscoll.

16. Handwritten notes of meeting between Pat O'Brien and Fergal O'Dwyer on 9 June 1995.

17. Print of computerised calculations of unrealised profit on Fyffes shareholding at latest share price and diagram of proposed funds flow dated 9 June 1995.

18. Memo dated 9 June 1995 from Michael Scholefield to Jim Flavin.

19. Handwritten notes of Michael Scholefield undated.

20. Memo dated 14 June 1995 from Michael Scholefield to Jim Flavin.

21. Fax dated 15 June 1995 from Terry O'Driscoll to Daphne Tease.

22. Memo dated 15 June 1995 from Fergal O'Dwyer to Jim Flavin attaching fax dated 12 June 1995 from Pat O'Brien to Fergal O'Dwyer enclosing draft letter.

23. Handwritten notes.

24. Handwritten notes of Michael Scholefield.

25. Memo dated 20 June 1995 from Michael Scholefield to File cc Jim Flavin and Fergal O'Dwyer.

26. Fax dated 20 June 1995 from Pat O'Brien to Fergal O'Dwyer.

27. Fax dated 21 June 1995 from Michael Meghan to Carl McCann.

28. Fax dated 23 June 1995 from Fergal O'Dwyer to Pat O'Brien, enclosing various correspondence with Thomas McCann.

29. Handwritten notes of Michael Scholefield regarding Exampleco transaction.

30. Handwritten notes of Michael Scholefield.

31. Fax dated 23 June 1995 from Michael Meghan to Carl McCann.

32. Letter dated 23 June 1995 from Carl McCann to Jim Flavin.

33. Fax dated 7 July 1995 from Peter van der Hoeven to Fergal O'Dwyer and Daphne Tease.

34. Memo dated 7 July 1995 from Michael Scholefield to Jim Flavin.

35. Letter dated 10 July 1995 from Michael Scholefield to Carl McCann.

36. Letter dated 10 July 1995 from Pat O'Brien to Daphne Tease enclosing letter dated 10 July 1995 from Pat O'Brien to Fergal O'Dwyer.

37. Fax dated 11 July 1995 from Michael Scholefield to Michael Meghan.

38. Fax dated 14 July 1995 from Daphne Tease to Alvin Price.

39. Memo dated 14 July 1995 from Daphne Tease to Jim Flavin cc Fergal O'Dwyer and Tommy Breen.

40. Handwritten notes of Michael Scholefield.

41. Fax dated 18 July 1995 from John Kelly to Fergal O'Dwyer enclosing a copy of the Dutch tax ruling in respect of DCC International Holdings BV signed by the Dutch Tax Inspector.

42. Letter dated 19 July 1995 from Michael Meghan to Michael Scholefield.

43. Memo dated 20 July 1995 from Fergal O'Dwyer to Jim Flavin.

44. Fax dated 21 July 1995 from Alvin Price to Michael Scholefield.

45. Letter dated 25 July 1995 from Alvin Price to Michael Scholefield.

46. Handwritten notes of Michael Scholefield regarding Exampleco.

47. Extract from DCC Chief Executive's Report (included in DCC Board papers) dated July 1995.

48. DCC plc Board papers (extract from Chief Executive / Deputy Chairman's report) and extract from minutes dated July 1995.

49. Fax dated 3 August 1995 from Terry O'Driscoll to Daphne Tease.

50. Letter dated 9 August 1995 from Coopers & Lybrand to the Directors of DCC plc.

51. Share Purchase Agreement dated 9 August 1995 between S&L Investments Limited and Lotus Green Limited.

52. Share Purchase Agreement dated 9 August 1995 between DCC plc and Lotus Green Limited.

53. Loan Agreement dated 9 August 1995 between DCC Properties Limited and Lotus Green Limited.

54. Memo dated 9 August 1995 from Fergal O'Dwyer to Exampleco File.

55. Fax dated 9 August 1995 from Barry O'Neill to David Ryan.

56. Fax dated 9 August 1995 from Barry O'Neill to David Ryan.

57. Fax dated 14 August 1995 from Terry O'Driscoll to Fergal O'Dwyer.

58. Fax dated 22 August 1995 from Alvin Price to Daphne Tease.

59. Agreement undated between Internationale Newderlanden (Nederland) Trust B.V, with trade name ING (Nederland) Trust and Lotus Green Limited.

60. Agreement undated between Mr. G.A.L.R. Diepenhorst, Lotus Green Limited and DCC International Holdings B.V.

WF-1250288-v1

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Dublin Cork Waterford Limerick
Kilkenny Wexford

our reference

FAX TRANSMISSION FORM

DATE: 16 March 1995

TO: Thomas McCann S.C.

LOCATION: Wakefield House,
York Road, Dun Laoghaire

FAX NO.: 2843658

FROM: Pat Wall

Total number of pages (including this page) 9

If any pages are not received, or are illegible,
please advise immediately

I would like your Opinion on a proposal the outlines of which are set out on the attached paper.

Would you be free to meet some day next week, perhaps on Wednesday? I will call you on Tuesday morning to confirm a suitable time.

Have a good weekend.

Kind regards.

Pat Wall.

lh.
c:\fax\mmm

France

1. Introduction

1.1 At present, the Drake Group holds a significant investment in France Plc, the disposal of which will give rise to a chargeable gain of approximately IR£17.5M (tax IR£7M). The asset has been held since 1980 and is not "trading stock". Drake has not traded in the shares of France and is treated as an investment holding company for tax purposes. Although Drake has no definite intention to dispose of its investment in France, the group wishes to take steps to minimise the potential tax payable in the event of a future disposal of the investment.

1.2 For the purposes of this report we have treated the investment in France as being held by Drake. We understand that part of the investment is in fact held through a Drake subsidiary but this does not materially effect the tax analysis.

2. Proposal

2.1 *Step 1*

Drake Plc and Drake BV (tax resident in the Netherlands) incorporate a new Irish company called Newco.

The share capital of Newco would be as follows:

Drake Plc 76 "A" ordinary shares
Drake BV 24 "B" ordinary shares (or a class of preference shares)

Both classes of shares would rank "pari passu" in all respects including voting rights except that the "A" shares will only be entitled to repayment "at par" on a winding up. The "B" shares would be entitled to all other assets of Newco on a winding up. The Memorandum and Articles of Association would need to be carefully drafted to ensure the desired result.

2.1.1 *Tax Analysis*

CGT

Newco will be a member of the Drake CGT group, provided it is tax resident in Ireland. Under Section 129, Corporation Tax Act 1976 a CGT group consists of a principal company and all its 75% subsidiaries. Under Section 156, CTA 1976 a

company is deemed to be a 75% subsidiary of another company if not less than 75% of its "ordinary share capital" is owned directly or indirectly by that company. Ordinary share capital is in turn defined by Section 155 of the same Act as meaning "all the issued share capital of the company, other than capital the holders whereof have a right to dividends at a fixed rate, but have no other right to share in the profits of the company".

2.1.2 *Capital Duty*

Capital duty of 1% will be payable on the issue of shares in Newco, assuming that the company is a limited liability company. As the share capital of Newco will be low, capital duty will not be a material cost.

2.2 *Step 2*

Newco incorporates a wholly owned subsidiary company, Subco.

2.2.1 *Tax Analysis*

Provided that Subco is tax resident in Ireland, it will form part of the Drake/Newco CGT group.

2.2.2 Capital duty payable on incorporation of Subco will be minimal, as the share capital will be minimal.

2.3 *Step 3*

Drake BV lends funds to Subco to enable it to purchase France from Drake on arm's length terms. The question of how Drake BV is put in funds to finance Subco needs to be considered. There are a number of alternatives which can be considered.

Tax Analysis

2.3.1 *CGT*

As Subco is within the Drake CGT group no tax will arise on the transfer of France under Section 130, CTA 1976. Subco will be deemed to have acquired the shares in France at the same time and cost as Drake Plc.

2.3.2 *Stamp Duty*

In principle, under the measures announced in the 1995 Budget, no stamp duty will be payable on the transfer as Subco is a 90% associate of Drake. However, a clawback of the relief claimed at this stage could arise at Step 4 (see paragraph 2.4).

Therefore, the transfer could be left at contract stage rather than executing a formal stock transfer between Drake and Subco. The duty at issue would amount to about £300,000. It is critical, however, for CGT purposes that beneficial ownership of France passes to Subco.

2.4 *Step 4*

Newco is liquidated. Drake Plc receives its original capital back in cash while the shares in Subco are distributed in specie by the liquidator to Drake BV.

Tax Analysis

2.4.1. *CGT*

On the liquidation of Newco, Subco leaves the Drake CGT group as it will now be held by a non resident company i.e. Drake B.V. Generally, under Section 135, CTA 1976, any gain which would have arisen on an intra-group transfer, but for the provisions of Section 130, CTA 1976, will crystallise in the transferee company on the 75% group relationship being broken within 10 years of the transfer. Section 135; however, contains a provision which provides that no gain is crystallised where a company ceases to be a member of a group by being wound up or dissolved or as a consequence of another member of the group being wound up of dissolved. As the event resulting in Subco leaving the Drake CGT group is a liquidation in Newco, no charge to tax under Section 135 should arise. For tax purposes, Subco will continue to hold France at its original base cost to Drake Plc.

Newco would be regarded as disposing of its shares in Subco but as these would have no value no capital gains tax would arise.

Both Drake and Drake BV would be regarded as disposing of their shareholdings in Newco at market value but as this is negligible no material capital gains tax would arise.

2.4.2 *Stamp Duty*

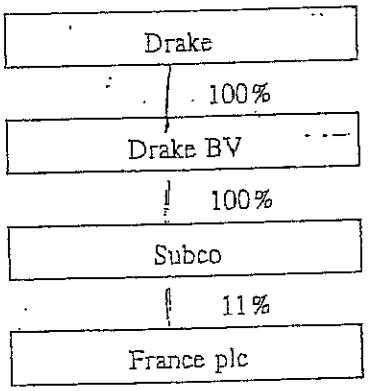
No stamp duty will arise on the transfer of France's shares to BV as the transfer is a distribution in specie by the liquidator of Newco.

As mentioned in paragraph 2.3.2., the liquidation may result in a clawback of any relief claimed on the transfer of the France shares from Drake to Subco. Relief is lost if Drake and Subco cease to be associated within 2 years of the transfer. As a company in liquidation is no longer the beneficial owner of its assets , the liquidation of Newco would appear, on a strict technical interpretation of the legislation, to break

the required association relationship between Drake and Subco. This is an issue which requires further consideration and we will need to consult with your legal advisors on the matter. It may be advisable to claim the relief even if there is a risk of clawback. No clawback would arise if, as suggested in paragraph 2.3.2., the transfer is left at contract stage, but this might weaken the agreement that the transfer was not part of a pre-ordained series of steps.

3. *Sale to Third Party*

Following implementation of Steps 1 to 4 the structure would be as follows:-



A disposal of the shares by Subco, would, in view of its low base cost, give rise to a significant capital gains tax liability in Ireland. There are two options which may be used to avoid the liability.

3.1 *Option 1*

BV disposes of Subco to the purchaser. Subject to confirmation from our Dutch colleagues, this should not give rise to any tax cost for Drake BV.

The difficulty with this proposal is that the purchaser is, in effect, acquiring a low base cost in the France shares for Irish CGT purposes. It is quite likely that a purchaser will require this to be reflected in the purchase price. If the purchaser is not resident in Ireland, this issue may be of less relevance, as it will be relatively easy for such a person to change the tax residence of Subco from Ireland and then liquidate Subco. As Subco would not be tax resident at the time the France shares are transferred in the course of liquidation, no Irish CGT would arise.

The option of selling Subco rather than France is only appropriate, of course, if there is a single purchaser. If the shares in France are to be sold to a number of different purchasers, selling Subco would not be an option. Similarly, it is unlikely to be appropriate where the sale is in response to a general offer to acquire France.

3.2 Option 2

Subco changes tax residence prior to its disposal of France shares.

If Subco changes tax residence, the gain deferred at the time of the transfer of the France shares from Drake Plc would not crystallise under Section 135. Subco has already ceased to be a member of the Drake group (on the liquidation of Newco). As a non resident company, Subco would not be liable to Irish tax on the subsequent disposal of France shares. Depending on the jurisdiction which Subco is resident at the time of the disposal, any gains arising could be tax exempt in that jurisdiction or, at least, Subco would be entitled to a significantly higher base cost (c. £30M) than it would have been under Irish rules. In view of the fact that its parent is Drake BV the most logical jurisdiction is the Netherlands. Subject to confirmation from our Dutch colleagues no capital gains tax should arise on a sale of France.

3.3 Paper for Paper

If a purchaser should make a paper offer for the France shares the proposal does not give rise to any insurmountable problems. The paper for paper relief is merely a deferral of the capital gains tax liability which would eventually crystallise if the paper is held by an Irish resident company.

4 UK Alternative

4.1 The above proposal assumes that Drake BV invests in Newco and subsequently acquires Subco. The proposal could also work if one of the group's UK companies "Drake UK" was used instead of Drake BV. If there was any doubt regarding the tax residence of Drake BV, it would be preferable to use Drake UK, if its tax residence in the UK can be more readily established. The critical point is that, at the time Newco is liquidated and the shares in Subco are distributed, the holder of the 24 "B" ordinary shares is a non resident company and therefore outside of the Drake Irish CGT group.

4.2 It may also be somewhat easier to effect a change of residence for Subco from Ireland to the UK rather than to the Netherlands. From an optical point of view, it is less likely that a change of residence to the UK will raise Revenue queries as the UK is not perceived as a tax haven. Subco brings itself within the scope of UK capital gains tax and it might make it more difficult for the Irish Revenue to tax any gain given the provisions of the Ireland/UK tax treaty.

4.3 The downside to using Drake UK rather than Drake BV is that, unlike the Netherlands, any increase in value of the France shares between the date they were acquired by Subco and the date they were eventually sold to the third party will be taxable in the UK. Subco will, however, obtain a step up in value to the market value

of the shares in France at the date it acquired them from Drake Plc. It would also be possible to transfer Subco to Drake UK in the first instance, establish a UK tax residence for Subco and then, before there has been any significant increase in the value of Subco/France, liquidate Subco. Drake UK could then sell its investment in France to Drake BV without material UK tax cost. Alternatively, following the change of tax residence to the UK, Drake UK could sell Subco to Drake BV. Subco could be liquidated at this stage or could change its tax residence to the Netherlands.

4.4 One further possible advantage to using the UK rather than the Netherlands is that, if Drake UK borrows from a bank to acquire the Subco/France shares, any interest on such borrowings will be available to shelter other taxable income of the Drake group in the UK, although part of the interest will be absorbed in sheltering dividends received from France (see paragraph 7.2).

5 *Burman -v- Hedges & Butler*

10 year dt. Inland Revenue press release * 15/11/91 F.A 1992

5.1 The above proposal is a variation of a plan used in the UK case of Burman -v- Hedges & Butler in which the taxpayer was successful in mitigating its tax liability on the disposal of shares held in a large UK group of companies. (In the Burman case, the holder of the 26 "B" ordinary shares was the third party purchaser rather than a non-resident group company).

5.2 In the Burman case, the Revenue argued that, as the liquidation of Newco was envisaged from the start, the 76 "A" ordinary shares were beneficially owned by the purchaser at all times. They also argued that Subco was acting as nominee for the purchaser. Based on the facts of the case, however, both contentions were rejected by the courts but care will need to be taken to ensure that these arguments cannot be successfully made by the Irish Revenue in the present case.

5.3 Following the Burman case the UK legislation was amended to prevent the creation of "artificial" capital gains tax groups and the avoidance, in certain circumstances, of the UK equivalent to Sec. 135 by liquidation. No similar legislation was introduced in Ireland.

6. *Anti-Avoidance Legislation*

6.1 *General*

There is no specific anti-avoidance legislation which would impact on the proposal. The UK case of Burman -v- Hedges referred to above, although not binding in an Irish court, would certainly tend to support our conclusions on the matter.

6.2 *Section 86 Finance Act 1989*

From a tax perspective, there are a number of different areas which might give rise to concern regarding Section 86.

6.2.1 *Transferring France to Subco*

Our proposal differs from the Burman case in that Newco is not controlled by the purchaser (Drake BV) at the time France is transferred. In any event it is difficult to see what tax advantage is gained by this step.

6.2.2 *Liquidation of Newco*

There is no immediate tax advantage to the group as Subco retains the low base cost of the group's investment in France. I believe it would be difficult for the Revenue to sustain a Section 86 argument where the taxpayer is relying on a specific provision such as the provision to Section 135(1) relating to liquidations.

6.2.3 *Change of Residence of Subco followed by Sale of France*

I would have thought that if Revenue were to attack this aspect of the proposal it is more likely to be on the grounds that Subco remains tax resident in Ireland rather than on Section 86 grounds.

6.2.4 The Revenue could seek to link all the different stages of the proposal and argue that, when taken as a whole, the transactions are designed to eliminate tax on the eventual disposal of the group's investment in France.

6.2.5 I think the Revenue would have great difficulty in applying Sec. 86 but in view of the amount of tax at issue, I would strongly recommend that you obtain counsel's opinion on the proposal.

Dividends

7.1 At present, dividends received by Drake from France are not taxable as they constitute franked investment income. Similarly, Subco would not be taxed on any dividends received from France for as long as it remains tax resident in Ireland.

7.2 If Subco changes tax residence, the dividends will no longer constitute franked investment income but will not be taxable in Ireland as they will be received by a non-resident company. If Subco is resident in the Netherlands, the dividends should be exempt from Dutch tax but we need to confirm this with C&L Amsterdam. If Subco is tax resident in the UK, it will be subject to UK tax but it should be possible to shelter this with additional interest expenses (see paragraph 4.2).

7.3 The proposal will have an impact on the tax credit to dividends paid by Drake but its overall impact on the group's dividend policy should not be material.

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F 64

our reference
pmw/tod

21 March 1995.

Private & Confidential

Fergal O' Dwyer Esq
Development Capital Corporation Plc
DCC House
Brewery Road
Stillorgan
Co Dublin

Dear Fergal

France

I refer to our recent meetings and discussions in connection with the above.

1. Introduction

1.1 At present, the Drake Group holds a significant investment in France Plc, the disposal of which will give rise to a chargeable gain of approximately IR£17.5M (tax IR£7M). The asset has been held since 1980 and is not "trading stock". Drake has not traded in the shares of France and is treated as an investment holding company for tax purposes. Although Drake has no definite intention to dispose of its investment in France, the group wishes to take steps to minimise the potential tax payable in the event of a future disposal of the investment.

1.2 For the purposes of this report we have treated the investment in France as being held by Drake. We understand that part of the investment is in fact held through a Drake subsidiary but this does not materially effect the tax analysis.

2. Proposal

2.1 Step 1

Drake and Drake BV (tax resident in the Netherlands) incorporate a new Irish company called Newco.

The share capital of Newco would be as follows:

Drake 76 "A" ordinary shares
Drake BV 24 "B" ordinary shares (or a class of preference shares)

Both classes of shares would rank "pari passu" in all respects including voting rights except that the "A" shares will only be entitled to repayment "at par" on a winding up. The "B" shares would be entitled to all other assets of Newco on a winding up. The Memorandum and Articles of Association would need to be carefully drafted to ensure the desired result.

2.1.1 *Tax Analysis*

CGT

Newco will be a member of the Drake CGT group, provided it is tax resident in Ireland. Under Section 129, Corporation Tax Act 1976 a CGT group consists of a principal company and all its 75% subsidiaries. Under Section 156, CTA 1976 a company is deemed to be a 75% subsidiary of another company if not less than 75% of its "ordinary share capital" is owned directly or indirectly by that company. Ordinary share capital is in turn defined by Section 155 of the same Act as meaning "all the issued share capital of the company, other than capital the holders whereof have a right to dividends at a fixed rate, but have no other right to share in the profits of the company".

2.1.2 *Capital Duty*

Capital duty of 1% will be payable on the issue of shares in Newco, assuming that the company is a limited liability company. As the share capital of Newco will be low, capital duty will not be a material cost.

2.2 *Step 2*

Newco incorporates a wholly owned subsidiary company, Subco.

2.2.1 *Tax Analysis*

Provided that Subco is tax resident in Ireland, it will form part of the Drake/Newco CGT group.

2.2.2 Capital duty payable on incorporation of Subco will be minimal, as the share capital will be minimal.

2.3 *Step 3*

Drake BV lends funds to Subco to enable it to purchase France from Drake on arm's length terms. The question of how Drake BV is put in funds to finance Subco needs to be considered. There are a number of alternatives which can be considered.

Tax Analysis

2.3.1 CGT

As Subco is within the Drake CGT group no tax will arise on the transfer to France under Section 130, CTA 1976. Subco will be deemed to have acquired the shares in France at the same time and cost as Drake.

2.3.2 Stamp Duty

In principle, under the measures announced in the 1995 Budget, no stamp duty will be payable on the transfer as Subco is a 90% associate of Drake. However, a clawback of the relief claimed at this stage could arise at Step 4 (see paragraph 2.4). Therefore, the transfer could be left at contract stage rather than executing a formal stock transfer between Drake and Subco. The duty at issue would amount to about £300,000. It is critical, however, for CGT purposes that beneficial ownership of France passes to Subco.

2.4 Step 4

Newco is liquidated. Drake receives its original capital back in cash while the shares in Subco are distributed in specie by the liquidator to Drake BV.

Tax Analysis

2.4.1. CGT

On the liquidation of Newco, Subco leaves the Drake CGT group as it will now be held by a non resident company i.e. Drake B.V. Generally, under Section 135, CTA 1976, any gain which would have arisen on an intra-group transfer, but for the provisions of Section 130, CTA 1976, will crystallise in the transferee company on the 75% group relationship being broken within 10 years of the transfer. Section 135, however, contains a provision which provides that no gain is crystallised where a company ceases to be a member of a group by being wound up or dissolved or as a consequence of another member of the group being wound up of dissolved. As the event resulting in Subco leaving the Drake CGT group is a liquidation in Newco, no charge to tax under Section 135 should arise. For tax purposes, Subco will continue to hold France at its original base cost to Drake.

Newco would be regarded as disposing of its shares in Subco but as these would have no value no capital gains tax would arise.

Both Drake and Drake BV would be regarded as disposing of their shareholdings in Newco at market value but as this is negligible no material capital gains tax would arise.

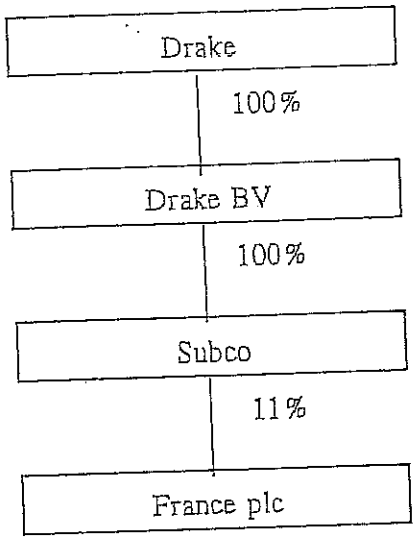
2.4.2 Stamp Duty

No stamp duty will arise on the transfer of France's shares to BV as the transfer is a distribution in specie by the liquidator of Newco.

As mentioned in paragraph 2.3.2., the liquidation may result in a clawback of any relief claimed on the transfer of the France shares from Drake to Subco. Relief is lost if Drake and Subco cease to be associated within 2 years of the transfer. As a company in liquidation is no longer the beneficial owner of its assets , the liquidation of Newco would appear, on a strict technical interpretation of the legislation, to break the required association relationship between Drake and Subco. This is an issue which requires further consideration and we will need to consult with your legal advisors on the matter. It may be advisable to claim the relief even if there is a risk of clawback. No clawback would arise if, as suggested in paragraph 2.3.2., the transfer is left at contract stage, but this might weaken the agreement that the transfer was not part of a pre-ordained series of steps.

3. Sale to Third Party

Following implementation of Steps 1 to 4 the structure would be as follows:-



A disposal of the shares by Subco, would, in view of its low base cost, give rise to a significant capital gains tax liability in Ireland. There are two options which may be used to avoid the liability.

3.1 Option 1

BV disposes of Subco to the purchaser. Subject to confirmation from our Dutch colleagues, this should not give rise to any tax cost for Drake BV.

The difficulty with this proposal is that the purchaser is, in effect, acquiring a low base cost in the France shares for Irish CGT purposes. It is quite likely that a purchaser will require this to be reflected in the purchase price. If the purchaser is not resident in Ireland, this issue may be of less relevance, as it will be relatively easy for such a person to change the tax residence of Subco from Ireland and then liquidate Subco. As Subco would not be tax resident at the time the France shares are transferred in the course of liquidation, no Irish CGT would arise.

The option of selling Subco rather than France is only appropriate, of course, if there is a single purchaser. If the shares in France are to be sold to a number of different purchasers, selling Subco would not be an option. Similarly, it is unlikely to be appropriate where the sale is in response to a general offer to acquire France.

3.2 *Option 2*

Subco changes tax residence prior to its disposal of France shares.

If Subco changes tax residence, the gain deferred at the time of the transfer of the France shares from Drake would not crystallise under Section 135. Subco has already ceased to be a member of the Drake group (on the liquidation of Newco). As a non resident company, Subco would not be liable to Irish tax on the subsequent disposal of France shares. Depending on the jurisdiction which Subco is resident at the time of the disposal, any gains arising could be tax exempt in that jurisdiction or, at least, Subco would be entitled to a significantly higher base cost (c. £30M) than it would have been under Irish rules. In view of the fact that its parent is Drake BV the most logical jurisdiction is the Netherlands. Subject to confirmation from our Dutch colleagues no capital gains tax should arise on a sale of France.

3.3 *Paper for Paper*

If a purchaser should make a paper offer for the France shares the proposal does not give rise to any insurmountable problems. The paper for paper relief is merely a deferral of the capital gains tax liability which would eventually crystallise if the paper is held by an Irish resident company.

4 *UK Alternative*

4.1 The above proposal assumes that Drake BV invests in Newco and subsequently acquires Subco. The proposal could also work if one of the group's UK companies

"Drake UK" was used instead of Drake BV. If there was any doubt regarding the tax residence of Drake BV, it would be preferable to use Drake UK, if its tax residence in the UK can be more readily established. The critical point is that, at the time Newco is liquidated and the shares in Subco are distributed, the holder of the 24 "B" ordinary shares is a non resident company and therefore outside of the Drake Irish CGT group.

4.2 It may also be somewhat easier to effect a change of residence for Subco from Ireland to the UK rather than to the Netherlands. From an optical point of view, it is less likely that a change of residence to the UK will raise Revenue queries as the UK is not perceived as a tax haven. Subco brings itself within the scope of UK capital gains tax and it might make it more difficult for the Irish Revenue to tax any gain given the provisions of the Ireland/UK tax treaty.

4.3 The downside to using Drake UK rather than Drake BV is that, unlike the Netherlands, any increase in value of the France shares between the date they were acquired by Subco and the date they were eventually sold to the third party will be taxable in the UK. Subco will, however, obtain a step up in value to the market value of the shares in France at the date it acquired them from Drake. It would also be possible to transfer Subco to Drake UK in the first instance, establish a UK tax residence for Subco and then, before there has been any significant increase in the value of Subco/France, liquidate Subco: Drake UK could then sell its investment in France to Drake BV without material UK tax cost. Alternatively, following the change of tax residence to the UK, Drake UK could sell Subco to Drake BV. Subco could be liquidated at this stage or could change its tax residence to the Netherlands.

4.4 One further possible advantage to using the UK rather than the Netherlands is that, if Drake UK borrows from a bank to acquire the Subco/France shares, any interest on such borrowings will be available to shelter other taxable income of the Drake group in the UK, although part of the interest will be absorbed in sheltering dividends received from France (see paragraph 7.2).

5 *Burman -v- Hedges & Butler*

5.1 The above proposal is a variation of a plan used in the UK case of Burman -v- Hedges & Butler in which the taxpayer was successful in mitigating its tax liability on the disposal of shares held in a large UK group of companies. (In the Burman case, the holder of the 26 "B" ordinary shares was the third party purchaser rather than a non-resident group company).

5.2 In the Burman case, the Revenue argued that, as the liquidation of Newco was envisaged from the start, the 76 "A" ordinary shares were beneficially owned by the purchaser at all times. They also argued that Subco was acting as nominee for the purchaser. Based on the facts of the case, however, both contentions were rejected by the courts but care will need to be taken to ensure that these arguments cannot be successfully made by the Irish Revenue in the present case.

5.3 Following the Burman case the UK legislation was amended to prevent the creation of "artificial" capital gains tax groups and the avoidance, in certain circumstances, of the UK equivalent to Sec. 135 by liquidation. No similar legislation was introduced in Ireland.

6. *Anti-Avoidance Legislation*

6.1 *General*

There is no specific anti-avoidance legislation which would impact on the proposal. The UK case of Burman -v- Hedges referred to above, although not binding in an Irish court, would certainly tend to support our conclusions on the matter.

6.2 *Section 86 Finance Act 1989*

From a tax perspective, there are a number of different areas which might give rise to concern regarding Section 86.

6.2.1 *Transferring France to Subco*

Our proposal differs from the Burman case in that Newco is not controlled by the purchaser (Drake BV) at the time France is transferred. In any event it is difficult to see what tax advantage is gained by this step.

6.2.2 *Liquidation of Newco*

There is no immediate tax advantage to the group as Subco retains the low base cost of the group's investment in France. I believe it would be difficult for the Revenue to sustain a Section 86 argument where the taxpayer is relying on a specific provision such as the provision to Section 135(1) relating to liquidations.

6.2.3 *Change of Residence of Subco followed by Sale of France*

I would have thought that if Revenue were to attack this aspect of the proposal it is more likely to be on the grounds that Subco remains tax resident in Ireland rather than on Section 86 grounds.

6.2.4 The Revenue could seek to link all the different stages of the proposal and argue that, when taken as a whole, the transactions are designed to eliminate tax on the eventual disposal of the group's investment in France.

6.2.5 I think the Revenue would have great difficulty in applying Sec. 86 but in view of the amount of tax at issue, I would strongly recommend that you obtain counsel's opinion on the proposal.

Dividends

7.1 At present, dividends received by Drake from France are not taxable as they constitute franked investment income. Similarly, Subco would not be taxed on any dividends received from France for as long as it remains tax resident in Ireland.

7.2 If Subco changes tax residence, the dividends will no longer constitute franked investment income but will not be taxable in Ireland as they will be received by a non-resident company. If Subco is resident in the Netherlands, the dividends should be exempt from Dutch tax but we need to confirm this with C&L Amsterdam. If Subco is tax resident in the UK, it will be subject to UK tax but it should be possible to shelter this with additional interest expenses (see paragraph 4.2).

7.3 The proposal will have an impact on the tax credit to dividends paid by Drake but its overall impact on the group's dividend policy should not be material.

8 Conclusion

8.1 You will appreciate that the proposal is aggressive from a tax point of view. There is, however, little down side for the group apart from costs. As the group has a minority interest only in France (and therefore no possibility of dividend stripping) and as it is held directly by Drake, the options available to the group in minimising tax on the disposal of its investment are limited. One alternative is to purchase capital gains tax losses but as well as being difficult to source such a course of action is itself open to Revenue attack.

8.2 To my knowledge this type of arrangement has not previously been implemented in Ireland. There are a number of Irish and non-Irish tax issues to be checked, there are legal and accounting issues to be confirmed and I would propose to obtain the opinion of Senior Counsel. Subject to these considerations it is my opinion this proposal has a high probability of success and I would recommend its implementation.

I trust that you will find the above useful. If you have any queries please do not hesitate to contact either Terry or me.

Kind regards.

Yours sincerely

Pat Wall

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31 March 1995.

Fergal O'Dwyer, Esq.
Development Capital Corporation
DCC House
Brewery Road
Stillorgan.

Dear Fergal,

I refer to our recent telephone conversation and attach a copy of Counsel's Opinion on the matter discussed.

The case put to Counsel was a hypothetical one and our discussions were strictly on a "no names" basis. We did not send him a copy of our letter of 21 March but he was provided with a briefing paper which summarised the issues discussed in that letter.

Broadly speaking, Counsel does not see any technical difficulty in implementing the proposal put to him. If you wish to discuss the matter in greater detail please do not hesitate to contact me.

Kind regards.

Yours sincerely,

P.P. Linda Hyde

Pat Wall.

Encl.
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Dated this 27th day of March, 1995

QUERISTS:-

The Drake Group

RE:-

Capital Gains Tax

COUNSEL'S OPINION

Coopers & Lybrand,
Chartered Accountants,
PO Box 1283 Fitzwilton House,
Wilton Place,
Dublin 2.

QUERISTS:-

The Drake Group

RE:-

Capital Gains Tax

COUNSEL'S OPINION

Having carefully considered the facts of this matter and the law applicable thereto I am of opinion as follows:-

I propose to approach the problems in the present case by advising upon such points as appear to arise from Agents' instructions to me and shall do so in the order in which they arise in those instructions and by reference to the numbers which they are therein given.

1. I do not think that anything arises out of this sub-paragraph. Some discussion took place towards the end of my consultation with Agents in relation to the nature of the shares in Newco but I really do not see that any great difficulty arises. It would seem to me that all that is

necessary is that the Articles of Association of Newco should provide that both classes of shares are to rank pari passu save that in that a winding up the amounts paid up or credited as paid up on the "A" ordinary shares shall be repaid to the holders of those shares in priority and that once those sums have been paid the amount paid up or credited as paid up on the B ordinary shares shall be paid to those shareholders and any surplus assets remaining shall be distributed to the B ordinary shareholders in proportion to the amounts paid up or credited as paid up on their shares: the mere fact that there may be nothing to distribute to the B ordinary shareholders under this last provision is, in my opinion, irrelevant.

1.1 Quite clearly Newco will be a member of Querists' group of companies (assuming, of course, that it is tax resident in this country): it will be a 75% subsidiary falling within Section 129 of the Corporation Tax Act, 1976, because 76% of its ordinary shares will be held by Newco - the A ordinary shares are, of course, ordinary shares because they do not merely confer a right to a dividend at a fixed rate.

1.2 I agree that 1% capital duty will be payable on the issue of shares in Newco - but as I understand that only one hundred shares will be issued that duty will, of course, be limited to £1 as the shares will not be issued at a premium.

2.1 I agree that provided Subco is resident in Ireland it will form part of the same group as Querists and Newco.

2.2 I also agree that capital duty on incorporation of Subco will be minimal as the share capital will be minimal.

3. There does not seem to be a discussion in my instructions as to how Drake BV will provide funds to enable Subco to purchase the shares in France but I presume that a loan will be made for that purpose - in any event this does not seem to impact greatly on the taxation matters upon which my advice is sought - the main question as far as I am concerned is what stamp duty will be payable in connection

with the transfer of the shares in France.

3.1 I agree that as Subco is within the Drake group for capital gains tax purposes no tax will arise on the transfer of the shares in France - this is the consequence of Section 130 of the Corporation Tax Act. Subco will, of course, be deemed to have acquired the shares in France at the same time and cost as they were required by Querists.

3.2 I agree with Agents that if the relief from stamp duty promised in the 1995 Budget is claimed on the transfer to Subco that relief would almost certainly be clawed back at Step 4 (assuming that Step 4 takes place within the two year period specified in Section 19(6) of the Finance Act, 1952: I am, of course, assuming that Section 19 of that Act will apply and that the amendment to be introduced will merely provide for a nil rate of stamp duty in Sub-Section (1) of the section). As the stamp duty clawback would appear to amount to about £300,000 it is clearly most desirable that steps be taken to avoid that liability. From the point of view of the "optics" of the situation there would, of course, be clear advantages in incurring this liability if it should arise - the relief could in the first instance be obtained and if the two years elapsed then the clawback would not appear to arise whereas if the two years did not elapse before a sale to an outsider the clawback would arise but there would be the cash with which to discharge it. However if it is desired to avoid it it would seem to me that this could be done by entering into a contract for the sale of the shares and purchase monies being paid on foot of the contract - on payment of the purchase monies the beneficial interest in the shares will pass to the purchaser. Care would, in my opinion, have to be taken in the drafting of the contract: it should, in my opinion, provide for a closing date which is, say, some days or weeks after the date of the contract: I do not think that such a contract could be stamped as a transfer even if the purchase price were paid because Section 81 of the Companies Act, 1963 provides that it shall not be

lawful for a company -

> "... to register a transfer of shares in or debentures of the company unless a proper instrument of transfer has been delivered to the company":

the effect of this is, it would seem to me, to require a proper instrument of transfer and I do not think that a contract can be a proper instrument of transfer even if the entire purchase monies have been paid thereunder - a proper instrument of transfer will normally be one which satisfies the provisions of the Articles of Association which usually require that a transfer should be in "the usual or common form", and such form would normally be the form provided by the Stock Transfer Act, 1963. Perhaps, however, to copperfasten the position it might be desirable to issue the shares as not fully paid up - if, for example, 5p were left unpaid on each share then the company has a clear interest in ensuring that a transfer in the form provided by the Stock Transfer Act, 1963, has been executed so as to enable the company to recover the unpaid portion of the purchase price. However this is by no means essential - it would seem to me that the Revenue would have great difficult in establishing that a contract for sale was in itself a transfer particularly if the contract could be made into a fairly lengthy document containing various covenants and so forth by the vendor. The point of this discussion is, of course, to avoid the Revenue being able to claim with success that the contract was itself a transfer - I think it highly unlikely that they would make such a claim and if they did I consider it even more unlikely that they would succeed - consequently it would seem to me that it should be sufficient for the usual form of contract to be entered into - Agents said at our consultation that they had in fact adopted this course in the past and in my opinion it should be safe so to do using the normal forms of contract which they have used in the past. In relation to the passing of the beneficial

interest - this will, in my opinion, pass upon the payment of the entire purchase price - see inter alia Tempany v Hynes, 1975 I.R.101, in which it was held that the beneficial interest passes to the extent to which the purchase price has been paid. Care must, of course, be taken to ensure that no receipt is issued for the purchase price in case such receipt could be regarded as being itself a transfer: what I would suggest is that a letter be written by the purchaser, Subco, to Querists stating that they enclose a draft for the entire purchase price due on foot of the contract and that Querists merely lodge that draft as a separate lodgement to whatever may be their appropriate account for the purpose so that it can be traced into it, and that they do not at any stage issue an acknowledgement to the purchaser, though they could pass a directors resolution acknowledging receipt of the purchase monies and directing them to be lodged to the specified account as a resolution is not a transfer not being a document (it being, rather, a mere record of a verbal transaction) - see Vaughton v Brine, 1840 1 Man & C 559, Beeching v Westbrook, 1841 8 M. & W. 411 and Hughes v Budd, 1840 8 Dowel. P.C. 478, cases which are quoted with approval by Monro and Nock on Stamp Duties at Paragraph 10.36.

4.1 Quite clearly on the liquidation of Newco Subco will leave the Drake Group but the proviso to Section 135 of the Corporation Tax Act will, in my opinion, prevent the crystallisation of any capital gains tax liability though Subco will, of course, at this point continue to hold the shares in France at their original base cost to Querists. I note that Agents state at this point (see p. 3 of the Case Submitted to me to Advise) that Newco would be regarded as disposing of its shares in Subco but as these would have no value no capital gains tax would arise - I presume from this that it is intended to capitalise Subco by way of loan. I agree with Agents that both Querists and Drake BV would be regarded as disposing of their

shareholdings in Newco at market value but this is negligible.

4.2 I agree that no stamp duty will arise on the transfer of the shares in France to Drake BV as the transfer will be a distribution in specie by the liquidator of Newco. At this point Agents once again return to the clawback provisions of Section 19 of the Finance Act, 1952 - I have already discussed them but I would agree with Agents that the optics are much better if there is a transfer of the shares in France to Subco and the relief is claimed - and if the shares should be held for a period of two years (assuming that that is the period retained in the forthcoming legislation) then the relief should not be lost: but I think that this is a matter for Querists and certainly if the shares are likely to be sold within the next two years I would have thought that an improvement in the optics would be unlikely to be worth the stamp duty cost of £300,000!

1. If the shares in Subco are sold to a purchaser while that company continues to hold the shares in France such sale should not, subject to Dutch law, give rise to any tax cost for Drake BV. There is, of course, the difficulty noted by Agents that a purchaser would acquire the shares in Subco at a base cost which was very small for Irish capital gains tax purposes and he would, accordingly, seek a reduction in the price to compensate him for that fact - but if the purchaser were resident abroad it should be possible to change the residence of Subco to a country where the purchaser is resident and then no Irish capital gains tax will arise. This last point does, of course, depend upon the terms of any new legislation in relation to residence - this was discussed at the consultation which I attended with Agents but one clearly cannot know the position until the Finance Act has been passed. I would also agree with

Agents that the option of selling Subco rather than the shares in France is only appropriate where there is a sale to a single purchaser and would be entirely inappropriate if there were a general offer to purchase France.

2. I would agree that if Subco can and does in fact change its residence prior to the disposal by it of the shares in France the gain deferred at the time of the transfer by Querists of the France shares would not crystallise under Section 135 because the non-resident company Subco would not be liable to Irish tax on the subsequent disposal by it of the shares in France. Of course whether Subco will be able to change its residence with ease or at all will depend on any new legislation which is in force at the time when it purports to do so - I cannot advise on this at present.

3. I agree that if the purchaser should make a paper offer for the France shares that proposal would not give rise to any real difficulty for the reason given in this paragraph (which appears on Page 5 of my instructions).

-4-

1. I agree with Agents that the proposal would work if Drake UK was used instead of Drake BV and that indeed there would be advantages in using Drake UK if its tax residence in the UK can be more readily established that the tax residence of Drake BV. This is, of course, a point upon which I do not have sufficient instructions to advise with certainty but I did gathered at the consultation which I attended that there might be some difficulty in establishing that Drake BV was tax resident in the Netherlands while it appears that there might be more substance to the claim that the United Kingdom company was in fact resident in the United Kingdom.

2. Again I agree that from an optical point of view it would be preferable to have a change of residence to the UK rather than to the Netherlands - the Irish Revenue would be

less likely to raise questions for a change of residence to the UK for the reason given by Agents - that is to say that it is not perceived as a tax haven. And if Subco comes within the United Kingdom capital gains tax legislation the Irish Revenue would find it difficult to tax any gain having regard to the provisions of the Convention with the United Kingdom.

3. It is, of course, true that an increase in the value of these shares in France between the date when they were acquired by Subco and the date when they were eventually sold to a third party would be taxable in the United Kingdom if Subco was resident in the United Kingdom - but even in those circumstances it would seem that Subco would obtain an increase in the value of the shares. I also agree with the suggestions made by Agents in Paragraph 4.3 of my instructions.

4. My instructions do not enable me to comment upon the point made in this paragraph (which appears on Page 6 of my instructions): I assume, however, that Drake UK does have sufficient borrowings to shelter other taxable income of the Drake Group in the United Kingdom.

-5-

1. I do not think it necessary for me to comment upon this paragraph - it is merely a statement of fact.

2. I do not see how the Irish Revenue could make with success the arguments made by the British Revenue in the Burman case as set forth in this sub-paragraph any more than the British Revenue did unless, of course, they called in aid Section 86 of the Finance Act, 1989 to which I refer below and which, in my opinion, they would be most unlikely to call in aid. I do, however, agree that care will have to be taken to ensure that the facts do reflect those in the Burman case.

3. The fact that the English legislation was amended and the Irish legislation was not does, of course, afford some

assistance in establishing that the proposals are satisfactory in the Irish context - the Irish Courts will not, of course, pay any regard to amendments made after the events which the Court is considering because the Court must consider the statute as it exists at the time of the events before it and not at any subsequent time (see the judgement of Griffin, J., in Cronin v Cork & County Property Company Limited, 3 I.C.R. at p. 210 when he said:-

> "With regard to the submission of Counsel for the company that the amendment of Section 18 by the Finance Act, 1981, Section 29 was an implied acceptance by the Oireachtas of the construction of Section 18 for which he contended, the Court cannot in my view construe a statute in the light of amendments that may thereafter have been made to it. An amendment to a statute can, at best, only be neutral, it may have been made for any one of a variety of reasons. It is, however, for the Courts to say what the true construction of a statute is, and that construction cannot be influenced by what the Oireachtas may subsequently have believed it to be".)

In the present case, however, one would not be arguing that there had been an amendment of the Irish Act subsequent to the date upon which the transactions had been effected - what one would be pointing out would be that the English had in fact legislated to cover this exact position and while it would not be a very strong argument it would be a point to be made and would not fall within the prohibition enunciated by Griffin, J.

-6-

1. I agree that there is no specific anti avoidance legislation which would impact on the proposal.

2.2 At the consultation which I attended with Agents I explained to them that in my view Section 86 is a difficult

section for the Revenue - they are faced with the problem that they must determine that certain facts are facts when in fact they are not facts, and it would seem to me that that must run a grave risk of being in breach of the provisions of Article 34:3:1 of the Constitution which provides that -

> "The Courts of first instance shall include a High Court invested with full original jurisdiction in and power to determine all matters and questions whether of law or fact, civil or criminal."

One of the basic functions of a Court is to determine the facts of a case and then to apply the law to it - this is evident, for example, in the case of O'Sullivan v P, 3 I.P.C. 355, 2 I.T.R. 464, in which it was held that the Courts had to determine the true nature of the transaction entered into by the taxpayer without paying attention to the words used by him and then apply the law to that nature as so found. If, however, the Revenue, when acting under Section 86, must first of all determine the facts to be other than they are, and that would seem to be an essential, then it would seem to me that they are flying in the face of the Constitution and in my opinion an Irish Court would in all probability determine that that was a void and invalid procedure. Indeed I can think of nothing more subversive to the whole concept of Constitutional justice than that the independence of the judiciary should be subverted in this particularly blatant manner. Consequently it would seem to me that the Revenue must be weak if they sought to enforce Section 86 - and perhaps that is why they have not done so to date (and did not, for a period of thirty years and more, seek to enforce Section 15 of the Finance Act, 1944, which gave an Inspector Draconian powers to ignore steps taken with a view to the avoidance of corporation profits tax). I do, however, agree with Agents that it is difficult for the Revenue to sustain an argument by reference to Section 86 where the

taxpayer relies on a specific provision such as the proviso to Section 135(1) of the Corporation Tax Act - I do not consider that Section 86 enables the Revenue to rewrite the legislation and if legislation applies to a particular fact then in my opinion the Revenue would be in serious difficulty in calling in aid Section 86.

2.3 In view of the foregoing I would agree with Agents that if the Revenue were to attack this transaction they are more likely to do so on the basis that Subco remained resident in Ireland, rather than on Section 86 grounds.

2.4 I do not think that the Revenue could fly in the face of the decision in McGrath v McDermott and merely look to the underlying economic nature of the transaction - one of the problems facing the Revenue if they adopted that course is that that procedure was ruled out as a possibility in the McGrath case, but in addition even if they relied on Section 86 to reintroduce it they would have to do so in a way which would appear to be in conflict with Article 34 of the Constitution - in other words what they would have to say is the Court is not to adopt its normal and proper methods of construction of fiscal statutes nor is it to determine what the facts are but it is to look to something other than the facts and to adopt a construction of the statutes dictated by the Revenue Commissioners. In my opinion the Court is unlikely to accede to such arguments. One cannot, of course, guarantee this position - Section 86 is there, it has the benefit of a presumption (which is, of course, capable of being rebutted and which in my opinion should be rebutted) that it is constitutional and the Courts will not be favourably disposed towards a corporation which has engaged in a tax avoidance scheme as a result of which it will save a very large amount of money: but notwithstanding those factors it would seem to me that Section 86 should not provide a refuge for the Revenue.

2.5 Accordingly I agree with the view expressed by Agents in this sub-paragraph that the Revenue would have great

difficulty in applying Section 86 - and as the amounts are so large and as there does not appear to be any serious downside risk involved in the transactions if a Section 86 attack should be successful it would seem to me that Querists should proceed on the basis that that section will not be relief on or, if relied on, will be defeated even though there is always the possibility that it will not be defeated: one cannot guarantee the position but one would do nothing if one stood in fear of the section (which was the Revenue desired) and in my opinion there are many and varied arguments which can be made against its application.

-7-

1. I agree that Subco would not be taxed on dividends received from the shares in France for as long as it remains resident in Ireland.
2. Again I agree that if the residence of Subco is changed dividends would not constitute franked investment income but would not be taxable in Ireland as they would be received by a non-resident company. I am not competent to advise upon the Netherlands position and in relation to the United Kingdom I take Agents' point that it should be possible to shelter dividends with additional interest expenses though that clearly is a practical and not a legal matter.
3. Clearly I cannot comment upon the impact on the Group's dividend policy if the proposals are implemented as I do not have sufficient instructions to do so and in any event that is very much a business/accountancy matter.

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As it would appear from the foregoing I am of opinion that these proposals are soundly based - there is always a danger in relation to Section 86 but I have already expressed my views on that point and do not consider the danger to be sufficient to

prevent the proposals being adopted. In my opinion they are proposals which should succeed in achieving the desired ends.

Nothing further occurs

Dated this 27th day of March, 1995 Thomas S. McCann

Wakefield House,
York Road,
Dun Laoghaire,
Co. Dublin.

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ATTENTION OF	Ms. Daphne Tease
COMPANY	DCC plc
FAX NO.	283 1017
FROM	Alvin Price
OUR REF.	2439-002-AP
NO. OF PAGES INCLUDING THIS ONE	1 DATE 7 April 1995

IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE TELEPHONE (353-1) 668 1711 AND ASK FOR - LIZ

MESSAGE

Dear Daphne,

I refer to our telephone conversation and wish to confirm that in my view where there is no change in the registered shareholder and no movement of the beneficial ownership of the relevant shares in a company (say, Company A) outside the shareholder's 100% owned Group, no new requirement to notify Company A arises.

Yours sincerely,

E. Price

P.P. Alvin F.M. Price
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2 May 1995.

Fergal O'Dwyer, Esq.
Development Capital Corporation
DCC House
Brewery Road
Stillorgan
Co. Dublin.

Dear Fergal,

Capital Gains Tax Minimisation

I refer to our telephone conversation on 21 April in which we discussed the alternatives of transferring the residence of Subco to the UK or the Netherlands.

I am sending you this note to summarise our discussion and conclusions.

The UK is less tax aggressive and in view of the existing substantial UK activities it may be easier to demonstrate a transfer of residence. On the downside any future uplift in the value of shares would be subject to UK capital gains tax. In view of the uncertain nature of any plans for a future disposal we agreed that the downside would outweigh the advantages.

A transfer of residence to the Netherlands is feasible and the additional tax risks are manageable. The principal risk is that the Irish Revenue might be more inclined to attack the transfer on the basis that the Netherlands is a capital gains tax free environment (i.e. a "tax haven"). In addition, the commercial case for the Netherlands might be somewhat weaker given your less tenuous business links with that country. However, I believe that these additional difficulties can be overcome by taking great care to ensure that the transfer of residence will stand up to Revenue assault. To ensure that this is the case it will be vital to be able to demonstrate that the effective management and control of Subco is in the Netherlands. All Board meetings will need to take place there and great care will have to be taken to ensure that the company is not defacto controlled from Ireland. We discussed the possibility that you might open a staff office in the Netherlands and this would significantly add to our defences.

In these circumstances I would be of the opinion that the Netherlands option is feasible and that there is a high probability that the proposed structure will succeed in achieving the objective of avoiding Irish capital gains tax. There is obviously some risk of a successful Revenue attack particularly if they were to invoke the provisions of section 86.

As a first step toward implementation of the proposal I have asked for a formal opinion from my Dutch colleagues which I expect to receive this week. I would aim to agree a final timetable with you in the coming days.

Kind regards.

Yours sincerely,

Pat Wall.

c.c. Jim Flavin, Esq.

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pmw/tod

11 May 1995.

Fergal O'Dwyer, Esq.
Development Capital Corporation plc
DCC House
Brewery Road
Stillorgan
Co. Dublin.

Dear Fergal,

Drake BV/Target

I attach a copy of letter from C&L Amsterdam dealing with the Dutch tax consequences of the transfer of Target to Drake BV.

The principal issue arising from the letter is that it will be necessary to seek a ruling from the Dutch authorities confirming Subco's entitlement to the participation exemption in respect of dividends received from Target and any gains arising on the eventual disposal of Target. While C&L Amsterdam are reasonably confident that such a ruling can be obtained, there can be no guarantee on this. This is an issue that we need to advance as soon as possible.

There are also some issues on the funding side which C&L Amsterdam need to consider in greater detail but these should not give rise to insurmountable difficulties.

On the Irish side, a proposed change to the Finance Bill has been introduced at Committee stage which would obliged Irish registered companies which are not tax resident here to report certain information to the Revenue. This proposed change will impact on Subco once it becomes non-resident. I attach a copy of the draft legislation for your information.

I should be obliged if you would telephone me when you have had an opportunity of reviewing C&L Amsterdam's letter. We also need to discuss the appointment of a Liquidator to Newco.

Kind regards.

Yours sincerely,

Terry O'Driscoll,
for Coopers & Lybrand.

c.c. Daphne Tease
DCC.

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COOPERS & LYBRAND

Coopers & Lybrand

Belastingadviseurs
Tax Lawyers and Consultants

Inter-office correspondence

to
Coopers & Lybrand

P.O. Box 1253, Dublin 2

Republic of Ireland

for attention of
Pat Wall / Terry O'Driscoll

your reference

date
May 10, 1995

from Coopers & Lybrand
P.O. Box 94669, 1090 GR Amsterdam

Prins Bernhardplein 200

1097 JB Amsterdam

name of writer
Peter van der Hoeven / Andrew Casley

our reference
inm3810.d95/A1688B2.01/PH/nn/nh

subject

Dear Pat/Terry

1. Further to your fax of May 3, 1995 in which you requested us to advise you on the Dutch tax consequences of the contemplated transfer of the shares of Target, we inform you as follows.

Dividends

2. Dividends received by a company resident in the Netherlands (Subco) from a foreign subsidiary (Target) are exempt from Dutch corporate income tax, if the following conditions are met:

- the company resident in the Netherlands holds 5% or more of the nominal share capital of the subsidiary;
- the subsidiary is subject to a tax on profits;
- the shares in the foreign subsidiary are not held as inventory;
- the shareholding in the foreign subsidiary can not be considered a portfolio investment.

3. The fourth condition is not relevant if the subsidiary is a EU-resident and the Dutch company holds more than 25% of the voting rights and the subsidiary is not subject to a "special tax regime" (Parent/Subsidiary Directive).

4. After the transfer of the shares of Target, Subco will hold 11% of the nominal share capital (and roughly the same (or less) of the voting rights). Whilst it would appear from your fax that the first three conditions are met, the Dutch tax inspector may argue that the shares in Target are held as a portfolio investment, since the activities of Target are not in line with the activities of the Drake group, and that therefore the participation exemption is not applicable.

5. Dividends paid by Subco to Drake B.V. will be exempt from Dutch corporate income tax under the participation exemption.

Capital gains

6. Under the Dutch participation exemption no distinction is drawn between dividends received and capital gains realized. Therefore, in this respect we refer to the remarks made in the paragraphs 2-5.

There is no minimum holding period before the participation exemption will apply.

Ruling

7. Based on the above, we would suggest filing a ruling request with the Dutch tax authorities, in order to agree in advance that the participation exemption will apply on the shares of Target.

8. Based on the following facts/information you provided us with, we think that we would have a strong case, although we cannot make any guarantees:

(i) Subco holds 11% of the ordinary shares and 8% of the preference shares of Target (the only two classes of share capital of Target).

(ii) The Drake group has Board Representation in Target and the Board member in question has played an active role in the strategic direction of the company;

(iii) The Drake group has held the shares of Target since 1980 and has no intention to sell the shares in the near future;

(iv) Drake is a venture capital company, maturing into an Industrial Holding Company (conglomerate), its business is making strategic investments in which the Drake group actively participates.

9. Please note that a ruling request in the Netherlands must contain the real names of the companies involved. We feel that this should not compromise confidentiality, since a tax ruling is not published; it will remain private between the tax inspector and the company.

10. Obtaining a ruling from the tax authorities will take approximately 1 - 3 months. You indicated that there is some urgency, please inform us whether we should prepare a draft ruling request and send it to you for approval.

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C&L Dublin

Existing interest/notional interest

11. The lending of funds interest free by Drake to Drake B.V. and by Drake B.V. to Subco will not adversely affect the deductibility of existing interest/notional interest.

Tax consequences of the proposed funding structure

12. According to Dutch case law, Drake B.V. should impute taxable interest income on the funds onlent to Subco. On the other hand Drake B.V. may deduct (imputed) interest costs, leaving a spread of 1/8% of the funds borrowed and onlent (1/8% * IRL 30,000,000 * 1,60 = NLG 60,000), taxed at a 40%/35% rate.

13. If Target qualifies for the participation exemption, the (imputed) interest cost in Subco (income in Drake B.V.) is not deductible for Dutch corporate income tax purposes, since these costs relate to an exempt foreign participation.

14. 1% capital tax will be due on both the interest cost in Drake B.V. and Subco (2 * 1% * 7% * IRL 30,000,000 * 1.60 = NLG 67,200). This capital tax will be due annually as long as the interest free loan structure is in place. The capital tax is deductible for Dutch corporate income tax purposes according to recent case law.

15. The tax inspector might qualify the funds provided to Subco not as a loan, but as a capital contribution. If so, a one-time 1% capital tax is due on the principal amount of the loan (1% * IRL 30,000,000 * 1,60 = NLG 480,000). In order to avoid this consequence, it should be shown that the funds provided to Subco can be regarded as a real loan and not as capital (a loan agreement should be drawn up and there should be evidence that the loan is repayable and will be repaid). As the only asset of Subco is the Target company this might be difficult to defend. If the principal of the loan is regarded a capital input you will appreciate that then no annual capital duty on interest foregone is due.

Tax resident in the Netherlands

16. In order to become a tax resident in the Netherlands from a Dutch perspective, the shareholders of Subco should decide in a shareholders' meeting to move Subco to the Netherlands. Subco should file a final corporate income tax return in Ireland, file a registration form with the Dutch Chamber of Commerce, rent an office in the Netherlands and appoint Dutch director(s). Board meetings and shareholder's meetings of Subco should be held in the Netherlands. Subco should be registered in the Netherlands for Dutch corporate income tax purposes.

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C&L Dublin

We note, however, that whilst this may be sufficient from a Dutch perspective, we would consider the Irish treatment to be crucial.

Distribution in specie of the shares in Subco

17. In your proposal Drake B.V. will own less than 25% of the shares in Newco, a company resident in Ireland. As this company is an intermediary holding company 100% owned by the Drake group, all condition for participation exemption in principle apply. We strongly advise, however, to apply for an advance ruling in this respect as well.

18. We understand that Newco will own 100% of the shares in Subco (a dual company incorporated under Irish law but resident in the Netherlands). We further understand that Newco will be liquidated shortly after incorporation and will distribute as liquidation dividend the Subco shares to Drake B.V., after repayment of nominal value on the 76% ordinary A shares to Drake Properties.

19. We understand that Subco has acquired Target at its actual market value and thus no hidden reserves are indirectly shifted from Drake Properties to Drake B.V. If this would have been the case, Dutch capital tax would be due.

20. In case no advance ruling can be obtained for Drake B.V.'s participation in Newco and the tax inspector takes the view that the participation exemption is not applicable on the shares in Newco and the value of the liquidation proceeds (i.e. Subco) exceeds the cost price of Newco to Drake B.V., a taxable gain (for the difference between the fair market value of the liquidation proceeds and the cost price of Newco in the books of Drake B.V.) is realized by Drake B.V. If the value of the liquidation proceeds is less than the cost price of Newco, the loss is deductible. The loss can not exceed the original cost price of Newco.

21. If the participation exemption is applicable, a gain realized on the liquidation of Newco is not taxable for Dutch corporate income tax purposes. A loss realized on the liquidation may be deductible, but can not exceed the cost price to Drake B.V. of its shares in Newco.

22. It is noted that Drake B.V. as well as Subco, after it moved its residence to the Netherlands, will be required to draw up its tax accounts in Dutch guilders. Consequently the cost price of Target is in Dutch guilders. Subsequent exchange differences might cause a loss or a gain in the tax books of Subco.

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Pat Wall / Terry O'Driscoll
DFL Dublin

23. From what we understand of the transaction any gain or loss should be small as it would have to arise from exchange differences or movements in Target's share price over the (brief) period for which Newco exists.

Please do not hesitate to contact us should you have any further questions.

Kind regards

Peter van der Hoeven / Andrew Casley

SECTION 55—*continued*

(4) A certificate may be subject to such conditions, including a date of revocation, as the Minister considers proper and specifies therein.'.".

—Charlie McCreevy.

*[*This is the appropriate reference if amendment no. 55 is accepted.*]

57. In page 91, lines 18 to 24, to delete subsection (1) and substitute the following:

"(1) Section 162 (as amended by section 48 of the Finance Act, 1990) of the Corporation Tax Act, 1976, is hereby repealed.".

—Charlie McCreevy.

SECTION 57

58. In page 92, before section 57, to insert the following new section:

"Amendment of section 141 (particulars to be supplied by new companies) of Corporation Tax Act, 1976.

57.—Section 141 of the Corporation Tax Act, 1976, is hereby amended—

(*a*) in the proviso to subsection (1), by the substitution for 'trade or profession' of 'trade, profession or business',

(*b*) by the insertion, after subsection (1), of the following subsections:

'(1A) Subject to subsection (1B), every company which is incorporated in the State and is neither resident in the State nor carrying on a trade, profession or business therein shall, in every case within thirty days of—

(*a*) the date on which it commences to carry on a trade, profession or business, wherever carried on, and

(*b*) any time at which there is a material change in information previously delivered by the company under this subsection, and

(*c*) the giving of a notice to the company by an inspector requiring a statement under this subsection,

deliver to the Revenue Commissioners a statement in writing containing particulars of—

(i) the name of the company;

(ii) the address of its registered office in the State and the address of its principal place of business;

(iii) the nature of the trade, profession or business;

(iv) the name and address of the secretary of the company;

(v) (I) where the company is controlled by a company the shares in which are listed in the official list of a recognised stock exchange and have been the subject of dealings on the said exchange in the period of 12 months ending at the time at which the statement is delivered, the name of

SECTION 57—*continued.*

that company and the address of its registered office, and

(II) in any other case, the name and address of any individual or individuals who have control of the company;

(vi) the territory in which the central management and control of the company is normally carried out; and

(vii) such other information as the Revenue Commissioners consider necessary for the purposes of determining the territory in which the company is resident for the purposes of tax.

(1B) Subsection (1A) shall not apply to a company (hereafter in this subsection referred to as the "first-mentioned company") if at the time at which a statement under that subsection would, apart from this subsection, fall to be delivered, there is a company, which is a 90 per cent. subsidiary of the first-mentioned company, carrying on a trade or profession in the State.',

and

(*c*) by the addition, after subsection (2), of the following subsection:

'(3) For the purposes of this section—

(*a*) sections 108 to 114 of the Corporation Tax Act, 1976, shall apply for the purposes of this paragraph as they would apply for the purposes of Part XI of that Act if subsection (7) of section 107 of the said Act were deleted, and

(*b*) control shall be construed in accordance with section 102 of the Corporation Tax Act, 1976.'.".

—An tAire Airgeadais.

SECTION 58

59. In page 93, before section 58, to insert the following new section:

"58.—Section 39 (1A) of the Finance Act, 1980 is hereby amended—

(*a*) by the insertion of the following:

'(*c*) artificial insemination (AI) production,', and

(*b*) by the insertion of the following:

'(iii) in relation to artificial insemination as including references to artificial insemination production,'.".

—Charlie McCreevy.

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WILLIAM FRY

SOLICITORS

FITZWILTON HOUSE, WILTON PLACE, DUBLIN 2. IRELAND.
TEL 01-668 1711, FAX 01-668 7016.
TELEX 93469, D.D.E. BOX NO. 023.

YOUR REF

IN REPLY PLEASE QUOTE

2439-131-AP

12 May 1995

Ms Daphne Tease
DCC plc
DCC House
Brewery Road
Stillorgan
Blackrock
Co Dublin

Dear Daphne,

I am enclosing for your attention a first draft of the Memorandum and Articles of Association of both Marjove Limited ("Newco") and Lotus Green Limited ("Subco").

I would make the following points.

1. The objects of both companies are standard holding companies which I believe is appropriate.

2. You will see that in the Articles of Marjove I have provided for the agreed stream of distribution of assets on a winding up. I believe the powers contained in Regulation 137 of Table A Part I are sufficient in terms of enabling a liquidator to distribute the assets in specie with the sanction of a special resolution.

3. In Article 16 of both Articles I have provided for up to five Directors which is probably sufficient given the power to appoint alternates.

I am also enclosing the necessary resolutions to make the relevant modifications to the Articles. If they are in order, this could be implemented.

Yours sincerely,

Alvin F M Price
WILLIAM FRY
Solicitors

c.c. Terry O'Driscoll Esq., Coopers & Lybrand

1146BH:LL

COMPANIES ACTS, 1963 to 1990

COMPANY LIMITED BY SHARES

MEMORANDUM OF ASSOCIATION

OF

MARJOVE LIMITED

1. The name of the Company is Marjove Limited.

2. The objects for which the Company is established are:-

(a) To carry on the business of an investment company and for that purpose to acquire and hold either in the name of the company or in that of any nominee shares, stocks, debentures, debenture stock, bonds, notes, obligations and securities issued or guaranteed by any company wherever incorporated or carrying on business and debentures, debenture stock, bonds, notes, obligations and securities issued or guaranteed by any government, sovereign ruler, commissioners, public body or authority, supreme, dependent, municipal, local or otherwise in any part of the world.

(b) To acquire any such shares, stock, debentures, debenture stock, bonds, notes, obligations or securities by original subscription, contract, tender, purchase, exchange, underwriting, participation in syndicates or otherwise and whether or not fully paid up and to subscribe for the same subject to such terms and conditions (if any) as may be thought fit.

(c) To exercise and enforce all rights and powers conferred by or incident to the ownership of any such shares, stock obligations or other securities including without prejudice to the generality of the foregoing all such powers of veto or control as may be conferred by virtue of the holding by the company of such special proportion of the issued or nominal amount thereof and to provide managerial and other executive, supervisory and consultant services for or in relation to any company in which the Company is interested upon such terms as may be thought fit.

(d) To undertake the management and control and supervision of the business or operations of any person or company and in particular, without limitation, to plan and effectively carry out the

organisation of and to initiate and to carry out schemes for the promotion and expansion of any such business, to engage in research into all problems relating to investment, property, financial, portfolio, industrial and business management, to carry out all or any work of a clerical, secretarial, managerial or other like nature, to provide staff and services, to prepare and deal with accounts, returns, forms and all documents required to be prepared and furnished in relation to any such bodies, to direct and carry out all advertising and publicity for any such business, and generally to do all acts and things (including the receipt and payment of money) necessary to be done for the supervision of the day to day running of any such business and to enter into contracts with any such company for the carrying out of the works or provisions of any of the services which the Company is authorised to perform or provide.

(e) To promote, develop and secure the interests of the group of companies which for the time being shall consist of the Company and any company which for the time being is an Associated Company and to so do in such manner as the Company may think fit and in particular, without limitation, by giving any guarantee, indemnity, support or security, in respect of or, directly or indirectly, assuming any liability or obligation of, any Associated Company, by making any payment or loan or disposition of any property, assets or rights to or for the benefit of any Associated Company or acquiring any property, assets or rights from any Associated Company notwithstanding that the Company may not receive in respect of any such transaction full or adequate consideration therefor or any consideration whatsoever or may pay consideration which would or might be in excess of an arms' length consideration.

(f) To purchase or otherwise acquire and carry on all or any part of the business or property and to undertake any liabilities of any person or company possessed of property suitable for any of the purposes of the Company or carrying on or proposing to carry on any business which the Company is authorised to carry on or which can be carried on in connection with the same or which is capable of being conducted so as, directly or indirectly, to benefit the Company.

(g) To purchase, take on lease, on licence, in exchange, upon option or otherwise acquire and hold any lands, buildings, property (whether leasehold or freehold) or any rights or interests therein or in respect thereof or in any forests, crops or growing produce thereon or any minerals therein or thereunder or any rights to pass thereon or any rights or interests in or over the sea, the sea bed, the sea shore, the sky or in space, or any interests connected or associated

with any of the foregoing and to exercise any rights in respect thereof and to develop, improve, alter or manage the same or any part thereof in any way (including, without limitation, construction, demolition, landscaping, planting, draining and improving) and to farm, harvest or extract anything from the same.

(h) To purchase, take on lease, on licence, in exchange, upon option, on hire or hire-purchase, or otherwise acquire and hold any personal property, rights or privileges which the Company may think necessary or convenient for the purposes of its business or which may seem to the Company calculated, directly or indirectly, to benefit the Company including, without limitation, the subscription, taking or otherwise acquiring of Securities in any company.

(i) To apply for, purchase or otherwise acquire and protect and renew any patents, patent rights, inventions, secret processes, recipes, receipts, prescriptions, formulae, trade marks, trade names, designs, licences, concessions and the like, conferring any exclusive or non-exclusive or limited right to their use, or any secret or other information as to any invention or process which may seem capable of being used for any of the purposes of the Company or the acquisition of which may seem calculated, directly or indirectly, to benefit the Company and to use, exercise, develop or grant licences in respect of, or otherwise turn to account, the property, rights or information so acquired and to expend money in experimenting upon, testing or improving any such patents, inventions or rights.

(j) To establish or promote or concur in establishing or promoting any company or companies for the purpose of acquiring all or any of the property, rights and liabilities of the Company or for any other purpose which may seem, directly or indirectly, calculated to benefit the Company or to place or guarantee the placing of, underwrite, subscribe for or otherwise acquire all or any part of the Securities of any such other company.

(k) To invest and to deal with the moneys of the Company not immediately required in any manner.

(l) To amalgamate, enter into partnership or into any arrangement for sharing profits, union of interests, co-operation, joint venture, reciprocal concession, mutual assistance or otherwise with any person or company carrying on or engaged in or about to carry on or engage in, any business or transaction which the Company is authorised to carry on or engage in or which can be carried on in conjunction therewith or which is capable of being conducted so as, directly or indirectly, to benefit the Company.

(m) To sell, lease, mortgage or otherwise dispose of the business, property, assets or undertaking of the Company or any part thereof for such consideration as the Company may think fit and to improve, manage, develop, exchange, licence, turn to account or otherwise deal with, all or any of the business, property, assets and undertaking of the Company and in particular, without limitation, to accept Securities of any other company in payment or part payment of the consideration payable to the Company in respect of any transaction referred to in this paragraph.

(n) To establish and maintain or procure the establishment and maintenance of or to adhere to any contributory or non-contributory pension or superannuation funds, schemes or plans for the benefit of, and give or procure the giving of donations, gratuities, pensions, allowances or emoluments to any persons who are or were at any time in the employment or service of the Company or of any Associated Company or who are or were at any time Directors or officers of the Company or of any Associated Company and the spouses, families and dependents of any such persons and also establish and subsidise and subscribe to any associations, institutions, clubs or funds calculated to be for the benefit of the Company and to make payments to or towards the insurance of any such person as aforesaid either alone or in conjunction with any other company and further to do any acts or things or make any arrangements or provisions necessary or desirable to enable all or any of such persons as aforesaid to become shareholders in the Company or otherwise to participate in the profits of the Company or any Associated Company.

(o) To settle moneys or other assets on the trustee or trustees of any trust, foundation, settlement or institution set up for charitable or benevolent purposes or for any public, general or useful object or to lend money or provide services (with or without interest or charge) to any such trustee or trustees and to pay, subscribe, lend or contribute assets or services of the Company (with or without interest or charge) or give any guarantee or indemnity in respect of any trust, foundation, settlement or institution set up or operating for any such purpose or object or in respect of any exhibition or for any charitable, benevolent, public, general or useful object.

(p) To borrow or raise money in such manner as the Company shall think fit and in particular, without limitation, by the issue of Securities of the Company (other than shares or stock) and to secure the repayment of any moneys borrowed or raised or any other obligation, debt or liability of any nature of the Company by way of mortgage, charge, lien or other security interest over or in respect of all or any of

the Company's undertaking, property or assets (both present and future and including its uncalled capital) upon such terms as to priority and otherwise as the Company shall think fit.

(q) To lend and advance money or give credit to any person or company and upon such terms as may seem expedient (whether with or without security or any interest or other charge).

(r) To give any guarantee or indemnity in respect of or otherwise support or secure in any manner (whether by personal covenant or by mortgaging, charging or granting any lien or other security interest over or in respect of all or any part of the Company's undertaking, property or assets, both present and future and including its uncalled capital, or by both such methods) any obligation, debt, liability of any nature of any person or company upon such terms as to priority and otherwise as the Company shall think fit.

(s) To pay for any rights or property acquired by the Company and to remunerate any person or company whether by way of cash payment or by the allotment of Securities of the Company credited as paid up in full or in part or otherwise.

(t) Upon any issue of Securities of the Company to employ brokers, commission agents and underwriters and to provide for the remuneration of such persons for their services.

(u) To draw, make, accept, indorse, discount, execute and issue promissory notes, bills of exchange, bills of lading, warrants, debentures and other negotiable or transferable instruments.

(v) To enter into any arrangements with any governments or authorities, supreme, municipal, local or otherwise, or any person or company that may seem conducive to the Company's objects or any of them and to obtain from any such government, authority, person or company any rights, privileges, charters, licenses and concessions which the Company may think it desirable to obtain and to carry out, exercise and comply therewith.

(w) To undertake and execute any trusts the undertaking whereof may seem desirable and either gratuitously or otherwise.

(x) To adopt such means of making known the products, investments or services of the Company or any Associated Company as may seem expedient and in particular, without limitation, by advertising in the press or radio or television by circulars, by purchase and exhibition of works of art or interest, by publication of books and periodicals and by

granting prizes, rewards, scholarships and donations and by sponsoring sports events, theatrical and cinematic performances and exhibitions of all descriptions.

(y) To apply for, promote and obtain any Act of the Oireachtas or any charter, privilege, licence or authorisation of any government, state or municipality or any ministerial or departmental licence or order for enabling the Company to carry any of its objects into effect or for effecting any modification of the Company's constitution or for any other purpose which may seem expedient and to oppose any proceedings or applications which may seem calculated, directly or indirectly, to prejudice the interests of the Company or any Associated Company.

(z) To promote freedom of contract and to resist, insure against, counteract and discourage interference therewith, to join any lawful federation, union or association or to do any lawful act or thing with a view to preventing or resisting, directly or indirectly, any interruption of or interference with the trade or business of the Company or any other trade or business or providing or safeguarding against the same or resisting or opposing any strike, movement or organisation which may be thought detrimental to the interests of the Company or any Associated Company or its or their employees and to subscribe to any association or fund for any such purposes.

(aa) To undertake and carry on any other trade or business (whether manufacturing or otherwise) which may seem to the Company capable of being conveniently carried on by the Company or which is calculated, directly or indirectly, to enhance the value of or render profitable, any of the Company's businesses, rights or property.

(ab) To do all or any of the matters hereby authorised in any part of the World and with or in respect of persons or companies resident, domiciled, incorporated, registered or carrying on business in any part of the World and either as principal, agent, factor, trustee or otherwise and by or through agents, factors, trustees or otherwise and either alone or in conjunction with others.

(ac) To distribute in specie or otherwise as may be resolved any of the assets of the Company among the members.

(ad) To do all such other things as may appear to the Company to be incidental or conducive to the attainment of the above objects or any of them.

Provided that:

(i) the objects set out in any paragraph of this Clause shall not be restrictively construed but the widest interpretation shall be given thereto and they shall not, except where the context expressly so requires, be in any way limited to or restricted by reference to or inference from any other object or objects set out in such paragraph or from the terms of any other paragraph or by the name of the Company; none of such paragraphs or the object or objects therein specified shall be deemed subsidiary or ancillary to the objects mentioned in any other paragraph, but the Company shall have full power to exercise all or any of the powers and to achieve and endeavour to achieve all or any of the objects conferred by and provided in any one or more of said paragraphs;

(ii) the word "company" in this Clause, except where used in reference to the Company, shall be deemed to include any firm, partnership, association or other body of persons, whether incorporated or not incorporated, and whether resident, domiciled, incorporated, registered, or carrying on business in the State or elsewhere;

(iii) the expression "Associated Company" in this Clause, shall be deemed to mean any company which for the time being is a subsidiary or holding company (which expressions in this proviso shall bear the meanings respectively ascribed thereto by Section 155 Companies Act, 1963) of the Company, is a subsidiary of a holding company of the Company or is a company in which the Company or any of such companies as aforesaid shall for the time being hold shares entitling the holder thereof to exercise at least one-fifth of the votes at any general meeting of such company (not being voting rights which arise only in specified circumstances); and

(iv) the expression "Securities" in this Clause, shall be deemed to mean any shares, stocks, bonds, debentures or debenture stock (whether perpetual or not), loan stock, notes, obligations or other securities or assets of any kind, whether corporeal or incorporeal.

3. The capital of the Company is IR £100 divided into 76 "A" Ordinary Shares of £1 each and 24 "B" Ordinary Shares of IR £1 each.

COMPANIES ACTS, 1963 to 1990

COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

OF

MARJOVE LIMITED

REGULATIONS

1. The Regulations contained in Part I of Table A in the First Schedule to the Companies Act, 1963 (as the same is amended by the Companies Acts, 1963-1990 and with the exception of Regulations 8, 11, 24, 51, 54, 75, 77, 79, 84, 86, 91 to 100 inclusive and 138 thereof) and the Regulations contained in Part II of Table A as aforesaid (as the same is amended as aforesaid and with the exception of Regulations 1 and 9 thereof) shall apply to the Company save in so far as they are excluded or modified hereby and such Regulations together with the Articles hereinafter contained shall constitute the Regulations of the Company.

SHARES

2. (a) The capital of the Company is IR£100 divided into 76 "A" Ordinary Shares of IR£1 each and 24 "B" Ordinary Shares of IR £1 each.

(b) The "A" Ordinary Shares and the "B" Ordinary Shares shall rank pari passu in all respects save that on a return of assets whether on a winding up or otherwise, the holders of the "A" Ordinary Shares shall be entitled to participate in priority to the

holders of the "B" Ordinary Shares but only to the extent of the capital (including share premium), paid up on the "A" Ordinary Shares. On the payment of such amount as aforesaid to the holders of the "A" Ordinary Shares, the holders of the "B" Ordinary Shares shall be entitled to receive the amount of the capital (including share premium) paid up on the B Ordinary Shares and any surplus assets arising after the payment of the paid up capital to the holders of B Ordinary Shares as aforesaid shall be distributed among the holders of the B Ordinary Shares in proportion to the amounts the up or credited as paid up on their shares. If the assets of the Company on a winding up shall be insufficient to make repayment in full of the paid up capital to the holders of the "A" Ordinary Shares or "B" Ordinary Shares as herein provided, the assets available for such purpose in either case shall be distributed in proportion to the amounts paid up or credited as paid up on their shares.

3. For the purpose of Section 20 Companies (Amendment) Act, 1983, the Directors of the Company are generally and unconditionally authorised to allot relevant securities as defined by Section 20 (10) of the said Act up to a maximum of the authorised but as yet unissued share capital of the Company at the date on which the Company was incorporated. This authority shall expire five years after the date of incorporation of the Company but may be previously revoked or varied by the Company in general meeting and may be renewed by the Company in general meeting for a further period not exceeding five years from the date of such renewal. The Company may make any offer or agreement before the expiry of this authority which would or might require relevant securities to be allotted after this authority has expired and the Directors may allot relevant securities in pursuance of any such offer or agreement.

4. The pre-emption provisions of sub-sections (1) (7) and (8) of Section 23 Companies (Amendment) Act, 1983 shall not apply to any allotment by the Company of equity securities (as defined in such Section).

5. Subject to the provisions of the Companies Act, 1990, any shares may be issued on the terms that they are, or, at the option of the Company are, liable to be redeemed on such terms and in such manner as the Company before the issue of the shares may by special resolution determine.

PURCHASE OF OWN SHARES

6. (a) Subject to the provisions of and to the extent permitted by the Companies Acts, 1963 - 1990 to any rights conferred on the holders of any class of shares and to the following paragraphs of this Article the Company may purchase any of its shares of any class and may cancel any shares so purchased and hold them as Treasury Shares (within the meaning of Section 209 of the Companies Act, 1990) with liberty to reissue any such share or shares as shares of any class or classes.

(b) The Company shall not exercise any authority granted under Section 213 (off market) or Section 215 (market) of the Companies Act, 1990 to make purchases of its own shares unless the authority required by such Section shall have been granted by special resolution of the Company.

(c) The Company shall not be required to select the shares to be purchased on a pro rata basis or in any particular manner as between the holder of the shares of the same class or as between the holders of shares of different classes.

LIEN

7. The Company shall have a first and paramount lien on every share for all moneys (whether immediately payable or not) called or payable at a fixed time in respect of that share, and the Company shall also have a first and paramount lien on all shares standing registered in the name of any person whether he be the sole registered holder thereof or one of two joint holders for all moneys immediately payable by him or his estate to the Company, but the Directors may at any time declare any share to be wholly or in part exempt from the provisions of this Regulation. The Company's lien on a share shall extend to all dividends payable thereon.

TRANSFER OF SHARES

8. An instrument of transfer of a share (other than a partly paid share) need not be executed on behalf of the transferee and need not be attested and Regulation 22 of Table A Part I shall be modified accordingly.

9. No transfer of any share in the capital of the Company (whether on a sale of such shares or transmission thereof by operation of law or otherwise howsoever) shall be registered unless such transfer is approved by resolution of the Directors. Regulations 29 to 32 of Table A Part I shall be modified accordingly.

MEETINGS

10. The following words shall be added to the end of Regulation 53 of Table A Part I, "and fixing the remuneration of Directors".

11. It shall not be necessary to give any notice of any adjourned meeting and Regulation 58 of Table A Part I shall be modified accordingly.

12. A poll may be demanded by the Chairman or by any member present in person or by proxy and Regulation 59 of Table A Part I shall be modified accordingly.

13. Where any meeting of the Company is held at short notice pursuant to Section 133 (3) or Section 141 (2) of the Act it shall be sufficient if the instrument appointing a proxy (and the power of attorney or other authority, if any, under which it is signed, or a notarially certified copy of such power or authority) is deposited with the Chairman of the meeting immediately upon the commencement of such meeting and Regulation 70 of Table A Part I shall be modified accordingly.

14. The resolution in writing mentioned in Regulation 6 of Table A Part II may consist of several documents in the like form each signed by one or more members (or being bodies corporate by their duly authorised representatives).

DIRECTORS

15. The number of Directors shall not be less than two nor, unless and until otherwise determined by the Company by ordinary resolution, more than [5]. A Director shall not retire by rotation and Regulation 110 of Table A Part I shall be modified accordingly.

16. A Director shall not require a share qualification but nevertheless shall be entitled to receive notice of and to attend and speak at any general meeting of or any separate meeting of the holders of any class of shares in the

Company and Regulation 136 of Table A Part I shall be modified accordingly.

17. (a) Any Director may by writing under his hand appoint (i) any other Director, or (ii) any other person who is approved by the Board of Directors as hereinafter provided, to be his alternate and every such alternate shall be entitled to receive notices of all meetings of the Directors and, in the absence from the Board of the Director appointing him, to attend and vote at meetings of Directors, and to exercise all the powers, rights, duties and authorities of the Director appointing him (other than the right to appoint an alternate hereunder) provided always that no such appointment of a person other than a Director shall be operative unless and until the approval of the Board of Directors by a simple majority of the whole Board shall have been given and entered in the Directors' Minute Book.

(b) A Director may at any time revoke the appointment of any alternate appointed by him and subject to such approval as aforesaid appoint another person in his place and if a Director shall die or cease to hold the office of Director the appointment of his alternate shall thereupon cease and determine. An alternate Director shall not be counted in reckoning the maximum number of Directors allowed by the Articles of Association for the time being. A Director acting as alternate shall have an additional vote at meetings of Directors for each Director for whom he acts as alternate but he shall count as only one for the purpose of determining whether a quorum be present.

(c) Every person acting as an alternate Director shall be an officer of the Company and shall alone be

responsible to the Company for his own acts and defaults and he shall not be deemed to be the agent of or for the Director appointing him. The remuneration of any such alternate Director shall be payable out of the remuneration paid to the Director appointing him and shall consist of such portion of the last mentioned remuneration as shall be agreed between the alternate and the Director appointing him.

(d) Any appointment or revocation by a Director under this Article shall be effected by notice in writing given under his hand and delivered to the Secretary or lodged at the registered office of the Company.

18. A Director present at a meeting of the Directors shall in addition to his own vote be entitled to one vote in respect of each other Director not present at the meeting who shall have authorised him in respect of such meeting to vote for such other Director in his absence. Any such authority may relate generally to all meetings of the Directors or to any specified meeting or meetings and must be in writing or by telefax, by cable or telegram or telex message, which must be presented to the Secretary for filing prior to or be produced at the first meeting at which a vote is to be cast pursuant thereto.

19. The Directors may establish and maintain or procure the establishment and maintenance of any non-contributory or contributory pension or superannuation funds for the benefit of and give or procure the giving of donations, gratuities, pensions, allowances or emoluments to any persons who are or were at any time in the employment or service of the Company or of any company which is a subsidiary of the Company or is allied to or associated with the Company or with any such subsidiary or who are or were at any time Directors or officers of the Company or

of any such other company aforesaid and hold or have at any time held any salaried employment or office in the Company or such other company and the wives, widows, families and dependents of any such persons and also establish and subsidise or subscribe to any institutions, associations, clubs or funds calculated to be for the benefit of or to advance the interests and well-being of the Company or any such other company as aforesaid or of any such persons as aforesaid and make payments for or towards the insurance of any such persons as aforesaid and subscribe or guarantee money for any charitable or benevolent objects or for any exhibition or for any public general or useful object and do any of the matters aforesaid either alone or in conjunction with any such other company as aforesaid. Any Director who holds or has held any such employment or office shall be entitled to participate in and retain for his own benefit any such donation, gratuity, pension, allowance or emolument to the extent and upon such terms as may for the time being be permitted or required by law.

20. The Directors shall have power at any time and from time to time to appoint any person to be a Director, either to fill a casual vacancy or as an addition to the existing Directors, but so that the total number of Directors shall not at any time exceed the number fixed in accordance with these regulations.

21. The office of a Director shall be vacated if the Director:-

(a) is adjudged bankrupt in the State or in any part of the World or makes any arrangement or composition with his creditors generally;

(b) becomes the subject of a Restriction Order made under Section 150 of the Companies Act, 1990;

(c) becomes the subject of a Disqualification Order made under Section 160 of the Companies Act, 1990;

(d) in the opinion of all his co-Directors becomes incapable by reason of mental disorder of discharging his duties as Director;

(e) resigns such office by notice in writing to the Company;

(f) is convicted of an indictable offence (other than an offence under the Road Traffic Acts for which he is not sentenced to imprisonment and actually imprisoned) unless the Directors otherwise determine; or

(g) is removed from office by a resolution duly passed pursuant to Section 182 of the Act or under the provisions of the next succeeding Article hereof.

22. In addition to and without prejudice to the provisions of the Act, the Company may by ordinary resolution remove any Director before the expiration of his period of office notwithstanding anything in these regulations or in any agreement between the Company and such Director. Any such removal shall be without prejudice to any claim such Director may have for damages for breach of any contract of service between him and the Company. The Company may, by ordinary resolution, appoint another person in place of any Director so removed from office.

23. Any Director who serves on any committee or who devotes special attention to the business of the Company or who otherwise performs services which in the opinion of the Directors are outside the scope of the ordinary duties of a Director, may be paid such extra remuneration by way of

salary, percentage of profits or otherwise as the Directors may determine.

24. Any such resolution in writing as is referred to in Regulation 109 of Table A Part I may consist of several documents in the like form each signed by one or more of the Directors for the time being entitled to receive notice of meetings of the Directors.

25. Any Director or alternate Director may participate in a meeting of the Directors or any committee of the Directors by means of conference telephone or other telecommunications equipment by means of which all persons participating in the meeting can hear each other and such participation in a meeting shall constitute a presence in person at the meeting.

BORROWING POWERS

26. The Directors may exercise all the powers of the Company to borrow money, and to mortgage or charge its undertaking, property and uncalled capital or any part thereof and to issue debentures, debenture stock and other securities, whether outright or as security for any debt, liability or obligation of the Company or of any third party. Debentures, debenture stock and other securities may be made assignable free from any equities between the Company and any person to whom the same may be issued. Any debentures or debenture stock may be issued at a discount, premium or otherwise and with any special rights as to redemption, surrender, drawings, allotment of shares, attending and voting at general meetings of the Company, appointment of Directors or otherwise.

NOTICES

27. Every person who, by operation of law, transfer, or other means shall become entitled to any share shall be bound by every notice or other document which, previous to his name and address being entered on the register in respect of such share, shall have been given to the person in whose name the share shall have been previously registered.

28. Any notice or document sent by post to the registered address of any member in pursuance of these presents shall, notwithstanding that such member be then deceased, and whether or not the Company have notice of his decease, be deemed to have been duly served in respect of any shares held by such member (whether solely or jointly with other person or persons) until some other person or persons be registered in his stead as the holder or joint holders thereof, and such service shall for all purposes of these presents be deemed a sufficient service of such notice or document on his or her executors or administrators, and all persons (if any) jointly interested with him or her in any such share.

29. The signature to any notice to be given by the Company may be written or printed.

INDEMNITY

30. Subject to the Act, every Director or other officer of the Company shall be entitled to be indemnified out of the assets of the Company against all losses or liabilities which he may sustain or incur in or about the execution of the duties of his office or otherwise in relation thereto.

SECRECY

31. No member shall be entitled to require discovery of or any information respecting any detail of the trading of the Company or any matter which is or may be in the nature of a trade secret, mystery of trade, or secret process which may relate to the conduct of the business of the Company, and which, in the opinion of the Directors, it would be inexpedient in the interests of the members of the Company to communicate to the public.

Names, addresses and descriptions of subscribers:

Frymount Limited

Director
Fitzwilton House
Wilton Place
Dublin 2
Limited Company

Lower Mount Nominees Limited.

Director
Fitzwilton House
Wilton Place
Dublin 2

Limited Company

Dated this day of 19

Witness to the above signatures:

Fitzwilton House,
Wilton Place,
Dublin 2.

Secretary

1143BH:11

D7.

MARJOVE LIMITED

We, the undersigned, being the holders of the entire issued share capital of Marjove Limited hereby resolve as follows:-

1. Ordinary Resolution.

That the authorised share capital of the Company be reduced by the sum of IR£[99,900] (all of which represents part of the share capital of the Company which has not been taken or agreed to be taken by any person) such that the authorised capital of the Company shall be the sum of IR£100.

2. Special Resolution.

That the existing two issued Ordinary Shares of IR£1 each be re-designated as "A" Ordinary Shares and that the existing unissued share capital of IR£98 (remaining after resolution 1) be redesignated as 74 "A" Ordinary Shares of IR£1 each and 24 "B" Ordinary Shares of IR£1 each.

3. Special Resolution.

That Clause [2] of the Memorandum of Association of the Company be deleted and be replaced by the clause set out in the document annexed hereto and marked with the letter "A".

4. Special Resolution.

That the existing Articles of Association of the Company be deleted and that they be replaced by the Articles of Association set out in the document annexed hereto and marked "B".

Dated May 1995

1144BH:dg

DRAFT 12.5.95-9:59am
1145BH

COMPANIES ACTS, 1963 to 1990

COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

OF

LOTUS GREEN LIMITED

REGULATIONS

1. The Regulations contained in Part I of Table A in the First Schedule to the Companies Act, 1963 (as the same is amended by the Companies Acts, 1963–1990 and with the exception of Regulations 8, 11, 24, 51, 54, 75, 77, 79, 84, 86, 91 to 100 inclusive and 138 thereof) and the Regulations contained in Part II of Table A as aforesaid (as the same is amended as aforesaid and with the exception of Regulations 1 and 9 thereof) shall apply to the Company save in so far as they are excluded or modified hereby and such Regulations together with the Articles hereinafter contained shall constitute the Regulations of the Company.

SHARES

2. The capital of the Company is IR£[ ] divided into [ ] Ordinary Shares of IR£1 each.

3. For the purpose of Section 20 Companies (Amendment) Act, 1983, the Directors of the Company are generally and unconditionally authorised to allot relevant securities as defined by Section 20 (10) of the said Act up to a maximum of the authorised but as yet unissued share capital of the Company at the date on which the Company was incorporated. This authority shall expire five years after the date of incorporation of the Company but may be previously revoked or varied by the Company in general meeting and may be renewed by the Company in general meeting for a further period not exceeding five years from the date of such renewal. The Company may make any offer or agreement before the expiry of this authority which would or might require relevant securities to be allotted after this authority has expired and the Directors may allot relevant securities in pursuance of any such offer or agreement.

4. The pre-emption provisions of sub-sections (1) (7) and (8) of Section 23 Companies (Amendment) Act, 1983 shall not

apply to any allotment by the Company of equity securities (as defined in such Section).

5. Subject to the provisions of the Companies Act, 1990, any shares may be issued on the terms that they are, or, at the option of the Company are, liable to be redeemed on such terms and in such manner as the Company before the issue of the shares may by special resolution determine.

PURCHASE OF OWN SHARES

6. (a) Subject to the provisions of and to the extent permitted by the Companies Acts, 1963 - 1990 to any rights conferred on the holders of any class of shares and to the following paragraphs of this Article the Company may purchase any of its shares of any class and may cancel any shares so purchased and hold them as Treasury Shares (within the meaning of Section 209 of the Companies Act, 1990) with liberty to reissue any such share or shares as shares of any class or classes.

(b) The Company shall not exercise any authority granted under Section 213 (off market) or Section 215 (market) of the Companies Act, 1990 to make purchases of its own shares unless the authority required by such Section shall have been granted by special resolution of the Company.

(c) The Company shall not be required to select the shares to be purchased on a pro rata basis or in any particular manner as between the holder of the shares of the same class or as between the holders of shares of different classes.

LIEN

7. The Company shall have a first and paramount lien on every share for all moneys (whether immediately payable or not) called or payable at a fixed time in respect of that share, and the Company shall also have a first and paramount lien on all shares standing registered in the name of any person whether he be the sole registered holder thereof or one of two joint holders for all moneys immediately payable by him or his estate to the Company, but the Directors may at any time declare any share to be wholly or in part exempt from the provisions of this Regulation. The Company's lien on a share shall extend to all dividends payable thereon.

TRANSFER OF SHARES

8. An instrument of transfer of a share (other than a partly paid share) need not be executed on behalf of the transferee and need not be attested and Regulation 22 of Table A Part I shall be modified accordingly.

9. No transfer of any share in the capital of the Company (whether on a sale of such shares or transmission thereof by operation of law or otherwise howsoever) shall be registered unless such transfer is approved by resolution of the Directors. Regulations 29 to 32 of Table A Part I shall be modified accordingly.

MEETINGS

10. The following words shall be added to the end of Regulation 53 of Table A Part I, "and fixing the remuneration of Directors".

11. It shall not be necessary to give any notice of any adjourned meeting and Regulation 58 of Table A Part I shall be modified accordingly.

12. A poll may be demanded by the Chairman or by any member present in person or by proxy and Regulation 59 of Table A Part I shall be modified accordingly.

13. Where any meeting of the Company is held at short notice pursuant to Section 133 (3) or Section 141 (2) of the Act it shall be sufficient if the instrument appointing a proxy (and the power of attorney or other authority, if any, under which it is signed, or a notarially certified copy of such power or authority) is deposited with the Chairman of the meeting immediately upon the commencement of such meeting and Regulation 70 of Table A Part I shall be modified accordingly.

14. The resolution in writing mentioned in Regulation 6 of Table A Part II may consist of several documents in the like form each signed by one or more members (or being bodies corporate by their duly authorised representatives).

[15. Provided that all the members entitled to attend and vote at an Annual General Meeting so consent in writing or a resolution providing that it be held elsewhere has been passed at the preceding Annual General Meeting, the Annual General Meeting of the Company need not be held in Ireland. Regulation 47 of Table A Part I is modified to that extent.]

DIRECTORS

16. The number of Directors shall not be less than two nor, unless and until otherwise determined by the Company by ordinary resolution, more than [5]. A Director shall not retire by rotation and Regulation 110 of Table A Part I shall be modified accordingly.

17. A Director shall not require a share qualification but nevertheless shall be entitled to receive notice of and to attend and speak at any general meeting of or any separate

meeting of the holders of any class of shares in the Company and Regulation 136 of Table A Part I shall be modified accordingly.

18. (a) Any Director may by writing under his hand appoint (i) any other Director, or (ii) any other person who is approved by the Board of Directors as hereinafter provided, to be his alternate and every such alternate shall be entitled to receive notices of all meetings of the Directors and, in the absence from the Board of the Director appointing him, to attend and vote at meetings of Directors, and to exercise all the powers, rights, duties and authorities of the Director appointing him (other than the right to appoint an alternate hereunder) provided always that no such appointment of a person other than a Director shall be operative unless and until the approval of the Board of Directors by a simple majority of the whole Board shall have been given and entered in the Directors' Minute Book.

(b) A Director may at any time revoke the appointment of any alternate appointed by him and subject to such approval as aforesaid appoint another person in his place and if a Director shall die or cease to hold the office of Director the appointment of his alternate shall thereupon cease and determine. An alternate Director shall not be counted in reckoning the maximum number of Directors allowed by the Articles of Association for the time being. A Director acting as alternate shall have an additional vote at meetings of Directors for each Director for whom he acts as alternate but he shall count as only one for the purpose of determining whether a quorum be present.

(c) Every person acting as an alternate Director shall be an officer of the Company and shall alone be responsible to the Company for his own acts and defaults and he shall not be deemed to be the agent of or for the Director appointing him. The remuneration of any such alternate Director shall be payable out of the remuneration paid to the Director appointing him and shall consist of such portion of the last mentioned remuneration as shall be agreed between the alternate and the Director appointing him.

(d) Any appointment or revocation by a Director under this Article shall be effected by notice in writing given under his hand and delivered to the Secretary or lodged at the registered office of the Company.

19. A Director present at a meeting of the Directors shall in addition to his own vote be entitled to one vote in respect of each other Director not present at the meeting

who shall have authorised him in respect of such meeting to vote for such other Director in his absence. Any such authority may relate generally to all meetings of the Directors or to any specified meeting or meetings and must be in writing or by telefax, by cable or telegram or telex message, which must be presented to the Secretary for filing prior to or be produced at the first meeting at which a vote is to be cast pursuant thereto.

20. The Directors may establish and maintain or procure the establishment and maintenance of any non-contributory or contributory pension or superannuation funds for the benefit of and give or procure the giving of donations, gratuities, pensions, allowances or emoluments to any persons who are or were at any time in the employment or service of the Company or of any company which is a subsidiary of the Company or is allied to or associated with the Company or with any such subsidiary or who are or were at any time Directors or officers of the Company or of any such other company aforesaid and hold or have at any time held any salaried employment or office in the Company or such other company and the wives, widows, families and dependents of any such persons and also establish and subsidise or subscribe to any institutions, associations, clubs or funds calculated to be for the benefit of or to advance the interests and well-being of the Company or any such other company as aforesaid or of any such persons as aforesaid and make payments for or towards the insurance of any such persons as aforesaid and subscribe or guarantee money for any charitable or benevolent objects or for any exhibition or for any public general or useful object and do any of the matters aforesaid either alone or in conjunction with any such other company as aforesaid. Any Director who holds or has held any such employment or office shall be entitled to participate in and retain for his own benefit any such donation, gratuity, pension, allowance or emolument to the extent and upon such terms as may for the time being be permitted or required by law.

21. The Directors shall have power at any time and from time to time to appoint any person to be a Director, either to fill a casual vacancy or as an addition to the existing Directors, but so that the total number of Directors shall not at any time exceed the number fixed in accordance with these regulations.

22. The office of a Director shall be vacated if the Director:-

(a) is adjudged bankrupt in the State or in any part of the World or makes any arrangement or composition with his creditors generally;

(b) becomes the subject of a Restriction Order made under Section 150 of the Companies Act, 1990;

(c) becomes the subject of a Disqualification Order made under Section 160 of the Companies Act, 1990;

(d) in the opinion of all his co-Directors becomes incapable by reason of mental disorder of discharging his duties as Director;

(e) resigns such office by notice in writing to the Company;

(f) is convicted of an indictable offence (other than an offence under the Road Traffic Acts for which he is not sentenced to imprisonment and actually imprisoned) unless the Directors otherwise determine; or

(g) is removed from office by a resolution duly passed pursuant to Section 182 of the Act or under the provisions of the next succeeding Article hereof.

23. In addition to and without prejudice to the provisions of the Act, the Company may by ordinary resolution remove any Director before the expiration of his period of office notwithstanding anything in these regulations or in any agreement between the Company and such Director. Any such removal shall be without prejudice to any claim such Director may have for damages for breach of any contract of service between him and the Company. The Company may, by ordinary resolution, appoint another person in place of any Director so removed from office.

24. Any Director who serves on any committee or who devotes special attention to the business of the Company or who otherwise performs services which in the opinion of the Directors are outside the scope of the ordinary duties of a Director, may be paid such extra remuneration by way of salary, percentage of profits or otherwise as the Directors may determine.

25. Any such resolution in writing as is referred to in Regulation 109 of Table A Part I may consist of several documents in the like form each signed by one or more of the Directors for the time being entitled to receive notice of meetings of the Directors.

26. Any Director or alternate Director may participate in a meeting of the Directors or any committee of the Directors by means of conference telephone or other telecommunications equipment by means of which all persons participating in the meeting can hear each other and such participation in a meeting shall constitute a presence in person at the meeting.

BORROWING POWERS

27. The Directors may exercise all the powers of the Company to borrow money, and to mortgage or charge its undertaking, property and uncalled capital or any part thereof and to issue debentures, debenture stock and other securities, whether outright or as security for any debt, liability or obligation of the Company or of any third party. Debentures, debenture stock and other securities may be made assignable free from any equities between the Company and any person to whom the same may be issued. Any debentures or debenture stock may be issued at a discount, premium or otherwise and with any special rights as to redemption, surrender, drawings, allotment of shares, attending and voting at general meetings of the Company, appointment of Directors or otherwise.

NOTICES

28. Every person who, by operation of law, transfer, or other means shall become entitled to any share shall be bound by every notice or other document which, previous to his name and address being entered on the register in respect of such share, shall have been given to the person in whose name the share shall have been previously registered.

29. Any notice or document sent by post to the registered address of any member in pursuance of these presents shall, notwithstanding that such member be then deceased, and whether or not the Company have notice of his decease, be deemed to have been duly served in respect of any shares held by such member (whether solely or jointly with other person or persons) until some other person or persons be registered in his stead as the holder or joint holders thereof, and such service shall for all purposes of these presents be deemed a sufficient service of such notice or document on his or her executors or administrators, and all persons (if any) jointly interested with him or her in any such share.

30. The signature to any notice to be given by the Company may be written or printed.

INDEMNITY

31. Subject to the Act, every Director or other officer of the Company shall be entitled to be indemnified out of the assets of the Company against all losses or liabilities which he may sustain or incur in or about the execution of the duties of his office or otherwise in relation thereto.

SECRECY

32. No member shall be entitled to require discovery of or any information respecting any detail of the trading of the Company or any matter which is or may be in the nature of a trade secret, mystery of trade, or secret process which may relate to the conduct of the business of the Company, and which, in the opinion of the Directors, it would be inexpedient in the interests of the members of the Company to communicate to the public.

Names, addresses and descriptions of subscribers:

Frymount Limited

Director
Fitzwilton House
Wilton Place
Dublin 2
Limited Company

Lower Mount Nominees Limited.

Director
Fitzwilton House
Wilton Place
Dublin 2

Limited Company

Dated this day of 19

Witness to the above signatures:

Fitzwilton House,
Wilton Place,
Dublin 2.

Secretary

1145BH:df

COMPANIES ACTS, 1963 to 1990

COMPANY LIMITED BY SHARES

MEMORANDUM OF ASSOCIATION

OF

LOTUS GREEN LIMITED

1. The name of the Company is Lotus Green Limited.

2. The objects for which the Company is established are:—

(a) To carry on the business of an investment company and for that purpose to acquire and hold either in the name of the company or in that of any nominee shares, stocks, debentures, debenture stock, bonds, notes, obligations and securities issued or guaranteed by any company wherever incorporated or carrying on business and debentures, debenture stock, bonds, notes, obligations and securities issued or guaranteed by any government, sovereign ruler, commissioners, public body or authority, supreme, dependent, municipal, local or otherwise in any part of the world.

(b) To acquire any such shares, stock, debentures, debenture stock, bonds, notes, obligations or securities by original subscription, contract, tender, purchase, exchange, underwriting, participation in syndicates or otherwise and whether or not fully paid up and to subscribe for the same subject to such terms and conditions (if any) as may be thought fit.

(c) To exercise and enforce all rights and powers conferred by or incident to the ownership of any such shares, stock obligations or other securities including without prejudice to the generality of the foregoing all such powers of veto or control as may be conferred by virtue of the holding by the company of such special proportion of the issued or nominal amount thereof and to provide managerial and other executive, supervisory and consultant services for or in relation to any company in which the Company is interested upon such terms as may be thought fit.

(d) To undertake the management and control and supervision of the business or operations of any person or company and in particular, without

limitation, to plan and effectively carry out the organisation of and to initiate and to carry out schemes for the promotion and expansion of any such business, to engage in research into all problems relating to investment, property, financial, portfolio, industrial and business management, to carry out all or any work of a clerical, secretarial, managerial or other like nature, to provide staff and services, to prepare and deal with accounts, returns, forms and all documents required to be prepared and furnished in relation to any such bodies, to direct and carry out all advertising and publicity for any such business, and generally to do all acts and things (including the receipt and payment of money) necessary to be done for the supervision of the day to day running of any such business and to enter into contracts with any such company for the carrying out of the works or provisions of any of the services which the Company is authorised to perform or provide.

(e) To promote, develop and secure the interests of the group of companies which for the time being shall consist of the Company and any company which for the time being is an Associated Company and to so do in such manner as the Company may think fit and in particular, without limitation, by giving any guarantee, indemnity, support or security, in respect of or, directly or indirectly, assuming any liability or obligation of, any Associated Company, by making any payment or loan or disposition of any property, assets or rights to or for the benefit of any Associated Company or acquiring any property, assets or rights from any Associated Company notwithstanding that the Company may not receive in respect of any such transaction full or adequate consideration therefor or any consideration whatsoever or may pay consideration which would or might be in excess of an arms' length consideration.

(f) To purchase or otherwise acquire and carry on all or any part of the business or property and to undertake any liabilities of any person or company possessed of property suitable for any of the purposes of the Company or carrying on or proposing to carry on any business which the Company is authorised to carry on or which can be carried on in connection with the same or which is capable of being conducted so as, directly or indirectly, to benefit the Company.

(g) To purchase, take on lease, on licence, in exchange, upon option or otherwise acquire and hold any lands, buildings, property (whether leasehold or freehold) or any rights or interests therein or in respect thereof or in any forests, crops or growing produce thereon or any minerals therein or thereunder or any rights to pass thereon or any rights or interests in or over the sea, the sea bed, the sea shore, the sky

or in space, or any interests connected or associated with any of the foregoing and to exercise any rights in respect thereof and to develop, improve, alter or manage the same or any part thereof in any way (including, without limitation, construction, demolition, landscaping, planting, draining and improving) and to farm, harvest or extract anything from the same.

(h) To purchase, take on lease, on licence, in exchange, upon option, on hire or hire-purchase, or otherwise acquire and hold any personal property, rights or privileges which the Company may think necessary or convenient for the purposes of its business or which may seem to the Company calculated, directly or indirectly, to benefit the Company including, without limitation, the subscription, taking or otherwise acquiring of Securities in any company.

(i) To apply for, purchase or otherwise acquire and protect and renew any patents, patent rights, inventions, secret processes, recipes, receipts, prescriptions, formulae, trade marks, trade names, designs, licences, concessions and the like, conferring any exclusive or non-exclusive or limited right to their use, or any secret or other information as to any invention or process which may seem capable of being used for any of the purposes of the Company or the acquisition of which may seem calculated, directly or indirectly, to benefit the Company and to use, exercise, develop or grant licences in respect of, or otherwise turn to account, the property, rights or information so acquired and to expend money in experimenting upon, testing or improving any such patents, inventions or rights.

(j) To establish or promote or concur in establishing or promoting any company or companies for the purpose of acquiring all or any of the property, rights and liabilities of the Company or for any other purpose which may seem, directly or indirectly, calculated to benefit the Company or to place or guarantee the placing of, underwrite, subscribe for or otherwise acquire all or any part of the Securities of any such other company.

(k) To invest and to deal with the moneys of the Company not immediately required in any manner.

(l) To amalgamate, enter into partnership or into any arrangement for sharing profits, union of interests, co-operation, joint venture, reciprocal concession, mutual assistance or otherwise with any person or company carrying on or engaged in or about to carry on or engage in, any business or transaction which the Company is authorised to carry on or engage in or which can be carried on in conjunction therewith or which is capable of being conducted so as, directly or indirectly, to benefit the Company.

(m) To sell, lease, mortgage or otherwise dispose of the business, property, assets or undertaking of the Company or any part thereof for such consideration as the Company may think fit and to improve, manage, develop, exchange, licence, turn to account or otherwise deal with, all or any of the business, property, assets and undertaking of the Company and in particular, without limitation, to accept Securities of any other company in payment or part payment of the consideration payable to the Company in respect of any transaction referred to in this paragraph.

(n) To establish and maintain or procure the establishment and maintenance of or to adhere to any contributory or non-contributory pension or superannuation funds, schemes or plans for the benefit of, and give or procure the giving of donations, gratuities, pensions, allowances or emoluments to any persons who are or were at any time in the employment or service of the Company or of any Associated Company or who are or were at any time Directors or officers of the Company or of any Associated Company and the spouses, families and dependents of any such persons and also establish and subsidise and subscribe to any associations, institutions, clubs or funds calculated to be for the benefit of the Company and to make payments to or towards the insurance of any such person as aforesaid either alone or in conjunction with any other company and further to do any acts or things or make any arrangements or provisions necessary or desirable to enable all or any of such persons as aforesaid to become shareholders in the Company or otherwise to participate in the profits of the Company or any Associated Company.

(o) To settle moneys or other assets on the trustee or trustees of any trust, foundation, settlement or institution set up for charitable or benevolent purposes or for any public, general or useful object or to lend money or provide services (with or without interest or charge) to any such trustee or trustees and to pay, subscribe, lend or contribute assets or services of the Company (with or without interest or charge) or give any guarantee or indemnity in respect of any trust, foundation, settlement or institution set up or operating for any such purpose or object or in respect of any exhibition or for any charitable, benevolent, public, general or useful object.

(p) To borrow or raise money in such manner as the Company shall think fit and in particular, without limitation, by the issue of Securities of the Company (other than shares or stock) and to secure the repayment of any moneys borrowed or raised or any other obligation, debt or liability of any nature of the Company by way of mortgage, charge, lien or other security interest over or in respect of all or any of

the Company's undertaking, property or assets (both present and future and including its uncalled capital) upon such terms as to priority and otherwise as the Company shall think fit.

(q) To lend and advance money or give credit to any person or company and upon such terms as may seem expedient (whether with or without security or any interest or other charge).

(r) To give any guarantee or indemnity in respect of or otherwise support or secure in any manner (whether by personal covenant or by mortgaging, charging or granting any lien or other security interest over or in respect of all or any part of the Company's undertaking, property or assets, both present and future and including its uncalled capital, or by both such methods) any obligation, debt, liability of any nature of any person or company upon such terms as to priority and otherwise as the Company shall think fit.

(s) To pay for any rights or property acquired by the Company and to remunerate any person or company whether by way of cash payment or by the allotment of Securities of the Company credited as paid up in full or in part or otherwise.

(t) Upon any issue of Securities of the Company to employ brokers, commission agents and underwriters and to provide for the remuneration of such persons for their services.

(u) To draw, make, accept, indorse, discount, execute and issue promissory notes, bills of exchange, bills of lading, warrants, debentures and other negotiable or transferable instruments.

(v) To enter into any arrangements with any governments or authorities, supreme, municipal, local or otherwise, or any person or company that may seem conducive to the Company's objects or any of them and to obtain from any such government, authority, person or company any rights, privileges, charters, licenses and concessions which the Company may think it desirable to obtain and to carry out, exercise and comply therewith.

(w) To undertake and execute any trusts the undertaking whereof may seem desirable and either gratuitously or otherwise.

(x) To adopt such means of making known the products, investments or services of the Company or any Associated Company as may seem expedient and in particular, without limitation, by advertising in the press or radio or television by circulars, by purchase and exhibition of works of art or interest, by publication of books and periodicals and by

granting prizes, rewards, scholarships and donations and by sponsoring sports events, theatrical and cinematic performances and exhibitions of all descriptions.

(y) To apply for, promote and obtain any Act of the Oireachtas or any charter, privilege, licence or authorisation of any government, state or municipality or any ministerial or departmental licence or order for enabling the Company to carry any of its objects into effect or for effecting any modification of the Company's constitution or for any other purpose which may seem expedient and to oppose any proceedings or applications which may seem calculated, directly or indirectly, to prejudice the interests of the Company or any Associated Company.

(z) To promote freedom of contract and to resist, insure against, counteract and discourage interference therewith, to join any lawful federation, union or association or to do any lawful act or thing with a view to preventing or resisting, directly or indirectly, any interruption of or interference with the trade or business of the Company or any other trade or business or providing or safeguarding against the same or resisting or opposing any strike, movement or organisation which may be thought detrimental to the interests of the Company or any Associated Company or its or their employees and to subscribe to any association or fund for any such purposes.

(aa) To undertake and carry on any other trade or business (whether manufacturing or otherwise) which may seem to the Company capable of being conveniently carried on by the Company or which is calculated, directly or indirectly, to enhance the value of or render profitable, any of the Company's businesses, rights or property.

(ab) To do all or any of the matters hereby authorised in any part of the World and with or in respect of persons or companies resident, domiciled, incorporated, registered or carrying on business in any part of the World and either as principal, agent, factor, trustee or otherwise and by or through agents, factors, trustees or otherwise and either alone or in conjunction with others.

(ac) To distribute in specie or otherwise as may be resolved any of the assets of the Company among the members.

(ad) To do all such other things as may appear to the Company to be incidental or conducive to the attainment of the above objects or any of them.

Provided that:

(i) the objects set out in any paragraph of this Clause shall not be restrictively construed but the widest interpretation shall be given thereto and they shall not, except where the context expressly so requires, be in any way limited to or restricted by reference to or inference from any other object or objects set out in such paragraph or from the terms of any other paragraph or by the name of the Company; none of such paragraphs or the object or objects therein specified shall be deemed subsidiary or ancillary to the objects mentioned in any other paragraph, but the Company shall have full power to exercise all or any of the powers and to achieve and endeavour to achieve all or any of the objects conferred by and provided in any one or more of said paragraphs;

(ii) the word "company" in this Clause, except where used in reference to the Company, shall be deemed to include any firm, partnership, association or other body of persons, whether incorporated or not incorporated, and whether resident, domiciled, incorporated, registered, or carrying on business in the State or elsewhere;

(iii) the expression "Associated Company" in this Clause, shall be deemed to mean any company which for the time being is a subsidiary or holding company (which expressions in this proviso shall bear the meanings respectively ascribed thereto by Section 155 Companies Act, 1963) of the Company, is a subsidiary of a holding company of the Company or is a company in which the Company or any of such companies as aforesaid shall for the time being hold shares entitling the holder thereof to exercise at least one-fifth of the votes at any general meeting of such company (not being voting rights which arise only in specified circumstances); and

(iv) the expression "Securities" in this Clause, shall be deemed to mean any shares, stocks, bonds, debentures or debenture stock (whether perpetual or not), loan stock, notes, obligations or other securities or assets of any kind, whether corporeal or incorporeal.

3. The capital of the Company is IR£[ ] divided into [ ] Ordinary Shares of £1 each.

LOTUS GREEN LIMITED

We, the undersigned, being the holders of the entire issued share capital of Lotus Green Limited hereby resolve as follows:-

"1. Special Resolution.

That Clause [2] of the Memorandum of Association of the Company be deleted and be replaced by the clause set out in the document annexed hereto and marked with the letter "A".

2. Special Resolution.

That the existing Articles of Association of the Company be deleted and that they be replaced by the Articles of Association set out in the document annexed hereto and marked "B"."

Dated May 1995

_____

_____

1148BH:df

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Coopers &Lybrand

P.O. Box 1253
Fitzwilton House
Wilton Place
Dublin 2

telephone (01) 661 0850
668 2222
676 6806

fax (01) 676 5792
660 1782

DDE 101

Dublin Cork Waterford Limerick
Kilkenny Wexford

our reference

FAX TRANSMISSION FORM

FAX NO:- (01) 6765792

DATE: 23 May 1995

TO: Peter Van der Hoeven/Andrew Casley

LOCATION: C&L Amsterdam

FAX NO: 0031 20 568 6888

FROM: Terry O' Driscoll/John P Kelly

Total number of pages (including this page) 8

If any pages are not received, or are illegible, please advise immediately

1. loan agreement
2. loan note to be given to Parker
3.

DRAFT

	ACTION REQUIRED	TIME	BY
1.	**Tax Clearances**		
	- Confirmation from C&L Amsterdam regarding Dutch tax implications.	10 May	Peter Van der Hoeven (PVH) ✓
	- Obtain necessary rulings from Dutch Revenue.	[30 June]	PVH
2.	**Incorporation of Newco**		
2.1	Incorporation of Newco.	10 May	DT/Alvin Price (AP) ✓
2.2	Payment of capital duty.	10 June	DT/AP
3.	**Share Structure**		
3.1	Resolution to increase share capital to £100 consisting of "A" and "B" ordinary shares.	10 May	DT/AP ✓
3.2	Resolution to amend Memorandum and Articles of Association to amend dividends rights of "A" and "B" ordinary shareholders and their entitlements on a winding up.	10 May	DT/AP/C&L ✓
3.3	[Drake Properties and] Drake BV resolutions to invest in Newco.	24 May	DT/DT

23 MAY 1995

DRAFT

		TIME	BY
3.4	Issue shares in Drake Properties, Drake BV. (Board Resolution).	[2 June]	DT/AP
3.5	Payment of capital duty.	19 June	DT/AP
3.6	Ensure tax resident in Ireland. - Decide Board - Hold meetings in Ireland	10 May	FOD/DT
4.	Incorporation of Subco		
4.1	Resolution by Newco to incorporate wholly owned subsidiary Subco (option).	10 May	DT/AP ✓
4.2	Incorporation of Subco.	10 May	DT/AP ✓
4.3	Payment of capital duty on incorporation of Subco.	10 June	DT/AP
4.4	Ensure Subco tax resident in Ireland. - Decide Board - Hold meetings in Ireland	10 May	DT/AP
4.5	Ensure Subco tax resident in Netherlands. - Decide Board - Holdings meetings in Netherlands	[4 July]	DT/AP

DRAFT

		TIME	BY
5.	Acquisition of Example Co by Subco		
5.1	Resolution by Subco to acquire Example Co.	[2 June]	DT/AP
5.2	Resolution by Drake Properties and S&L to sell Example Co to Subco.	[2 June]	DT/AP
5.3	Draft share purchase agreement.	12 May	AP
5.4	Stamp duty	[24 May]	TOD/AP
5.5	Drake lends interest free to Subco - Resolution by Drake/Subco - Loan documentation	[26 May]	FOD/DT/AP DT/AP/C&L Amsterdam
5.6	Advance of loan by Drake to Subco	[26 May]	FOD/DT
5.7	Completion of share purchase agreement.	[9 June]	AP/DT
5.8	Payment from Subco to Drake.	[9 June]	DT
6.	**Liquidation of Newco**		
6.1	**Initial Meeting of Directors** To convene a meeting of all/ the majority of Directors of Newco to arrange a winding up of the company.	26 June	DT/AP

DRAFT

		TIME	BY
6.2	**Second Meeting of Directors**		
	As convened above to:		
	(a) Make a Statutory Declaration (Declaration of Solvency) that they have made a full inquiry into the affairs of the company and FORMED THE OPINION that the company will be able to pay its debts in full within 12 months from the date of winding up.	26 June	DT/AP
	(b) Direct the Secretary to call an Extraordinary General Meeting of the members.		
	(c) Nominate a Director to chair the Extraordinary General Meeting.		
6.3	**Declaration of Solvency**		
	The Declaration of Solvency should be signed at the above meeting of Directors by all/the majority of the Directors and sworn before a Commissioner for Oaths.	26 June	DT/AP
	The Declaration has no effect unless:		
	(i) it is made within 28 days immediately preceding the passing of the Resolution for winding up;		
	(ii) it is filed with the Companies Office within 15 days of the passing of the Resolution for winding up;		
	(iii) it embodies a Statement of Assets and Liabilities at the latest practicable date and not more than 3 months before the making of the Declaration.		

DRAFT

		TIME	BY
	(iv) it incorporates a Report made by an independent person (a person qualified to be an auditor of the company) that the opinion of the Directors and the Statement of Assets and Liabilities are reasonable;		
	(v) a copy of the Declaration is attached to the Notice convening the General Meeting.		
6.4	**Notice to the Members** A Notice of meeting of members to be circulated by the Company Secretary, together with proxies and copy of the Declaration. In this regard it should be noted that as the Resolution to be passed is a Special Resolution, 21 days notice will be required unless agreement to short notice is received from members (holding not less than 90% in nominal value of the shares, or where no share capital 90% of the total voting rights at that meeting of all the members) and auditors of the company.	27 June	DT/AP
6.5	**Extraordinary General Meeting of Members** The Extraordinary General Meeting of Members shall be held, at which the Special Resolution to wind up the company is passed.	29 June	DT/AP
	Appoint a liquidator	30 June	POD/TOD
6.6	**Filing Requirements** The Liquidator shall lodge at the Companies Office, the following three documents within 15 days of the passing of the Resolution to wind up:	30 June	Liquidator

DRAFT

		TIME	BY
	(a) Notice of Appointment - Form 39A (b) Special Resolution as signed by an officer of the company - Form 16. (c) Original Declaration of Solvency as sworn by the directors of the company (Form 12) with Independent Persons Report.		
6.7	**Advertising Requirements** The Liquidator must advertise the notice of his appointment in Irish Oifigiuil within 14 days of his appointment.	30 June	Liquidator
6.8	Draft Deed of Indemnity for liquidator in case of fall in value of Subco due to fall in value of Drake.	3 July	Liquidator
6.9	Liquidation of Newco.	3 July	Liquidator
6.10	Repayment of capital in Newco to Drake.	3 July	Liquidator
6.11	Distribution in specie of shares in Subco to Drake BV.	3 July	Liquidator
7.	**Transferring Residence of Subco**		
7.1	Board resolution/board meeting.	4 July	FOD/AP
7.2	Replace directors of Subco	4 July	FOD/DT

DRAFT

7.3	Further Board Meeting in Netherlands	4 July	FOD/DT
7.4	[Detailed list of "Do's" and "Don'ts"]	25 May	PMW/TOD

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WILLIAM FRY

SOLICITORS

FITZWILTON HOUSE, WILTON PLACE, DUBLIN 2. IRELAND.
TEL 01-668 1711, FAX 01-668 7016.
TELEX 93469, D.D.E. BOX NO. 023.

YOUR REF

IN REPLY PLEASE QUOTE

2439-131-BH

23 May 1995

Daphne Tease,
DCC plc
DCC House
Brewery Road
Stillorgan
Blackrock
Co. Dublin

Dear Daphne,

I am enclosing for your attention initial draft of:-

1. ~~Loan Agreement;~~ See Letter
2. ~~Share Purchase Agreement;~~ Letter
3. ~~Put and Call Option Agreement;~~

which I have now prepared. I think there are a number of issues in this Agreement which need addressing including:-

1. the terms of the loan generally and whether its purpose needs to be specified;

2. the mechanics of payments under the Share Purchase Agreement;

3. the option period and the price payable under the Option Agreement.

I am copying these simultaneously to Terry O'Driscoll/John Kelly in Price Waterhouse.

Yours sincerely,

Brendan Heneghan

Brendan Heneghan
WILLIAM FRY
Solicitors

DRAFT 23.5.95-4:01pm
1155BH

DRAKE IRELAND LIMITED

- and -

LOTUS GREEN LIMITED

LOAN AGREEMENT

WILLIAM FRY
Solicitors
Fitzwilton House
Wilton Place
Dublin 2

2439-131-BH

THIS AGREEMENT is made on 1995

BETWEEN:

DRAKE IRELAND LIMITED
having its registered office
at DCC House, Stillorgan,
Blackrock, County Dublin
(hereinafter called the "Lender")

- and -

LOTUS GREEN LIMITED
having its registered office
at [Fitzwilton House, Wilton Place,
Dublin 2]
(hereinafter called the "Borrower")

WHEREAS:

A. The Lender has agreed to make a loan to the Borrower on the terms set out following.

NOW THIS AGREEMENT WITNESSETH:-

1. Amount. On the signing hereof, the Lender shall make available to the Borrower a loan in the sum of £[ ].

2. Interest. Except as may otherwise be agreed between the parties, the loan made by the Lender to the Borrower hereunder shall be free of interest.

3. Purpose. [ ].

4. Repayment. The loan made by the Lender to the Borrower hereunder shall be repayable on demand being made therefor by the Lender at any time. Without prejudice to the foregoing, the loan shall become automatically repayable if:-

(a) the Borrower shall enter into liquidation or receivership (other than for the purposes of

reconstruction, previously approved by the Lender); or

(b) the Borrower disposes of all of its assets for cash or other consideration in money's worth.

5. Notices. Any notice or other communication whether required or permitted to be given hereunder shall be given in writing and shall be deemed to have been duly given if delivered by hand against receipt of the addressee or his duly authorised agent or if transmitted by telex or sent by prepaid registered post addressed to the party to whom such notice is to be given at the address set out for such party herein (or such other address as such party may from time to time designate in writing to the other party hereto in accordance with the provisions of this Clause). Any such notice shall be deemed to have been duly given if delivered at the time of delivery if transmitted by telex at the time of transmission and if sent by prepaid registered post as aforesaid forty eight hours after the same shall have been posted.

6. Headings and Captions. The Section headings and captions to the Clauses in this Agreement are inserted for convenience of reference only and shall not be considered a part of or affect the construction or interpretation of this Agreement.

7. Governing Law. This Agreement shall in all respects (including the formation thereof and performance thereunder) be governed by and construed in accordance with the laws of Ireland.

IN WITNESS whereof these presents have been entered into the day and year first herein written.

Signed by
for and on behalf of
DRAKE IRELAND LIMITED
in the presence of :-

Signed by
for and on behalf of
LOTUS GREEN LIMITED
in the presence of:-

1155BH:ic/66

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WILLIAM FRY
SOLICITORS

FITZWILTON HOUSE, WILTON PLACE, DUBLIN 2, IRELAND
TELEPHONE (353-1) 681711

PRINCIPAL FAX NUMBER (353-1) 687016

ATTENTION OF	Daphne Tease
COMPANY	DCC
FAX NO.	2831017
FROM	Brendan Heneghan
OUR REF.	2439-131-BH
NO. OF PAGES INCLUDING THIS ONE	10

DATE 25 May 1995

IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE TELEPHONE (353-1) 681711 AND ASK FOR Helena

MESSAGE

Letter follows

WILLIAM FRY

SOLICITORS

FITZWILTON HOUSE, WILTON PLACE, DUBLIN 2, IRELAND.
TEL 01-668 1711, FAX 01-668 7016.
TELEX 93469, D.D.E. BOX NO. 123.

YOUR REF

IN REPLY PLEASE QUOTE

2439-131-BH

25 May 1995

Daphne Tease
DCC plc
DCC House
Brewery Road
Stillorgan
Blackrock
Co. Dublin.

Project Exampleco

Dear Daphne,

I refer to the minutes of Marjove Limited which you sent me. I have made a number of minor amendments to the minutes and I am attaching same for your attention.

With regard to the minutes of Lotus Green Limited, I assume you will be drafting these. I think the relevant resolutions would be virtually identical to resolutions 3 and 4 in the Marjove minutes. I am not sure however who the Lower Mount Nominees Limited share should be transferred to. I am enclosing copies of the four share transfer forms necessary to effect the registration. Could you let me have the name of the second nominee shareholder in Lotus Green Limited and I will fill that detail in. You might also advise me as to the date of the meeting so that I can date these transfers. I will then have them presented for registration.

I would mention that it is necessary for the directors of Marjove Limited and Lotus Green Limited to notify their shareholdings in DCC to each company under the Companies Act. This should be done within five business days of the Company becoming a DCC subsidiary.

I assume you will arrange to have the necessary cheques for £74.00 and £24.00 respectively drawn up and lodged to the Marjove bank account. A photocopy of these should be retained. I presume you will also issue the necessary share certificates. If you let me have a completed Form B4 for Marjove Limited, I will arrange to file it and pay the capital duty.

WILLIAM FRY

There should of course be a resolution by Drake BV and Drake Properties Limited to subscribe 24 and 74 shares respectively.

I believe that the above will complete Steps 2, 3 and 4 as outlined in the Coopers & Lybrand checklist of 23 May (except for 4.5).

Yours sincerely,

Brendan Heneghan

Brendan Heneghan
WILLIAM FRY
Solicitors

c.c. Terry O'Driscoll, Coopers & Lybrand

DRAFT

Marjove Limited

Minutes of a Meeting of the Directors
held at DCC House, Stillorgan, Blackrock, Co. Dublin
on Wednesday, 24th May 1995 at 12.00 noon

PRESENT: Michael Scholefield
Daphne Tesse

RESOLUTION 1: *Issue of 74 "A" Ordinary Shares*

It was noted that the members of the Company had by written resolution amended the Articles of the Company to provide for the ~~issue~~ of 74 "A" Ordinary Shares ~~on the terms~~ set out in the ~~Memorandum and~~ Articles of Association. It was resolved that 74 "A" Ordinary Shares be issued to DCC Properties Limited for a consideration of IR£74. The Secretary was instructed to deal with the issue of the necessary share certificate, the making of Companies Office returns and the payment of Capital Duty.

RESOLUTION 2: *Issue of 24 "B" Ordinary Shares*

It was noted that the members of the Company had by written resolution amended the Articles of the Company to provide for the ~~issue~~ of 24 "B" Ordinary Shares ~~on the terms~~ set out in the ~~Memorandum and~~ Articles of Association. It was resolved that 24 "B" Ordinary Shares be issued to DCC International Holdings BV for a consideration of IR£24. The Secretary was instructed to deal with the issue of the necessary share certificate, the making of Companies Office returns and the payment of Capital Duty.

RESOLUTION 3: *Transfer of 2 "A" Ordinary Shares*

There was produced to the meeting the following share transfers:-

Transferor	Transferee	No. of "A" Ordinary Shares
Frymount Limited	DCC Properties Limited	1
Lower Mount Nominees Limited	DCC Properties Limited	1

It was resolved that these be approved for registration by the Company subject to their re-presentation to the Company duly stamped.

Resolution 4 It was resolved that two Ordinary Shares of £1 each

DRAFT

RESOLUTION 5 *Opening of Bank Account at Bank of Ireland - 2 College Green*

It was resolved that:

1. Bank of Ireland plc (hereinafter called "the Bank") be and is hereby requested to open one or more accounts in the name of Marjove Limited (hereinafter called "the Company") at 2 College Green, Dublin 2 and that the Bank be and is hereby authorised to honour and negotiate all cheques and other negotiable instruments drawn, made, endorsed or accepted on behalf of the Company and to act on all instructions relating to the accounts, affairs or transactions of the Company notwithstanding that such action may lead to borrowing or cause any of the accounts to be overdrawn or any overdraft to be increased provided that:

   (a) in the case of telefaxed or written instructions, they are signed on behalf of the Company by the following:

      (i) in the case of cheques/transfers for amounts less than or equal to IR£500, one authorised "A" or "B" signatory

      (ii) in the case of cheques/transfers for amounts greater than IR£500 and less than IR£300,000, two authorised "A" or "B" signatories

      (iii) in the case of cheques/transfers for amounts equal to or greater than IR£300,000; such transfers only being made to

         (1) accounts with other Irish banks and those accounts must be in the name of Marjove Limited, or

         (2) specifically to the account of DCC plc, Bank of Ireland, 2 College Green, Dublin 2, current account number 69054226,

      two authorised "A" or "B" signatories

      (iv) in the case of cheques/transfers for amounts equal to or greater than IR£300,000 and not to accounts as described in (iii)(1) and (iii)(2) above, two authorised "A" signatories

DRAFT

(b) in the case of telephone instructions, a transfer may be made by one of the "A" or "B" authorised signatories and may only be made to the account of DCC plc, Bank of Ireland, 2 College Green, Dublin 2, current a/c No. 69054226

2. Mr. M. Scholefield and Mrs. D. Tease, Directors of the Company, be and are hereby authorised to execute on behalf of the Company the Authority and Indemnity in the form produced at the meeting in connection with instructions to be given by telephone or facsimile message

3. the Bank be supplied with a copy of the Memorandum and Articles of Association of the Company and a list of the officials authorised to sign as per Schedule 1 of these minutes together with their specimen signatures

4. the Bank be and is hereby requested to grant accommodation by way of overdraft, loan or otherwise for the purposes of the Company on such terms and conditions as are current in or may be stipulated by the Bank from time to time and

5. this resolution be communicated to the Bank and remain in force until an amending resolution shall be passed by the Board of Directors of Marjove Limited and a copy thereof certified by at least one Director and the Secretary of the Company shall be communicated to the Bank.

CONCLUSION: There being no other business the meeting concluded.

DATE _____ CHAIRMAN _____

STOCK TRANSFER FORM

PRIMECOURT
[Printers & Stationers] Ltd.

(Above this line for Registrars only)

Consideration Money £	Certificate lodged with the Registrar (For completion by the Registrar/Stock Exchange)

Full name of Undertaking	Marjove Limited
Full description of Security	A Ordinary Share
Number or amount of Shares, Stock or other Security and, in figures column only, number and denomination of units, if any	Words: One — Figures: One unit of £1 (units of)
Name(s) of registered holder(s) should be given in full; the address should be given where there is only one holder. If the transfer is not made by the registered holder(s) insert also the name(s) and capacity (e.g., Executor(s)) of the person(s) making the transfer.	In the name(s) of Lower Mount Nominees Limited, Fitzwilton House, Wilton Place, Dublin 2

I/We hereby transfer the above security out of the name(s) aforesaid to the person(s) named below *or to the several persons named in Parts 2 of Brokers Transfer Forms relating to the above security*:

Delete words in italics except for stock exchange transactions.

Signature(s) of transferor(s)

1. [signature] Director
2. [signature] Secretary
3.
4.

Joint corporate shareholders should execute under their common seal.

Stamp of Selling Broker(s) or, for transactions which are not stock exchange transactions, of Agent(s), if any, acting for the Transferor(s)

May 1995

Date

Full name(s) and full postal address(es) (including County or, if applicable, Postal District number) of the person(s) in whose the security is transferred. Please state title, if any, or whether Mr., Mrs. or Miss. Please complete in typewriting or in Block Capitals.	DCC Properties Limited, DCC House, Stillorgan, Blackrock, Co. Dublin

I/We request that such entries be made in the register as are necessary to give effect to this transfer.

Stamp of Buying Broker(s) (if any)	Signature or name and address of person lodging this form (if other than the Buying Broker(s))

STOCK TRANSFER FORM

(Above this line for Registrars only)

Consideration Money £

Certificate lodged with the Registrar

(For completion by the Registrar/Stock Exchange)

Full name of Undertaking.	Lotus Green Limited
Full description of Security.	Ordinary Share.
Number or amount of Shares, Stock or other security and, in figures column only, number and denomination of units, if any.	Words: One — Figures: One unit of £1 (units of)
Name(s) of registered holder(s) should be given in full; the address should be given where there is only one holder. If the transfer is not made by the registered holder(s) insert also the name(s) and capacity (e.g., Executor(s)) of the person(s) making the transfer.	In the name(s) of Lower Mount Nominees Limited, Fitzwilton House Wilton Place Dublin 2.

I/We hereby transfer the above security out of the name(s) aforesaid to the person(s) named below *or to the several persons named in Parts 2 of Brokers Transfer Forms relating to the above security:*

Delete words in italics except for stock exchange transactions.

Signature(s) of transferor(s)

1. [signature] Director
2. [signature] Secretary
3.
4.

Bodies corporate should execute under their common seal.

Stamp of Selling Broker(s) or, for transactions which are not stock exchange transactions, of Agent(s), if any, acting for the Transferor(s).

Date .... May 1995.

Full name(s) and full postal address(es) (including County or, if applicable, Postal District number) of the person(s) to whom the security is transferred.

Please state title, if any, or whether Mr., Mrs. or Miss.

Please complete in typewriting or in Block Capitals.

I/We request that such entries be made in the register as are necessary to give effect to this transfer.

Stamp of Buying Broker(s) (if any)	Stamp or name and address of person lodging this form (if other than the Buying Broker(s))

STOCK TRANSFER FORM

PRIMECOURT
Printers & Stationers Ltd.

(Above this line for Registrars only)

Consideration Money £

Certificate lodged with the Registrar

(For completion by the Registrar/Stock Exchange)

Full name of Undertaking.	Marjove Limited	
Full description of Security.	A Ordinary Shares	
Number or amount of Shares, Stock or other Security and, in figures column only, number and denomination of units, if any.	Words: One	Figures: 1 unit of £1 (units of)
Name(s) of the registered holder(s) should be given in full; the address should be given where there is only one holder. If the transfer is not made by the registered holder(s) insert also the name(s) and capacity (e.g., Executor(s)) of the person(s) making the transfer.	In the name(s) of	Frymount Limited Fitzwilton House Wilton Place Dublin 2

I/We hereby transfer the above security out of the name(s) aforesaid to the person(s) named below *or to the several persons named in Parts 2 of Brokers Transfer Forms relating to the above security*;

Delete words in italics except for stock exchange transactions.

Signature(s) of transferor(s)

1. FRYMOUNT LIMITED
2. ....
3. ... SECRETARY
4. ....

Bodies corporate should execute under their common seal.

Stamp of Selling Broker(s) or, for transactions which are not stock exchange transactions, of Agent(s), if any, acting for the Transferor(s)

May 1995

Date

Full name(s) and full postal address(es) (including County or, if applicable, Postal District number) of the person(s) to whom the security is transferred.

Please state title, if any, or whether Mr., Mrs. or Miss.

Please complete in typewriting or in Block Capitals.

DCC Properties Limited
DCC House
Stillorgan
Blackrock
Co. Dublin

I/We request that such entries be made in the register as are necessary to give effect to this transfer.

Stamp of Buying Broker(s) (if any)	Stamp or name and address of person lodging this form (if other than the Buying Broker(s))

11

NEED BRIEFING | Meeting with PO'Brien of SKC on 25/5/??

1. Sec 86 – General
– Lot of reliance on uncertainties
– 86 needs Revenue to find facts
– Only Court / High Court can find facts
– Given [struck through] no loss 86 and gave specific exemption – same for Sec 135 – Purpose of anti avoidance
– Sec 86 – Organic creation of – Artificial

- Residence is likely to be looked at by Revenue
- Need to work at residence
- Ask if a disclosure at agreement
– Go carefully about the work →
– Well considered – always done with money due in
- UK revenue – expert view [struck through] 135 equivalent saves only utilised in liquidation of company itself.

– Aggressive position for a plc to be in
– Fin incentive at reorganising ...
– CG loss relief only against a cheque ...
– Need to look at a view

| TAX LOSS COMPANIES |

– $15 m → Information due –

12

F2

MOVE RESIDENCE TO UK

- No need for Dutch clearance - no possible time delays here.
- Optically, the U.K. is not considered as a "tax haven".
- May be easier to establish residence.
- Timing = 4 weeks.

MEETING WITH C&L AMSTERDAM (24/5/95)

- Submission to Dutch Revenue must disclose who Drake and Exampleco are.
- Need to be very careful about what is said about intention to dispose.
- Dutch Revenue to be contacted once the submission has gone in to arrange a meeting i.e. to speed up the process - need to be careful about pushing the Dutch Revenue on timing particularly if there is no disposal planned.
- Timing of Dutch ruling is uncertain - hope to have by 30 June 1995 - liquidation of Newco and subsequent change of residence of Subco can then commence immediately thereafter.

MEETING WITH PAT O'BRIEN (23/5/95)

- Such schemes are normally effected when a disposal has occurred or is about to occur.
- If revenue attack the scheme it is likely to be over the change of residence - unlikely to attack until such time as there is a realised gain.
- Believes the scheme to be well constructed with a fair timetable but is reasonably aggressive - only aggressive because it is being done in the absence of an imminent disposal.
- Will write to DCC with his advice and will look specifically at whether the scheme could in any way bring about a tax liability now without there having been a realisation for DCC.

13

WILLIAM FRY

SOLICITORS

F40

FITZWILTON HOUSE, WILTON PLACE, DUBLIN 2. IRELAND.
TEL 01-668 1711, FAX 01-668 7016.
TELEX 93469, D.D.E. BOX NO. 023.

YOUR REF

IN REPLY PLEASE QUOTE

2439-131-AP

7 June 1995

BY COURIER

Fergal O'Dwyer Esq
DCC plc
DCC House
Brewery Road
Stillorgan
Blackrock
Co Dublin

Dear Fergal,

Further to our telephone conversation, I enclose herewith engrossments in duplicate of Agreements in respect of the shares in the plc which are being sold by DCC plc and S & L Investments Limited to Lotus Green Limited.

I confirm that these Agreements are in line with those envisaged in Tommy McCann SC's opinion whereby (a) on payment for the shares being made, the beneficial ownership will pass to the Purchaser and (b) the Share Purchase Agreement itself should not be treated as a transfer attracting stamp duty.

Kind regards.

Yours sincerely,

Alvin F.M. Price
WILLIAM FRY
Solicitors

6682LL

14

WILLIAM FRY

SOLICITORS

FITZWILTON HOUSE, WILTON PLACE, DUBLIN 2, IRELAND.
TEL 01-668 1711, FAX 01-668 7016.
TELEX 93469, D.D.E. BOX NO. 023.

YOUR REF

IN REPLY PLEASE QUOTE

2439-131-AP

7 June 1995

BY COURIER

Fergal O'Dwyer Esq
DCC plc
DCC House
Brewery Road
Stillorgan
Blackrock
Co Dublin

Dear Fergal,

I enclose herewith engrossments in duplicate of the Option Agreement and of the Loan Agreement as discussed.

Yours sincerely,

Alvin F.M. Price
WILLIAM FRY
Solicitors

15

Coopers & Lybrand

P.O. Box 1283
Fitzwilton House
Wilton Place
Dublin 2

Telephone (01) 851 0333
668 2222
676 0306

fax (01) 676 6702
660 1782

DDE 101

Dublin Cork Waterford Limerick
Kilkenny Wexford

F FO
41

FAX TRANSMISSION FORM

our reference

DATE: 7 June 1995.

TO: Fergal O'Dwyer

LOCATION: DCC plc

FAX NO.: 2831018

FROM: Terry O'Driscoll

Total number of pages (including this page) 3

If any pages are not received, or are illegible, please advise immediately

RE: LOTUS GREEN

Dear Fergal,

Further to our telephone conversation this morning in connection with the above, I attach a copy of a fax which I received from Peter Van der Hoeven on his discussions with the Dutch Authorities. Generally, the attitude of the authorities appears helpful and Peter is reasonably hopeful of receiving an early reply from them.

Documentation

I confirm that we have reviewed the documentation prepared by Alvin Price. Alvin is putting through some relatively minor amendments in the documentation and is also writing to you confirming that:-

1. Signing the transfer agreement followed by the subsequent bank transfer from Lotus Green to DCC plc and S&L will be sufficient to transfer the beneficial ownership of the Exampleco shares to Lotus Green.

2. The agreement, as drafted, should not give rise to any stamp duty liability.

I understand that, subject to receiving confirmation from Alvin on the above points, it is proposed to proceed with the following steps tomorrow (8 June):-

1. Drake Properties Limited lends purchase consideration to Lotus Green. We have reviewed a draft loan agreement dated 23 May and discussed this with Brendan Henehan. The draft agreement required certain minor amendments but we have not seen a second draft as yet. This should be prepared as soon as possible.

2. S&L, DCC plc and Lotus Green execute the two transfer agreements in relation to the shares in Exampleco.

3. Full consideration is paid by Lotus Green to S&L and DCC plc.

4. An option agreement in relation to the Exampleco shares is completed between Lotus Green and Vencap Investment Holdings Limited.

I understand that Daphne is drafting up the necessary resolutions in relation to the above steps and I look forward to receiving these later today.

I confirm that there are no tax reasons why the above steps should not be implemented tomorrow. As you are aware, there is some risk that if, in the event of not receiving the necessary clearances from the Dutch authorities, B.V. transfers its shareholding in Marjove Ltd. to another group company, any increase in the value of Marjove's shares while owned by B.V. will be subject to Dutch tax. We have attempted to minimise the risk in this regard by putting the option agreement in place between Lotus Green and Vencap.

Finally I understand that the value of the Exampleco shares to be inserted in both the sale agreements and the option agreement will be at their market value at tomorrow's date.

If you have any queries on the above please do not hesitate to contact either me or John Kelly.

Kind regards.

Yours sincerely,

Terry O'Driscoll,
for Coopers & Lybrand.

c.c. Daphne Tease
DCC plc

Alvin Price
Wm. Frys.

lh.z:\wp.fo

Coopers & Lybrand

Accountants and Management Consultants

inter-office correspondence

date
June 7, 1995

to
Coopers & Lybrand
P.O. Box 1283 Dublin 2
Republic of Ireland

for attention of
Pat Wall / Terry O'Driscoll

your reference

from Coopers & Lybrand
P.O. Box 94669, 1090 GR Amsterdam
Prins Bernhardplein 200
1097 JB Amsterdam

name of writer
Peter van der Heijden

our reference
bm/010.205/[illegible]

subject DCC INTERNATIONAL HOLDINGS B.V. MARJOVE LTD. LOTUS GREEN LTD

Dear Pat, Terry

1. With reference to the Dutch ruling request in respect of DCC International Holdings B.V. ("DCC"), which we sent to the Amsterdam and Rotterdam tax authorities last week, we would like to inform you as follows.

2. This morning we spoke to the chief of the rulingteam of the Rotterdam tax inspectorate. He informed us that he himself will be dealing with the DCC ruling request. He furthermore informed us that he has read our request, but that he could not give us his opinion yet. He had one question. He asked us why Lotus Green Ltd should be an Irish company, resident in the Netherlands and why it could not be a Dutch company. We told him that this was for Irish reasons.

3. Subsequently, we called the tax inspector in Amsterdam. Since she had not been in the office for some days, she had not been able to read our request yet. We informed her that the chief of the rulingteam himself will be dealing with the ruling request. She informed us that she would consult with him whether the Rotterdam inspectorate will only deal with the ruling request or all tax matters of DCC will be dealt with by the Rotterdam tax inspectorate in the future.

4. Please note that Andrew Copley will be in the United States this week. Should you have any questions regarding the above, please contact Esther Oprinsen or myself (telephone number: 20 - 5686904).

Kind regards

16

MEETING POS / FSD ON 9 June 1998

1. Look at 75/25 rather than 76/24

2. Recovery of capital provision → F37

3. Revenue will see it!

DCC Ltd Tax return
- Disposal of Examples
- Disposal of Newco

Lotus Green Tax return
- Accounts of Examples
- Lotus Green goes non resident - file a return

4. Residence
→ Management and controlled
→ Look to have meaningful board meetings
→ [illegible] [illegible] [illegible] board meetings

→ STATUS OF INVESTMENT IN SOSCO i.e. Investment Company

→ Relying on Section 130 i.e. tax free transfer
→ Sec 131 - if you acquire a capital asset in transferor hands and the trading stock
- then a deemed disposal by SOSCO at mv i.e. realisation without a realised
Provision which says you can elect out of this - i.e. defer into income tax gain
- if you make the election - look at MTA's in relation to consolidation

6. DUTCH TAX DEDUCTION ON A DECREASE ALLOWS LENGTH LOSS BETWEEN P/C and SUBCO.

(*) 7. VALUATION MOVING BETWEEN NOW AND LIQUIDATION i.e. INSPECTION For Months

→ Fluctuation in MV of Grain Plc.
→ make sure ~~that~~ ~~the~~ of the agreement cannot be ignored in deleting a sale price
→

(*) 8. ADVICE SHOULD COVER

→ UK equivalent of Sec 135
→ View on narrow interpretation of Sec 135 – regularly some getting excluded
→ Revenue Press release 15/4/92 – Amend Act 1992

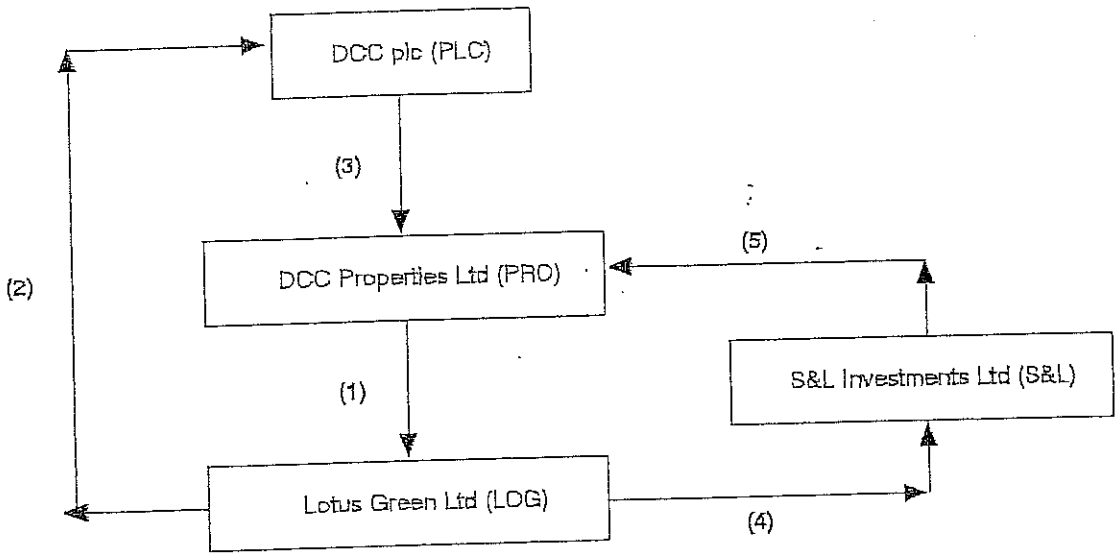
(*) 9. SECTION 86

→ Can it apply IF IT HAS NO SALE
→ Section 86 can only apply if Inspector believes there is a tax advantage.
→ "Potential" or "prospective" change of ownership
→ ~~Cannot~~ Tommy M'Cann believe that it cannot apply.

- could 86 apply before a [illegible]
- what about voluntary movements
-

17

EXAMPLECO



(1) PRO advances a loan to LOG of IR£38,694,068

(2) LOG purchases PLC's investment in EXAMPLECO for a consideration equal to its current market value of IR£31,336,491

(3) PLC advances a loan to PRO of IR£31,336,491

(4) LOG purchases S&L's investment in EXAMPLECO for a consideration equal to its current market value of IR£8,357,575

(5) S&L advances a loan to PRO of IR£8,357,575

09-Jun-95

File : CGTFYFFE
Range : PROFIT

DCC plc : Exampleco

	DCC	S&L	Total
No. of ordinary shares	23,109,507	7,667,500	30,777,007
Latest traded price	1.09	1.09	1.09
Market value - ordinary	25,189,363	8,357,575	33,546,938
No. of prefrence shares	4,621,901		4,621,901
Latest traded price	1.330		1.33
Market value - preference	6,147,128	0	6,147,128
Total market value	**31,336,491**	**8,357,575**	**39,694,066**
Cost per investment ledger	8,508,363	5,032,949	13,541,312
- ordinary shares	5,084,091		5,084,091
- preference shares			
Unrealised profit	17,744,037	3,324,626	21,068,663

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E2

DCC

Memorandum

To: Jim

From: Michael

Date: 9th June 1995

Re: Example Co Transaction

You have asked me to consider whether you have any obligation in your capacity as a director of Fyffes to notify the details of the above transaction to Fyffes and whether any of the insider dealing provisions of the Irish Companies Acts are applicable.

Listing Rules

I specifically considered the provisions of the following chapters of the Listing Rules:

Chapter 9: Continuing Obligations
Chapter 10: Transactions
Chapter 11: Transactions with Related Parties and
Chapter 16: Directors.

Given that Fry's have confirmed that there are no requirements to notify the proposed transaction under the Companies Acts and given that Chapter 10 of the Listing Rules appears to relate solely to transactions outside the Group, there are no provisions within Chapters 9 and 10 which are relevant. The provisions of Chapter 11 would only be relevant in the context of a transaction between DCC and Fyffes (and Fyffes is not a party to the transaction). Chapter 16 includes provisions in relation to the notification of interests of directors and connected persons. The definition of a connected person is set out in Section 26 of the 1990 Companies Act. This states that "a body corporate shall also be deemed to be connected with the director of a company if it is controlled by that director". Since DCC is not "controlled" by you, I don't believe you are under an obligation to notify any interest of a DCC subsidiary as a connected person to you in your capacity as a director.

I am conscious of the fact that the current period is a close period for Fyffes plc. As a director you would be prohibited from dealing during this period. In my view the Example Co transactions might constitute "dealing". However your duty as a director under the Model Code is to seek to prohibit dealings by yourself and connected persons and we have already established that DCC is not a connected person.

I do not believe there are any other provisions of the Listing Rules which may be applicable to the current situation.

.../-

I am not aware that there are any agreements between DCC and Fyffes or indeed between you in your capacity as a director of Fyffes and Fyffes in relation to corporate governance matters which would require a notification of the Example Co transactions.

Insider Dealing

The insider dealing provisions of Irish law are contained in the Companies Act 1990. Again the Example Co transaction might, in my view, constitute "dealing" as the definition does not on the face of it seem to exclude purchases and sales within the same group. The basic rule is that a person who is connected with a company may not deal in that company's securities if "by reason of his being connected with that company he is in possession of information that is not generally available, but if it were would be likely to materially affect the price of those securities". These provisions are extended to a company (e.g. DCC) when any officer is precluded from dealing. However where the decision to enter into the transaction was taken on its behalf by a person other than the officer and there are written arrangements to ensure that the information was not communicated to that person and that no advice relating to the transaction was given by a person in possession of the information, and the information was not so communicated and such advice was not so given, then a company is not precluded from entering into a transaction at any time by reason only of information in the possession of an officer of that company.

My conclusions to the above are as follows:

(i) If you are not in possession of price sensitive information in relation to Fyffes plc, then there is no problem;

(ii) If you are in possession of price sensitive information in relation to Fyffes plc it is my belief that the insider dealing rules are not relevant because the decision to enter into the transaction have been made by persons other than yourself (the Board) who would not be aware of any price sensitive information in relation to Fyffes. However in these circumstances it might be appropriate if you did not participate in the Board decision and that we review the "written arrangements" referred to above.

Would you like me to get Alvin Price to confirm any of the above?

Michael

Michael

19

No exemption [illegible] [illegible] buying transaction.

There is a "dealing".

Don't think we would be prosecuted.

Technically unlawful

Not too concerned

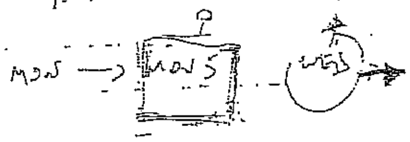
If that was.

Nothing immediately contemplated.

1 No price sensitive info.
2 Price sensitive info. — fairly robust view.
3 Own intentions

Not participation in a deal

(i) Sell on market tell brokers / brokers need to tell prospective purchasers (if possible).



* Off market transaction.
× Board [illegible] [illegible] authorisation.
* Broker specific buyer + choice of terms of conditions.

Hambro Magan (Graham Group / Exit multiple of 21.0x.)

[illegible]

[put through C 207]

NCB agency cross match between 2.

Nothing @ 70

Offer @ 210

[illegible]

DATACARE.

1125 + 599 + 395 per day   Windows Version.

– + 600 + 200 per day   DOS.

Support [illegible] % of [illegible]

No added features

Cost per usage – [illegible] per phone call

[illegible]   Practice Generally

How many do it . . .   [illegible] for

ANSWER   1st half [illegible] part of year and [illegible] [illegible] 2 months [illegible] [illegible] pleased to note that [illegible] 2 months were [illegible] ahead of budget and well [redacted] [illegible]

~~In order to make him a [illegible]. 1st 2 months [illegible] % ahead of budget 28% ahead of last year. [illegible] months~~

Customer   Not.

More do then don't.

Positive [illegible] statement [illegible] put up [illegible]
Pre-[illegible] to see [illegible] going on.

Is the market looking [illegible] a [illegible]
Absolutely [illegible] [illegible]
[illegible]
Not [illegible]

Market not looking for anything.

No exemption for intra-Group transaction.

There is a "dealing".

Don't think we would be prosecuted.

Technically unlawful

Not too concerned.

If there was

Nothing immediately contemplated

1. No price sensitive info.
2. Price sensitive info. Fairly robust view.
3. Our intentions

Not participation on equal

1. Sell on market tell brokers/brokers need to tell prospective purchaser (if possible)

- Off market transaction
- Doesn't come within authorization
- Locate specific buyer and advise of them of conditions.

Send to Alex

Practice Generally

How many do it

Insider

1st half light part of year and only had results for 1st 2 months trading so far. However pleased to note that results for those 2 months were ahead of budget and well up on last year.

In order to make him an insider.
1st 2 months 11% ahead of budget 26% ahead of last year. Not important months.

C Watson Not.

20

E 1

DCC

Memorandum

To: Jim

From: Michael Scholefield

Date: 14th June 1995

Re: Example Co Transaction

I spoke with Alvin Price as agreed on the insider dealing implications of the above. On reflection, Alvin agreed with my original conclusion that the transaction might technically be construed as insider dealing but only if you were in possession of price sensitive information in your capacity as a director of Fyffes. If you are not in possession of such information (i.e. which is not generally available but, if it were, would be likely materially to affect the price of the shares), then there is no problem.

If you are in possession of price sensitive information Alvin thinks we would need to review fairly seriously whether the transaction should be undertaken at a time when that was the case. At a minimum we would need to have a very careful look at the drafting of the documentation.

In relation to your query on the wording of the Act about "advice being given" Alvin said that this might relate to, for example a recommendation from a broker on the basis of the price sensitive information to enter into the transaction and, more generally, not participating in the decision as an equal. AP also mentioned that if the transaction was being entered into for a specific purpose and that purpose might be construed to be price sensitive so far as the shares involved were concerned, then that also might be problem. However if the purchase related to a possible transaction in the future rather than something specifically imminent, he thought that wouldn't really be an issue.

Perhaps we should discuss the above.

Michael

Michael

21

Coopers & Lybrand

P.O. Box 1283
Fitzwilton House
Wilton Place
Dublin 2

telephone (01) 6610333, 6682222, 6780300
fax (01) 6765792, 6601782
DDE 101

Dublin Cork Waterford Limerick Kilkenny Wexford

FAX TRANSMISSION FORM

our reference

FAX NO: 676 5792

DATE: 15/6/95.

TO: Daphne Teare

LOCATION: DCC

FAX NO: 2831018

FROM: Terry O'Donnell

Total number of pages (including this page) 9

IF ANY PAGES ARE NOT RECEIVED OR ARE ILLEGIBLE
PLEASE ADVISE IMMEDIATELY

EXAMPLECO ISSUES

DRAFT

1. Section 131 CTA 1976

101 Section 131 deals with situations where an asset is disposed of by a company to a group member and the asset was not trading stock of the transferor company but is to be held as trading stock by the transferee company. In such cases, the transferee company is treated as if it did not acquire the asset as trading stock initially, but had immediately after the transfer appropriated the asset as trading stock, so that the general CGT group provisions apply to the transfer.

102 Where Section 131 applies, no chargeable gain arises in the transferor company (Section 130 CGA 1975). The transferee company is deemed, however, to have sold and immediately reacquired the asset at its market value. Any chargeable gain "deferred" under Section 130 will therefore crystallise immediately in the transferee company.

103 If the transferee company wishes to defer crystallisation of the gain, however, it may elect that, in calculating its profits for Case I purposes, the market value of the assets at the date of appropriation is reduced by the amount of the chargeable gain which would, in the absence of an election, have arisen at the date of appropriation. This election may only be made if the transferee company "is liable to ..... tax in respect of profits of the trade under Case I of Schedule D". In the present case, it is likely that Lotus Green will be non-resident at the time of any future sale of shares in Exampleco and will therefore not be liable to Irish tax on any profits arising on the sale. In these circumstances, it is extremely unlikely that the Revenue would accept the validity of an election made by Lotus Green under paragraph 15 and, for the purposes of this report, we have assumed that such an election will not be possible.

104 Trade

Trade is defined by Section 1 Income Tax Act 1967 as including "every trade, manufacture, adventure or concern in the nature of trade". Trading Stock is defined by S.62 of the same Act as:-

> "Property of any description, whether real or personal, which is either:-
>
> (a) property such is sold in the ordinary course of the trade in relation to which the expression is use or would be so sold if it were mature ... or if its manufacture, preparation, or construction were complete, or
>
> (b) materials such as are used in the manufacture, preparation or construction of property such as is sold in the ordinary course of the said trade".

105 It is critical to the success of the current proposal that Lotus Green is not carrying on a trade of dealing in shares and is not acquiring the shares in Exampleco as trading stock. We have concluded that it would be very difficult for the Revenue to establish that the shares in

Exampleco are being acquired as trading stock. In view of the importance of this point, we have set out in detail below the usual tests to be applied in considering whether a company is carrying on a trade.

106 The question of whether the company is carrying on a trade is largely determined by the facts of each particular case. A review of the relevant cases on the issue is helpful in giving assistance in understanding what, in law, constitutes, a "trade" but the conclusion in each case depends on the particular facts before the Judges.

107 It may be helpful to consider the 6 "badges of trade" identified by the Royal Commission on the Taxation of Profits and Income in 1954 in the UK. These badges were a summary of factors which had been considered relevant by Judges when considering this question in previous cases.

108 (a) Subject matter of sale

Some assets are more typically indicative of trading stock than others.

In one particular case, concerned with the sale of a substantial amount of whisky, a Judge commented:-

> "A man may purchase stocks and shares with a view to selling them at an early date at a profit, but if he does so he is purchasing something which is itself an investment, a potential source of revenue to him while he holds it. A man may purchase land with a view to realising it at a profit but it may also yield him an income while he continues to hold it. If he continues to hold it there may also be a certain pride of possession. But the purchaser of a large quantity of a commodity like whisky, greatly in excess of what could be used by himself, his family and friends, a commodity which yields no pride of possession, which cannot be turned to account except by a process of realisation, I can scarcely consider to be other than an adventurer in a transaction in the nature of trade".

109 (b) Length of ownership

Trading stock is generally held for a relatively short time whereas investments tend to be held for longer periods.

In the case of Turner v. Last 42 TC 517 Cross J. stated as follows:-

> "A man may buy...land....for his own use and enjoyment with no idea of a quick re-sale and then quite unexpectedly he may receive an offer to buy which is to tempting to refuse. This is a perfectly possible state of facts; but the fact that there was a quick re-sale naturally leads one to scrutinize the evidence that it was not envisaged from the first very carefully".

DRAFT

110 (c) Frequency and number of transactions

Trading generally involves a number of transactions carried out on a regular and habitual basis. An isolated transaction may constitute an adventure in the nature of a trade and there are a number of cases on this but notwithstanding this, the frequency of transactions is an important factor in considering whether a trade is being carried on. A company, for example, which regularly purchases its shares on the market and sells the shares within a relatively short period of time is more likely to be a share dealing company than an investment holding company.

111 (d) Supplementary work on or in connection with the property realised

If the seller has done work on the goods sold or if he has, shortly after acquisition of the asset, taken steps to market the property this would tend to indicate a trading transaction.

112 (e) The circumstances giving rise to the sale of the property

There may be special circumstances relating to the sale which would assist in arguing that the assets being sold, which would otherwise tend to be treated as trading stock, were originally acquired as an investment. For example, a company which acquires rented property with a view to holding the property as an investment may, shortly after its acquisition, receive a very generous offer for the property.

113 (f) Motive

The motive of the person acquiring the asset is a very important factor, i.e. was the motive to hold the property as an investment or to deal in the property.

114 These badges are intended as guidelines only. No one particular badge is conclusive and it is a matter of looking at all the facts surrounding the transaction in each particular case.

A useful summary of the tests to be applied was given in the case of Californian Copper Syndicate v. Harris 5 TC 159:-

> "It is quite a well settled principle in dealing with questions of assessment of income tax, that where the owner of an ordinary investment chooses to realise it, and obtains a greater price for it than he originally acquired it at, the enhanced price is not profit in the sense of Schedule D....assessable to income tax. But it is equally well established that enhanced values obtained from realisation or conversion of securities may be so assessable, where what is done is not merely a realisation or change of investment, but an act done in what is truly the carrying on, or carrying out, of a business. The simplest case is that of a person or association of persons buying and selling lands or securities speculatively, in order to make gain, dealing in such investments as a business, and thereby seeking to make profits.

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> What is the line which separates the two classes of cases may be difficult to define, and each case must be considered according to its facts; the question to be determined being - is the sum of gain that has been made a mere enhancement of value by realising a security, or is it a gain made in an operation of business in carrying out a scheme for profit making?".

115 Applying the above tests to the present case, it would appear that most, if not all, of the badges of trade are be absent e.g. the subject matter of the transaction generally of an investment rather than a trading nature, it is not intended that Lotus Green will acquire other shares with a view to resale, etc.

116 Obviously a very important issue concerns the motive of the Lotus Green directors in acquiring the shares in Exampleco. In this context, it may be useful to review the matter from a group perspective. The shares in Exampleco have been held as a long term investment within the Drake group. There is nothing in the facts as known to us which would indicate that the transfer of the shares to Lotus Green signals a change of the group's view of its investment in Exampleco. The recent application to the Dutch Authorities regarding participation exemption must support this conclusion. You may also remember that we initially expressed a preference for having Lotus Green held by your UK holding company rather than by the BV but you did not favour this approach as it was quite likely that the shares in Exampleco will continue to be held for a significant period of time and that, in these circumstances, the UK would not be a tax efficient location for the investment.

117 Notwithstanding that there is no current intention to dispose of the Exampleco shares, it is always possible that, in certain circumstances, the shares will be sold by Lotus Green within a short time after acquisition. As mentioned in the Turner v. Last case above (see paragraph 109 (b) above) such a fact is likely to result in the Revenue reviewing the company's motive in acquiring the shares in detail. However, this does not mean that the transaction is necessarily a trading transaction. Much will depend on the circumstances surrounding the sale e.g. if a purchaser were to make a general offer to all shareholders and Lotus Green was unaware of this at the time of the acquisition, the acquisition of shares is less likely to be a trading transaction than if Lotus Green, immediately after its acquisition of the Exampleco shares, places these shares on the market.

118 Conclusion

It is difficult to be categorical on this issue as so much depends on the facts of each case and on the conclusions that may be drawn from these facts from the Courts. Based on our knowledge of facts in the present case, however, in our view it would be extremely difficult for the Revenue to establish that the shares in France are being acquired as trading stock.

119 In order to give additional protection on this point, it may be advisable to restructure the proposed financing of Lotus Green. At present, it is intended that the company be financed with an interest free loan repayable on demand from Drake Properties Limited. As discussed in recent telephone conversations, we would suggest that this arrangement be revised so that the loan is repayable at the end of a fixed period (say ten to fifteen years) and is subordinated to other debt. This would tend to support the long term nature of the investment.

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120 We would also recommend that you review recent board minutes and other relevant documentation of Drake plc to ensure that these contain nothing which would indicate that the shares are being transferred to Lotus Green as trading stock.

2. Option arrangement and Mc Grath case

201 As requested, we have reviewed the impact of changes made to the CGT legislation introduced by Finance Act 1989 following the McGrath case. We have concluded that the amendments to the CGT legislation have no impact on the current proposal. The 1989 changes related to transactions between connected persons and they only apply where an asset is disposed of between such persons and is subject to a restriction e.g. an option. No such transfer is envisaged in the proposal.

202 On a more general note, the use of the option is very much a secondary issue in the overall proposal. The benefit of the option arrangement was always somewhat marginal. Having reviewed the matter again in recent days we have concluded that the option does not add greatly to the proposal and, on balance, we would recommend that the option arrangement should not be proceeded with.

203 The only benefit of the option arrangement is that it pegs the value of Marjove's investment in Lotus Green and is designed to ensure that no charge to CGT arises on the liquidation of Marjove if the value of the shares increases in the period while owned by Marjove. As an alternative to the option arrangement, this CGT difficulty could be overcome by shortening the period between Lotus Green acquiring Exampleco and Marjove being liquidated. This would minimise the risk of movement in Exampleco's share price. Under the original proposal, it was envisaged that a month would elapse between the transfer and liquidation. In principle, there should be no difficulty in shortening this period. Lotus Green, for example, could acquire the shares after close of business on Friday evening and Marjove could be liquidated early Monday - it is most unlikely that there would have been any movement in the share price of Exampleco in that period.

204 We have considered whether shortening the period between the liquidation of Marjove and the acquisition of the Exampleco shares increases the risk attaching to the proposal. We have concluded that any increase is marginal. We have also considered the possibility of further arrangements designed to ensure that no CGT arises on the liquidation of Marjove. In our view, however, the most effective way of dealing with this difficulty is to liquidate Marjove shortly after the Exampleco transfer.

205 This revision to the original proposal does not affect the overall time scale but does impact on the timing of the individual steps. If you are in agreement with the revised proposal, we can agree a fresh timetable.

3. Section 86

301 You have queried whether, in the event of a successful section 86 challenge by the Revenue, payment of tax would be accelerated. In particular you are concerned with paragraph

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2.5 on page 11 of Mr McCann's Opinion dated 27 March 1995. Mr McCann is out of the country at present but will be returning on Monday. We have therefore not had an opportunity of discussing with him the points raised by you in our recent telephone conversation.

302 Our brief to Counsel made it clear that there was no definite intention to dispose of the investment in Exampleco and Mr McCann was aware of this at our meeting in March. His Opinion therefore has to be read in this light.

303 The issue regarding a possible Section 86 challenge which might accelerate payment of tax was discussed in detail at our meeting. The definition of "tax advantage" in the section includes "any potential or prospective charge or assessment". In theory, therefore, if the Revenue were to form the opinion that the current proposal falls within section 86 and the Courts agreed with this opinion and if the Revenue computed the potential tax advantage of having the shares in Exampleco held by Lotus Green rather than by Drake plc, the payment of tax by the group would be accelerated.

304 Mr McCann's view on Section 86 could probably be fairly summarised as follows:-

(i) There is a "grave" risk that Section 86 is unconstitutional for the reasons set out on pages 10 and 11 of his Opinion.

(ii) He is of the opinion that Section 86 could not be successfully applied by the Revenue to the current proposal.

(iii) The possibility of a successful Revenue attempt to assess a potential tax advantage at, say, the time of the transfer of the shares to Lotus Green is, in his opinion, very unlikely. The Revenue would face extreme practical difficulties in calculating the potential tax advantage. For example, it would be impossible to know the likely date of sale to a third party and the eventual sale proceeds.

(iv) Notwithstanding the above, there can be no guarantee that the Revenue would be unsuccessful in seeking to apply the section particularly as the section has yet to come before the Irish courts. In Mr McCann's view, however, the section 86 risk "is not sufficient to prevent the proposals being adopted".

305 As mentioned above, Mr McCann is currently out of the country. If you think it would be useful, we will speak with him on his return and confirm that the above fairly reflects his view on the application of Section 86 to the present proposal.

4. UK law Post Burman v. Hedges & Butler

401 The case of Burman v. Hedges & Butler was heard in 1978. The case therefore pre-dates the case of Furniss v. Dawson which, in broad terms, laid down the principle that, for UK tax purposes, tax liabilities could be computed by ignoring certain pre-ordained transactions which are designed to avoid tax and which have no other commercial purpose. This so-called doctrine of "fiscal nullity" or "substance over form" was rejected by the Irish Supreme Court in the McGrath case (1988). In the UK, arrangements such as those put in

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place in the Burman case, would clearly be vulnerable to the principles enunciated in the Furniss v. Dawson case, although these principles have been restricted in more recent UK cases.

402 In addition to the fact that the Burman case pre-dates the adoption of the form over substance approach by the UK courts, there have been a number of technical changes in the UK governing CGT groups which would have to be considered by any UK tax payers using a Burman type arrangement.

403 For example, in determining whether a company is a member of a CGT group in the UK it is now necessary that the subsidiary is an effective 51% subsidiary of a UK parent company. This requires that the parent is beneficially entitled to more than 50% of the profits available for distribution to equity holders and more than 50% of any assets available for distribution to equity holders on a winding up. There is no similar requirement in Ireland, where the test continues to refer solely to a 75% ownership of ordinary share capital.

404 In addition, Section 25 Finance Act (2) 1992 in the UK has amended the UK equivalent of our Section 135. The proviso to our Section 135 provides that:

> "references in this section to a company ceasing to be a member of a group of companies do not apply to cases where a company "ceases to be a member of a group by being wound up or dissolved or in consequence of another member of the group being wound up or dissolved".
>
> In the UK now the equivalent wording is:
>
> "references in this section to a company ceasing to be a member of a group of companies do not apply to cases where a company ceases to be a member of a group in consequence of another member of the group ceasing to exist".
>
> Thus, the proviso to section 35 is much wider than the UK equivalent section.

5. Tax residence and shareholder approval

501 We understand from recent discussions that, on the sale of Exampleco, the consent of the shareholders of Drake plc to the sale will, in order to satisfy the Stock Exchange conditions, be required. You have queried whether this requirement for Drake plc shareholder consent should impact on the tax resident status of Lotus Green.

502 Lotus Green will be tax resident outside Ireland if it is managed and controlled in the Netherlands. This is a question of fact and it is clearly an issue on which care needs to be taken. We do not believe, however, that the requirement for shareholder consent should significantly impact on the tax residence of the company. The requirement to obtain shareholder approval is a matter for Drake plc as it relates to its stock exchange listing. We understand that, from a legal point of view, a transfer of the Exampleco shares from Lotus

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Green to a third party without obtaining the consent of Drake plc shareholders would not be invalid. It would, of course, have severe repercussions for Drake plc as regards its public listing and, from a practical point of view, Lotus Green would not sell Exampleco unless PLC receive the necessary consent. The position of Lotus Green in this regard would be no different than any foreign subsidiary of an Irish quoted parent.

22

Discussed with [illegible] 19/6/95
Counsel to look at
→ [illegible] V [illegible]
→ Section 86 comment in brief

Fergal 19/6/95

DCC

Memorandum

To: Jim c.c. Daphne

From: Fergal

Date: 15 June 1995

Re: ExampleCo

Attached is a copy of Pat O'Brien's letter and Coopers & Lybrand's review of any points raised in his letter. Both letters are still in draft form. Pat O'Brien intends adding a conclusion paragraph on the overall merits of the scheme. It might be useful if you were also to hear his comments first hand, say over the phone. Pat Wall has signed off on the letter from the US.

The points raised by Pat O'Brien in his draft letter and reviewed again by Coopers & Lybrand (without them being aware that we had sought a second opinion) are summarised as follows:

Pat O'Brien's Points	Coopers & Lybrand's Review
1. The scheme (even before any realisation) will be signalled to the Irish Revenue	We have accepted all along that this is the case.
2. Section 86 - Did Counsel believe a sale of ExampleCo was imminent when he drafted his opinion.	The brief to Counsel was quite clear that there was no definite intention to dispose. Counsel is away until Monday. They will check again with him if we so wish.
3. The Irish Revenue could attack the scheme before any sale on the basis of a "potential or prospective" gain to the tax payer.	The possibility of a successful attempt to assess a potential tax advantage at say, the time of the transfer of the shares in ExampleCo to Subco is, in the opinion of Counsel, very unlikely. The Revenue would face extreme practical difficulties in calculating the potential tax advantage. Notwithstanding the above, there can be no guarantee that the Revenue would be unsuccessful in seeking to apply the section particularly as the section has yet to come before the Irish courts. In his opinion however the Section 86 risk is not sufficient to prevent the proposals being adopted. He also believes that there is a "grave risk that Section 86 is unconstitutional".

4. Timing - i.e. could any movements in ExampleCo's share price between the date of transfer of ExampleCo to Subco and the ultimate liquidation of Newco (Subco's holding company) give rise to Irish CGT.	Coopers & Lybrand are now recommending that the transfer take place on a Friday and the liquidation of Newco take place on a Monday so there is no time delay.
5. Trading - i.e. could Subco be considered to be a share trader for Corporation Tax purposes. The length of time Subco owns ExampleCo could be relevant in this regard.	It is difficult to be categorical on this issue. Based on Coopers & Lybrand's knowledge of the facts in the present case it is their view that it would be extremely difficult to establish that the shares in ExampleCo are being acquired by Subco as trading stock. They have also suggested the following: - the loan agreement from DCC Properties to Subco be a long term loan (10-15 years) and subordinated. - we need to review recent board minutes for DCC plc and other relevant documentation to ensure that these contain nothing which would indicate that the shares are being transferred to Subco as trading stock.
6. Residence - i.e. impact of, the possible need for shareholder approval in relation to any possible future disposal of ExampleCo shares, on Subco's residence in Holland.	Subco will be tax resident outside Ireland if it is managed and controlled in Holland. This is a question of fact and it is clearly an issue on which care needs to be taken. Coopers & Lybrand do not believe that the requirement for shareholder consent should significantly impact on the tax residence of Subco.
7. Burnums v Hedges and Butler precedent - i.e. whether any subsequent UK legislation has impacted on the scope of Section 135 of the Irish equivalent legislation which permits the liquidation route for Newco.	Coopers & Lybrand's view is that Irish legislation is much wider than UK equivalent.

I would welcome an opportunity to discuss the overall scheme with you. The comments apply equally to any scheme that might be considered in relation to Russia/America.

Fergal

KPMG Stokes Kennedy Crowley

1 Stokes Place, St Stephen's Green, Dublin 2, Ireland
Tel: 353 1 708 1000, Fax: 353 1 708 1122

TELEFAX · If not well received immediately telephone Linda Casey at 01 708 1000 ext 2223

Telefax No.	2831017		
Date	12 June 1995	Page 1 of	13
To	Fergal O'Dwyer	From	Pat O'Brien
Company	DCC	Ref	11380/13

Subject

Fergal,

I refer to our meeting on Friday and I attach a copy of my draft letter.

Please call to discuss any comments which you may have.

Regards.

Pat O'Brien

pob/lc/11384/4

12 June 1995

Mr Fergal O'Dwyer
Chief Financial Officer
DCC Plc
DCC House
Brewery Road
Stillorgan
Blackrock
Co Dublin

Dear Fergal

You have asked me to comment on the capital gains tax planning structure which has been proposed with a view to minimising any future Irish tax liabilities on a possible disposal of your shares in France.

My understanding of the proposed structure, and my comments below, are based on a Brief which was presented to Tommy McCann SC on 16 March 1995 (the text which I have is marked "draft" but I assume it is the final paper submitted to Mr McCann) and on his Opinion dated 27 March 1995. I understand that you have taken tax advice (which I have not seen) from Coopers & Lybrand.

The following summarises the comments on the structure which I made at our meeting last Friday.

1. Profile

Even if there is not an early sale of the shares in France, I believe the tax structure should be assessed against the liklihood that it may have a reasonably high profile with Irish Revenue. As I mentioned, the transfer by Drake of the shares in France to Subco will be a disposal and acquisition for tax purposes in the hands of Drake and Subco, respectively. The establishment of Newco will be an acquisition for tax purposes by Drake while the (admittedly small) distribution on liquidation of Newco will be a disposal for Drake (probably in the same accounting period as the acquisition). Any non-cash liquidation distributions made by Newco (the prime example here is, of course, the distribution to Drake BV of the shares in Subco) will be a disposal for tax purposes by Newco. Finally, the change of residence of Subco will mark the end and beginning of tax accounting periods for that company (section 9, Corporation Tax Act 1976) if the change of residence takes place on a date other than the normal accounting date of the company. In any event, the change of residence of Subco is something to which one would want to draw the attention of Irish Revenue.

I make these points not to suggest any weakness in the tax structure proposed. Rather, I am pointing out that, given the number of steps in the structure which have some Irish tax significance, it must be possible that Irish Revenue will take some interest in it even if the shares in France are not sold for some time.

2. General Approach

As I mentioned when we spoke, the approach which I took in reviewing the papers was to look at what I think are the relevant technical tax issues before considering the possible impact of section 86. I will reverse the sequence here and comment first briefly on section 86.

3. Section 86 Finance Act 1989

As you are aware, Section 86 was introduced following the failure of Irish Revenue to persuade the Supreme Court to take a "substance over form" approach in applying tax law to commercial transactions. The facts in the McGrath case were very similar to those in earlier UK cases where Inland Revenue had been successful. Once the Supreme Court declined to follow the UK precedent, the Irish authorities felt that they had little choice but to introduce a general anti-avoidance section.

Developments over the past few years in the UK and Ireland would suggest that the taxpayer's win in McGrath was something of a Pyrrhic victory. UK case law over the past decade has seen a narrowing of the potential scope of the earlier decisions in the UK McGrath-type cases. The result is that taxpayers and their advisers have some practical guidance as to the scope of the substance over form doctrine.

In Ireland, we have a very widely-drafted general anti-avoidance section. We have no case law guidance on its possible scope or limitations for the very simple reason that the Irish authorities have not taken any case under the section.

I would expect Revenue to be very cautious in their use of section 86. It is probably stating the obvious to say that they will only take a case which they are very confident of winning. However, experience on the UK side would suggest that even a judgement in favour of Revenue might result in some narrowing of the perceived potential scope of the section. That seems to me to be a risk which Revenue would sensibly run only if the potential upside in terms of tax yield is sufficiently attractive. Thus it would be strange to see Revenue running a case under section 86 where the tax involved is, say, £100,000 but they might feel they had little to lose where the tax involved is, say, £50m. It would be little more than speculation to hazard a guess as to where £7m lies on this continuum!

I would like to make two comments on section 86 in its possible application to your proposed structure.

When we first met, I wondered whether Counsel was assuming an early sale of the shares in France in the light of his comment (at page 12 of the Opinion) "as the amounts are so large and as there does not appear to be any serious downside risk involved with the transaction, if a section 86 attack should be successful". The Brief made it quite clear (at paragraph 1.1) that Drake has no definite intention to dispose of its investment in France. Nevertheless, in the light of the extract from the Opinion which I have just quoted I think it would be prudent to ask Counsel what he had in mind in drafting that.

One of the points which we discussed when we met was whether section 86 could in any event be applied by Revenue prior to the sale of the shares in France. My own view is that the section could be so applied and I have two reasons for saying this.

If section 86 is to be applied, the Revenue Commissioners must form the opinion that a transaction is a tax avoidance transaction. This involves the Revenue Commissioners forming the opinion that a transaction gives rise to, or would but for section 86 give rise to, a tax advantage. The term "tax advantage" is defined in section 86 (1) to mean "a reduction, avoidance or deferral of any charge or assessment to tax, including any potential or prospective charge or assessment". This wording seems to me to be sufficiently broad as to catch a transaction even where there is no current tax saving.

Assume for the moment that I am incorrect in what I have just suggested so that it is necessary to point to a current tax saving achieved by the transaction if section 86 is to apply. It seems to me that we could still be within the ambit of section 86 even if the ultimate sale of the shares in France has not taken place. The reason for this is that a straight sale of the shares in France by Drake to Drake BV would give rise to a tax liability in Drake on the basis of an assumed open-market price for the transaction. Thus it could be argued that the various steps which result in the shares in France being owned by a Dutch-resident wholly-owned subsidiary of Drake BV are susceptible to attack under section 86 even if the ultimate sale of the shares in France has not taken place.

In any event, my main purpose in raising these points is to suggest to you that Mr McCann be asked to clarify the extract quoted above from his Opinion. To the extent that the transaction proceeds on the basis of his view that section 86 should not apply, I think you might usefully ask whether he would be equally confident in this conclusion if, as the Brief clearly envisages, the shares in France might not be sold for some time, if at all. Clearly the worst possible answer is that you end up paying tax where you have not realised a third-party sale of the shares in France. A second concern, and one which I think should also be put to Counsel, is the timing of any possible tax charge in the event of the successful application of section 86 by Revenue. The concern here is that a reduction in the value of the shares in France prior to their sale outside the group might give a higher tax liability than would have been suffered if no planning had been done.

Mr McCann's main thesis in relation to section 86 is that Revenue would have difficulty in applying it on constitutional grounds. I am very aware of the strength of feeling of Counsel on this point but I fear it is not something on which I can usefully comment since I have no expertise in constitutional law.

4. Timing

Since the shares in France are quoted securities, I think we need to be careful that movements in the share price in the course of the implementation of the proposed structure do not give rise to tax costs. As the Brief notes (at paragraph 2.4.1), the distribution to Drake BV of Newco's shares in Subco would be regarded as a disposal for Irish tax purposes. The Brief suggests that no capital gains tax will arise since the shares in Subco would have no value.

The question which I have here is whether the time which will elapse between the transfer of the shares in France to Subco and the distribution in specie of the shares in Subco to Drake BV in the course of the liquidation of Newco might leave some value in the shares in Subco arising from an increase in the underlying value of the shares in France. You mentioned that some form of option arrangement might be put in place to cap this but I cannot comment on these arrangements because I do not have any information on them. However, I did say that the effectiveness of any such arrangements should be assessed in the light of provisions in section 33 Capital Gains Tax Act 1975 dealing with transactions between connected persons.

The impact of any increase in the value of the shares in France should also be assessed at the level of Drake BV. In this case the question, which I understand you are having addressed, is whether an increase in the value of the shares in France (which would result in an increase in the value of the shares in Subco and of Drake BV's shares in Newco) would cause any tax issue in the Netherlands or would be covered by the participation exemption.

5. Trading

The Brief to Counsel makes it clear that the shares in France are not trading stock for Drake. For the reasons which I outlined at our meeting, and which I summarise below, I think it is equally important to be satisfied that the shares will not be seen as trading stock of Subco.

Briefly, section 131 Corporation Tax Act 1976, when combined with paragraph 15 of Schedule 1 to the Capital Gains Tax Act 1975, provides that where a group company (Subco) acquires an asset (the shares in France) as trading stock from another group member (Drake) for which the asset was not trading stock, the acquiring company is treated as having acquired the asset as a capital asset and then as having disposed of and re-acquired the asset at its market value. The net result of this is that the transferee company is taxed on the chargeable gain but gets an uplift to market value in the carrying cost of the asset as trading stock. The tax charge on the capital gain can be avoided if the transferee (Subco on our facts) elects that its carrying cost of the asset as trading stock be reduced by the amount of the chargeable gain. The intended effect of this is that the gain should be picked up as an income gain when the property is ultimately sold.

Notwithstanding my earlier comments on the profile which this overall transaction may have with Revenue in any event, I think one would be reluctant to give the structure the additional prominence which an election made under paragraph 15 would involve. In addition it should be noted that an election under paragraph 15, with a view to avoiding the tax charge on the unrealised capital gain, may be made only where the taxpayer "is chargeable to income tax (or corporation tax) in respect of the profits of the trade under Case 1 of Schedule D". It could certainly be argued that this condition is met in circumstances where Subco is in the first instance resident in Ireland but it is not, I think, an argument which I would like to be running in the event of a fairly quick change in the residence of Subco.

In summary, I believe everything possible should be done, consistent with the overall tax planning for your group companies, to ensure that Subco cannot be regarded as a trading company. In doing this, I think some attention should be paid to UK tax cases which have been decided on the corresponding UK legislation (while these cases dealt with attempts to convert capital losses into income losses rather than with chargeable gains, the findings as to what did and did not constitute a trade are interesting). I think it would also be important to be able to reach a fairly firm conclusion on this point, even against the possible background of a fairly early disposal of the shares in France. One of the key factors in a determination of trading status is the intention of the taxpayer with regard to the asset when it was acquired. However, we should bear in mind that Revenue are invariably looking at matters such as this with the benefit of hindsight.

6. Residence

I agree with the analysis in the Brief (at section 6.2.3) that the purported change in residence of Subco is one of the most likely areas of attack from Revenue. As I mentioned earlier, the change of residence is something to which you will want to draw the attention of Revenue. It is, accordingly, critical that all possible steps be taken to support the desired tax position.

KPMG | Stokes Kennedy Crowley

As you are aware, there is no statutory definition of residence for Irish corporation tax purposes. Old UK case law, which is binding here in this matter, points to corporate residence being located at the place where the central management and control of the company is exercised. The location of a company's central management and control is a question of fact to be determined in the light of the available evidence.

Under the proposed structure, it is as important that Subco be resident in Ireland at the outset (in order to facilitate a tax-free transfer to it of the shares in France under section 130) as it is that Subco should be resident outside Ireland at the time of the ultimate disposal of the shares in France (with a view to avoiding a charge to Irish tax on the disposal). Thus it would be necessary at some stage to be able to point to a change in residence of Subco and to be able to point to facts which support this.

If Subco's only purpose is to hold the shares in France, it occurs to me that the only times at which evidence might be available as to the location of significant strategic decision-making on behalf of the company is on the acquisition of the shares from Drake and on the ultimate sale of the shares in France to a third party. At all other times it seems likely that the Board of Subco will have little to do but to observe the normal statutory formalities. For this reason, and with a view to giving the board some ocassion to meet and make decisions at the time of its purported change in residence (which by definition will have to precede a decision on the sale of the shares in France), I suggest that you consider having some other activity or investment in Subco.

If this is not done, I would certainly have some concern about the point which you raised on Friday about the parent company consent which will be required for any sale of the shares in France. Presumably the consent is a shareholder consent but it is my understanding that such a consent would normally involve a recommendation from the directors of the parent company. The immediate concern which you raised is that the exercise in Ireland of the functions which lead to the shareholder consent might have some implications for the residence position of Subco.

I think this concern is well founded.

The following extract from Taxation of Companies and Company Reconstructions (Bramwell, 4th Edition, paragraph 12.03) is in point:

"The central management and control, or as it is sometimes expressed "the superior and directing authority" of a company is not the same as the day-to-day supervision of the company's business although the two may often be vested in the same person or body of persons. It is the authority which decides upon matters of general policy relating to the company's business. For example, it will decide whether the company will continue to carry on an existing business or diversify into other activities, whether the company should carry on business at all, how the business of the company should be financed. In other words, a body will exercise the central management and control of a company if it takes decisions on "strategic" or fundamental questions of policy relating to the direction of the business. Thus in one case where the directors of a company, carrying on business in America, held regular meetings of a committee of the Board of Directors in America, but reserved matters of major importance for board meetings in the United Kingdom, it was held that the company was resident in the United Kingdom. The Lord Chancellor said:

> "...it is clear that the directorate in Manchester was a directorate of paramount authority as is shown not only by the fact that the reserved subjects are kept for them in extraordinary session, but by this that....they were constantly supervising and guiding the policy of the company, even as regards matters which belonged to manufacture and trading.""

I attach for your information a copy of a Statement of Practice issued by the UK Inland Revenue in July 1983 on Company Residence. I would refer you in particular to the material in paragraphs A-07 and A-08. From this it will, I think, be clear that the fact that a decision to sell the shares in France will be subject to approval in Ireland will cause some concern on residence. This concern will not be eliminated by having other matters which engage the attention of the directors of Subco but I do think it will be helpful if the shares in France do not constitute the only business asset of Subco so that one can point to activities of the directors of Subco in other areas as a counterbalance to the significance which might be attached to the Irish approval of the sale of the shares in France.

7. Bushmills Precedent

The Brief (at section 5) refers to the two arguments made by the Inland Revenue in the Bushmills case (Burman v Hedges & Butler) and Counsel in his Opinion gives it as his view that these arguments, if advanced in an Irish court, would not be successful.

Since that case is sixteen years old, I think it would be useful also if the opinions which you have taken on this proposal were to refer to a line of thinking advanced far more recently by Inland Revenue on the scope of the "liquidation exclusion" from the charge to tax under section 135 Corporation Tax Act 1976. Inland Revenue expressed the view, at a time when the legislation was identical to ours, that the proviso which prevents a charge to capital gains tax in the case of a liquidation applies only in a case in which an asset is transferred from a single subsidiary to its parent and the subsidiary is subsequently liquidated so that the group constituted by these two companies ceases to exist.

The UK introduced legislation in 1992 (but effective November 1991) which is intended to confirm this narrower interpretation of the proviso. The Inland Revenue's contention that the legislation prior to its amendment should also be interpreted in this narrow way found little favour with UK tax commentators. However, since the 1991/92 amendment was somewhat controversial and might be looked at by an Irish Inspector of Taxes seeking to levy tax on your proposed structure, I think it would be as well that the matter is included in the opinions which you have. I should say that it is my view that the narrower interpretation is simply incorrect and that, subject to meeting the various requirements of the legislation, a tax charge would not arise under section 135 by virtue of the liquidation of Newco.

8. Shareholdings in Newco

There may be some Dutch tax advantage from having a 75%-25% rather than a 76%-24% shareholding arrangement in Newco. This will not present any Irish difficulties since the requirement for an Irish group structure is that Drake should hold at least 75% of the ordinary share capital of Newco.

9. Funding of Subco

I understand that the current intention in relation to the funding of Subco is that Drake will make an interest-free loan to it. In the event that you have some taxable income in the Netherlands and that Subco, following the transfer of its residence to the Netherlands, is part of the Drake BV tax consolidation group (fiscal unity) it might be interesting to consider whether there is any case for a claim for a deduction for deemed interest expense on the inter-company loan applying arms-length principles.

10. Interest Relief

I understand that the various steps in the proposed structure have been assessed to ensure that they do not cause any difficulty for any of your existing interest relief claims under section 33 Finance Act 1974/Section 10 Corporation Tax Act 1976.

1. Stamp Duty

I understand that William Fry are looking at the Stamp Duty implications of the proposal and I make no comments on this.

Consent to transactions within section 482(1)(d)

A–04 8. The Treasury consent generally to transactions of the class described in section 482(1)(d) which consist of:

(a) the transfer by the resident company of shares or debentures of the non-resident company to another member of the resident group;

(b) subject to the conditions prescribed by paragraph 9, the transfer by the resident company or by a company which is not resident in the United Kingdom (in para. 9 referred to in either case as "the transferor company") of shares or debentures of the non-resident company to a person not connected with the resident company;

(c) the transfer by a company which is not resident in the United Kingdom of shares or debentures of the non-resident company to a company which is a member of a territorial group of which the first-mentioned company is also a member.

9. The conditions prescribed by this paragraph are:

(a) that the transfer:
  (i) is for full consideration paid to the transferor company, and
  (ii) is not to a nominee or trustee for a person who is connected with the resident company;

(b) that no arrangements exist as a consequence of which:
  (i) the resident company, or
  (ii) a nominee or trustee for the resident company, or
  (iii) a person connected with the resident company, or
  (iv) a nominee or trustee for a person connected with the resident company,

is or may become entitled to the shares or debentures transferred or to any of them or to any interest in them or in any of them.

Revocation of previous consents

A–05 10. All consents previously given generally by the Treasury to transactions of the classes described in section 482(1)(c) and (d) are hereby revoked.

COMPANY RESIDENCE

27 July 1983

1. In last year's consultative paper "Taxation of International Business" it was said that, while the Government do not propose at this stage to proceed with a statutory definition of company residence, a Statement of Practice would be issued to clarify the application of the existing test based on case law.

2. The attached Statement of Practice [SP6/83] seeks to draw out the implications of the decisions of the Courts. The Inland Revenue do not intend to embark on a general review of the residence status of existing companies; but where it is necessary to examine the residence status of a company, they will seek to do so in accordance with the Statement.

Company residence

A–05

1. Residence has always been a material factor, for companies as well as individuals, in determining tax liability. But statute law has never laid down any general rules for determining where a company is resident. The question has thus been left to the Courts to decide.

The case law test

A–06

2. The test of company residence is that enunciated by Lord Loreburn in *De Beers Consolidated Mines v. Howe* 5 T.C. 198 at the beginning of this century:

> "A company resides, for the purposes of Income Tax, where its real business is carried on . . . I regard that as the true rule; and the real business is carried on where the central management and control actually abides"

3. The "central management and control" test, as set out in *De Beers*, has been endorsed by a series of subsequent decisions. In particular, it was described by Lord Radcliffe in the 1959 case of *Bullock v. Unit Construction Company* 38 T.C. 712 at page 738 as being:

> "as precise and unequivocal as a positive statutory injunction . . . I do not know of any other test which has either been substituted for that of central management and control, or has been defined with sufficient precision to be regarded as an acceptable alternative to it. To me . . . it seems impossible to read Lord Loreburn's words without seeing that he regarded the formula he was propounding as constituting *the* test of residence".

Nothing which has happened since has in any way altered this basic principle: under current United Kingdom case law a company is regarded as resident for tax purposes where central management and control is to be found.

Place of "central management and control"

A–07

4. In determining whether or not an individual company is resident in the U.K., it thus becomes necessary to locate its place of "central management and control". The case law concept of central management and control is, in broad terms, directed at the highest level of control of the business of a company. It is to be distinguished from the place where the main operations of a business are to be found, though those two places may often coincide. Moreover, the exercise of control does not necessarily demand any minimum standard of active involvement: it may, in appropriate circumstances, be exercised tacitly through passive oversight.

5. Successive decided cases have emphasised that the place of central management and control is wholly a question of fact. For example, Lord Radcliffe in *Unit Construction* said that "the question where control and management abide must be treated as one of fact or 'actuality' " (p. 741). It follows that factors which together are decisive in one instance may individually carry little weight in another. Nevertheless the decided cases do give some pointers. In particular a series of decisions has attached importance to the place where the company's board of directors meet. There are very many cases in which the board meets in the same country as that in which the business operations take place, and central

management and control is clearly located in that one place. In other cases central management and control may be exercised by directors in one country though the actual business operations may, perhaps under the immediate management of local directors, take place elsewhere.

6. But the location of board meetings, although important in the normal case, is not necessarily conclusive. Lord Radcliffe in *Unit Construction* pointed out (p. 738) that the site of the meetings of the directors' board had *not* been chosen as "*the* test" of company residence. In some cases, for example, central management and control is exercised by a single individual. This may happen when a chairman or managing director exercises powers formally conferred by the company's Articles and the other board members are little more than cyphers, or by reason of a dominant shareholding or for some other reason. In those cases the residence of the company is where the controlling individual exercises his powers.

7. In general the place of directors' meetings is significant only in so far as those meetings constitute the medium through which central management and control is exercised. If, for example, the directors of a company were engaged together actively in the U.K. in the complete running of a business which was wholly in the U.K., the company would not be regarded as resident outside the U.K. merely because the directors held formal board meetings outside the U.K. While it is possible to identify extreme situations in which central management and control plainly is, or is not, exercised by directors in formal meetings, the conclusion in any case is wholly one of fact depending on the relative weight to be given to various factors. Any attempt to lay down rigid guidelines would only be misleading.

8. Generally, however, where doubts arise about a particular company's residence status, the Inland Revenue adopt the following approach:

(i) They first try to ascertain whether the directors of the company in fact exercise central management and control.

(ii) If so, they seek to determine where the directors exercise this central management and control (which is not necessarily where they meet).

(iii) In cases where the directors apparently do *not* exercise central management and control of the company, the Revenue then look to establish where and by whom it is exercised.

Parent/subsidiary relationship

A–05 9. It is particularly difficult to apply the "central management and control" test in the situation where a subsidiary company and its parent operate in different territories. In this situation, the parent will normally influence, to a greater or lesser extent, the actions of the subsidiary. Where that influence is exerted by the parent exercising the powers which a sole or majority shareholder has in general meetings of the subsidiary, for example to appoint and dismiss members of the board of the subsidiary and to initiate or approve alterations to its financial structure, the Revenue would not seek to argue that central management and control of the subsidiary is located where the parent company is resident. However, in cases where the parent usurps the functions of the board of the subsidiary (such as *Unit Construction* itself) or where that board merely rubber

stamps the parent company's decisions without giving them any independent consideration of its own, the Revenue draw the conclusion that the subsidiary has the same residence for tax purposes as its parent.

10. The Revenue recognise that there may be many cases where a company is a member of a group having its ultimate holding company in another country which will not fall readily into either of the categories referred to above. In considering whether the board of such a subsidiary company exercises central management and control of the subsidiary's business, they have regard to the degree of autonomy which those directors have in conducting the company's business. Matters (among others) that may be taken into account are the extent to which the directors of the subsidiary take decisions on their own authority as to investment, production, marketing and procurement without reference to the parent.

Double taxation agreements

11. In general our double taxation agreements do not effect the U.K. resi- A–09
dence of a company as established for U.K. tax purposes. But where the partner country adopts a different definition of residence, it may happen that a U.K. resident company is treated, under the partner country's domestic law, as also resident there. In these cases, the agreement normally specifies what the tax consequences of this "double" residence shall be.

12. Under the double taxation agreement with the United States, for example, the U.K. residence of a company for U.K. tax purposes is unaffected. But where that company is also a U.S. corporation, it is excluded from some of the reliefs conferred by the agreement. On the other hand, under a double taxation agreement which follows the 1977 OECD Model Taxation Convention, a company classed as resident by both the U.K. and the partner country is, for the purposes of the agreement, treated as resident where its "place of effective management" is situated.

13. The Commentary in paragraph 3 of Article 4 of the OECD Model records the U.K. view that, in agreements (such as those with some Commonwealth countries) which treat a company as resident in a state in which "its business is managed and controlled", this expression means "the effective management of the enterprise". More detailed consideration of the question in the light of the approach of Continental legal systems and of Community law to the question of company residence has led the Revenue to revise this view. It is now considered that effective management may, in some cases, be found at a place different from the place of central management and control. This could happen, for example, where a company is run by executives based abroad, but the final directing power rests with non-executive directors who meet in the U.K. In such circumstances the company's place of effective management might well be abroad but, depending on the precise powers of the non-executive directors, it might be centrally managed and controlled (and therefore resident) in the U.K.

Conclusion

14. In outlining factors relevant to the application of the case law test, this A–10
statement assumes that they exist for genuine commercial reasons. Where, however, as may happen, it appears that a major objective underlying the existence

of certain factors is the obtaining of tax benefits from residence or non-residence, the Revenue examines the facts particularly closely in order to see whether there has been an attempt to create the appearance of central management and control in a particular place without the reality.

15. The test examined in this statement is not always easy to apply in present day circumstances. The last relevant case was decided over 20 years ago, and there have been many developments in communications since then, which in particular may enable a company to be controlled from a place far distant from where the day-to-day management is carried on. As the statement makes clear, while the general principle has been laid down by the Courts, its application must depend on the precise facts.

(a) 1970 c.10. By virtue of para. 21(3) of Sched. 30 to the I.C.T.A. 1988 (c.1) on and after 6 April 1988 the reference to s.482(4) is to be construed as a reference to s.765(1)(c) or (d) of that Act, the reference to s.482(1)(c) or (d) is to be construed as a reference to s.765(1)(c) or (d) of that Act, the reference to s.258(7) is to be construed as a reference to s.413(5) of that Act and the reference to the purposes of s.258 is to be construed as a reference to the purposes of Chap. IV of Part X of that Act.

(b) 1978 c.30.

(c) By virtue of para. 21(3) of Sched. 30 to the I.C.T.A. 1988 (c.1) on and after 6 April 1988 the reference to s.533(2) to (8) is to be construed as a reference to s.839(2) to (8) of that Act.

23

Matters for C+C letter

-> Section 131 v Section 35 ✓
-> Burns case any development - one 10 years ago
-> Can the scheme bring about a liability with a disposal ✓
-> Shareholder v Phoenix point ✓
-> How does the offer ✓ work - Small
of McGrath case ✓
-> 24/76

Matters for SKC letter

-> Shareholder v Phoenix point

Matter for AP

-> Insider dealing

24

Damien Gallagher
Tim Kenny
Brian Fagan
Fergal O'Dwyer

× Assemble AGM info.

× Ring for proxies

× Ring Davys re share price feedback
news or trading statement?

6286366
Tim Hurst

× Boxes.

3,177,284 DCC limited. (plc) DCC plc

147,912 : Leaca

Various consultations

Conversations [illegible]

Appears that Insider dealing

Discussed current knowledge - Not likely to cause material price movement

Noted that DCC is having ... gain / loss.
No net purchase / sale of shares.

MS to sign off

~~Williams~~ | 1 Sept. INTERIM.
Tenders. | 1 July FINAL
WALSALL |

25

X14

DCC

Memorandum

To: File c.c. Jim and Fergal

From: Michael

Date: 20 June, 1995

Re: Compliance: Example Co Transaction

At the request of Jim Flavin, I have given consideration as Compliance Officer to the potential impact of insider dealing legislation on the above, given Jim's position as a director of Fyffes plc.

The proposed transaction will take place entirely within the DCC Group between wholly owned subsidiaries of DCC plc. As such there is no net purchase or sale of the shares by the Group. Any potential for gain or loss falls entirely within the Group and will not impact on any third party.

I have discussed with Jim Flavin his current knowledge of corporate development and other relevant matters within Fyffes plc. I am satisfied on the basis of my discussion with Jim that he is not aware of any matter that would cause a material movement in the share price of Fyffes plc and on that basis I conclude that he is not in possession of price sensitive information in relation to that company. I would note that it is proposed that the Example Co Transaction does not take place within a close period for Fyffes plc.

Together with Jim Flavin and Fergal O'Dwyer I have discussed with Alvin Price of William Fry the possible relevance of the insider dealing legislation to the above transaction, the details of which he is fully conversant. Alvin confirmed that the decision to enter into a transaction would need to be based on price sensitive information in order to fall foul of the insider dealing legislation, which in practical terms anyway was probably not intended to apply to transactions between wholly owned subsidiaries of the same company. Alvin has already separately confirmed to Fergal that there is no requirement to notify Fyffes plc of the above transaction which will involve a change of beneficial ownership only and not a change of registered shareholding.

From the above I conclude that the proposed transaction does not fall within the insider dealing provisions of the Companies Acts.

Michael

26

KPMG Stokes Kennedy Crowley

1 Stokes Place, St Stephen's Green, Dublin 2, Ireland
Tel: 353 1 708 1000, Fax: 353 1 708 1122

TELEFAX - If not well received immediately telephone Linda at 01 708 1000 ext 2223

Telefax No.	2831017		
Date	20 June 1995	Page 1 of	3
To	Fergal O'Dwyer	From	Pat O'Brien
Company	DCC		
		Ref	11380/32
Subject			

Fergal,

I refer to our telephone conversation last evening.

With reference to section 7 of my draft letter of 12 June, I agreed to prepare something which you might put to Counsel for his view as to how an Irish court might respond to the suggestion that the "liquidation exclusion" from the charge to tax under section 135 should be narrowly interpreted.

As I said I would, I have prepared the attached note on a "devil's advocate" basis. That is, I have tried to put the arguments from the perspective of an Inspector of Taxes wishing to attack the scheme.

Regards.

Pat O'Brien

Section 135 Corporation Tax Act 1976 - "Liquidation Exclusion"

1. Section 135 (1) Corporation Tax Act 1976 provides that references to a company ceasing to be a member of a group of companies do not apply to cases where a company ceases to be a member of a group by being wound up or dissolved or in consequence of another member of a group being wound up or dissolved.

2. The corresponding UK legislation was considered in Burman v Hedges & Butler.

   This case concerned the sale of the Bushmills Distillery to the Seagram Group. The transaction was effected by setting up a new company (Newco 1) in which Hedges & Butler held certain shares entitled only to par on a winding up but with no fixed dividend rights and in which Seagram held shares entitled to all surplus assets in a winding up. By reason of the number of shares and the rights attaching, Newco 1 was in a group with Hedges & Butler. Newco 1 owned all the shares in Newco 2. Hedges & Butler transferred Bushmills to Newco 2 at full market value, the consideration left outstanding. Newco 1 was put into liquidation, the Hedges & Butler shareholding being paid off in cash and the shares in Newco 2 being distributed to Seagram.

3. The Inland Revenue attacked the arrangements on a limited number of grounds. Accordingly, the decision in that case does not amount to an approval of the scheme. Rather, it merely indicates that certain lines of attack by the Inland Revenue, which are only some from among many, may not be effective.

4. In particular the case did not address the critical issue. This is whether or not it was in consequence of another company being wound up or dissolved that Newco 2 left the Hedges & Butler group. If it was in consequence of another company being wound up or dissolved, there would be no deemed disposal of the Bushmills shares on the ocassion of Newco leaving the group. If, on the other hand, Newco 2 left the Hedges & Butler group for some other reason, then it would be deemed to dispose of the Bushmills shares at open market value and the scheme would be ineffective.

5. The expression "wound up" and the expression "dissolved" are used in Section 135 (1) CTA 1976 but are not defined. Both provisions appear in the Companies Act in relation to the liquidation of companies. There the expression "wound up" refers to the conclusion of the process of "winding up the affairs of the company", an expression used in the Companies Act 1963. The expression "dissolved" in relation to a company means the action of the Registrar of Companies in removing a company from the Register of Companies. A dissolution occurs subsequent on the completion of the winding up of a company. Between the two events a general meeting of the company is held at which a report on the winding up is given and a return of that meeting is made to the Registrar, following which the dissolution occurs.

6. The tense in which "being wound up or dissolved" is used is somewhat ambiguous in Section 135. Having regard to the fact that the dissolution is a single act and not an ongoing process and having regard to the fact that "wound up" refers to the completion of the process of "winding up", it is arguable that the phrase means "in consequence of another company of the group having being wound up or having been dissolved". It does not mean "in consequence of something which occurs during the process of the winding up of the affairs of another member of the group, or as part of the process leading to the eventual dissolution of another member of the group".

7. The distinction between the two interpretations is fundamental. If we take the view that the phrase has the first suggested meaning, then it has quite a restricted meaning. It can refer only to a company leaving a group in consequence of the fact that its affairs had been fully wound up or that it had been dissolved. The only event which occurs as a necessary consequence of either act is that the shares in the company cease to exist. That would appear to be the time at which the company in liquidation ceased to be a member of the group.

8. Section 129 (4) states that for the purposes of the definition of a group, the passing of a resolution or any other act or the winding up of a company is not to be regarded as the ocassion of the company ceasing to be a member of the group of companies. Since a group is defined by reference to the ownership of certain shares, it follows that it is the point at which those shares are no longer owned that the group ceases to exist.

9. If it is correct to argue that Newco 1 remained a member of the Hedges & Butler group until the actual dissolution of Newco 1, then it is not in consequence of the company's dissolution that Newco 2 left the Hedges & Butler group. It had already left at some time before the dissolution.

10. The question, therefore, boils down to whether or not, where Newco 2's share are transferred to Seagram and cash is transferred to Hedges & Butler, being the final distribution of all of the assets of Newco 1 and being the last step required to complete the "winding up of the affairs of Newco 1", Newco 2 could be set to leave the group as the consequence of Newco 1 being wound up.

11. Strictly it should be held that Newco 1 is wound up in consequence of Newco 2 being transferred to Seagrams and the cash being transferred to Hedges & Butler rather than vice versa. Furthermore these transfers need to be complete before it can be said that Newco has been "wound up". It is arguable, therefore, that Newco 2 leaves the Hedges & Butler group in consequence of the shares in it being transferred from Newco 1 to Seagrams and not in consequence of anything else.

12. While this may seem a harsh interpretation, it may be helpful to compare it with an alternate course of action which might have occurred. The liquidator might have sold the shares in Newco 2 on the open market and transferred the cash (proceeds) to Seagram in respect of their shares in Newco 1. Would anyone suggest that the sale of Newco 2 was "in consequence of Newco 1 being wound up"?

13. In such a case it could certainly be said that the sale of the shares had occurred during the process of winding up and surely it could not be suggested that the sale of shares in such circumstances benefited from the exemption in Section 135 (1).

14. Accordingly, it can be argued that the exemption applies no more to a transfer in specie to the shareholders than it does to a sale to a third party and the transfer of cash to the shareholders. In both instances Newco 2 leaves the Hedges & Butler group in consequence of no longer being owned by Newco 1 and not in consequence of Newco 1 "being wound up or dissolved".

15. In summary the exemption in Section 135 (1) relating to a company leaving a group in consequence of another company being wound up relates only to a company leaving a group in consequence of the shares in another company ceasing to exist because of that company being wound up or dissolved and does not refer to any actions of the liquidator of that other company.

16. The obvious occasion upon which a company ceases to be a member of a group in consequence of the dissolution of another company is where company A owns company B (thus forming a group). Company B is put into liquidation. That fact in itself does not break the group. At the point of dissolution, shares in company B cease to exist but and for Section 135 (1) company A would then leave the group of which it was the principal company. However, in consequence of section 135 (1) company A is not deemed to dispose of any assets which had previously been transferred to it by company B.

17. The line of thought used by the Irish courts in deciding that the "abandonment of an option" exemption does not extend to the receipt of cash in return for the abandonment of an option is worth bearing in mind. The two issues are not the same but the option abandonment case does illustrate the willingness of the courts to place narrow interpretations upon exemptions where these exemptions are being used for the purpose of tax planning of a type to which Revenue take exception.

11384/45

27

Fyffes

memo

To: N.V. McCann/D.J. Bergin

From: Carl McCann

Subject: DCC

Date: 05/23/95

Dad/Denis,

During lunch Jim mentioned that he was transferring his Fyffes stake to an off-shore structure so that they could take advantage of a disposal, if it ever arose, without needing to pay tax. The essence of such an arrangement, if it works, is that control must be with directors who reside off-shore. This implies a technical change of control. Perhaps such an event requires (1) the Chairman's formal approval and/or (2) Disclosure, which might be self-defeating both in terms of its potential effect on our share price (hardly to our advantage) or which might damage its tax-effectiveness.

Perhaps, in any case, Jim should be writing to seek your permission to make any such change. Maybe he is trying to keep the file right by deeming his casual reference last Thursday to be notice. Would he try to construe the fact you didn't openly disagree to be your technical acceptance??

Perhaps we need to drop him a line to clarify the point that any such change would require his application in writing and your agreement in writing or otherwise.

Let's see what Denis thinks.

Who did J.F. lunch with N + Carl.

INTERPOSED.

19 - JUNE - 95.

suggest someone else handwriting.

(1) SUICIDE TAX SCHEME

(2) DCC DIRECTORS ALL AWARE OF OUR FIGURES AND BULLISH, ON AN ONGOING BASIS,

(3) THEY SHOULD NOT HAVE ANY INFORMATION OTHER THAN THE MARKET GENERALLY

(4) PARTICULARLY IN THE LIGHT OF JF STATEMENTS THAT, IF HE DID NOT GET A BOARD POSITION THAT DCC WOULD INTEND TO BE A SELLER OF SHARES

(1) ("SUICIDE") TAX SCHEME INVOLVING OUR SHARES BEING TRANSFERRED TO A FOREIGN RESIDENT COMPANY, WITH NO JF OR ANY DCC DIRECTOR ON ITS BOARD, AND FOR THE PURPOSE OF THE SCHEME

DCC File
Copy NVHCC
For info.

Fyffes

memo

To: To DCC file

From: Carl McCann

cc:

Subject:

Date: 06/21/95

We had the Audit Committee meeting today, 20th June 1995. The Committee approved the Interim Results. Jim Flavin turned up over an hour late when the meeting was finished, then proceeded to go through the numbers and process. He looked at the adjustments between the management accounts and the interim accounts, and he probed the necessity for the various adjustments. He then announced that our monthly figures were being consolidated into DCC's monthly figures and being presented to the DCC board as part of their package, not perhaps in detail, but rather as the one line net profit attributable. The meeting, including Denis and Gerry, were rather surprised. Denis challenged him on the point, and Jim said that this was perfectly normal practice and a reasonable thing to do. I think everyone was too surprised to say any more about it. This follows on Jim's phonecall to me the previous evening at c. 6.15pm where he indicated he was planning to transfer ownership of DCC shares in Fyffes to a Dutch BV. He sought waiver of any requirement to inform the Chairman and so on. He said his advice was that there was no requirement to do same. I told him I felt that was a requirement. I told him that I would try and revert to him on this point.

Going to Dundalk a long time idle Animus?

054-0139/1

FAX re Jim Flavin.

X15

ST-ES ST. STEPHEN'S GREEN
DUBLIN 2
TELEPHONE 6E5-1-6T5 6611
FAX 6E5-1-66E 6606

JAMES O'DWYER JOHN V. O'DWYER WILLIAM JOHNSTON SIOBHÁN DOWNEY SEAMUS GIVEN
PAUL McLAUGHLIN RONAN WALSH GERARD W. BOHAN CARL O'SULLIVAN CONSULTANTS
IAN A. SCOTT EUSENE F. FANNING EUGENE McCAGUE ISABEL FOLEY VINCENT WALSH
JOHN G. FISH DONOGH CROWLEY NICHOLAS G. MOORE JOHN MEADE DENIS J. KERRIN
DANIEL E. O'CONNOR JOHN E. WALSH DECLAN HAYES DONOR McDONNELL CHEVASSE HAMILTON
PETER McLAUGHLIN MICHAEL MEGHEN DAVID O'DONOGHUE PATRICK McGOVERN NIALL McLAUGHLIN
ROBERT BOLTON JOSEPH LETDEN COLM DUGGAN ORAINNE KENNESSY DAVID R. FIDOT
DR. YVONNE SCANNELL

ALSO AT 115 EAST 57TH STREET, SUITE 1230, NEW YORK, N.Y. 10022. TELEPHONE (212) 759 0606. FAX (212) 588 2694

ARTHUR COX

our reference
MM/PR

your reference

date
21st June, 1995

Strictly Private and Confidential

Carl McCann Esq.,
Fyffes plc,
22/23 St. Mary's Abbey,
Off Capel Street,
Dublin 7.

Dear Carl,

I refer to our telephone conversation of last week in the course of which you asked me to let you know the nature and form of any notifications which might be required consequent upon a transfer by DCC of its entire shareholding in Fyffes.

I would be obliged if you could let me have details as to precisely what is intended. In particular I will need to know if legal and beneficial ownership of the shares in question will pass to a new entity together with some particulars as to the nature of the new entity concerned and its relationship to DCC.

I am sorry to bother you for the detail but I am sure you will appreciate that advice given on the basis of a misunderstanding of what is intended would be of no value.

I look forward to hearing from you.

Regards.

Yours sincerely,

MICHAEL MEGHEN

Jim
Regards

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DCC

Facsimile Message

To:	Pat O'Brien	Fax No:	7081122
From:	Fergal O'Dwyer	Date:	23rd June, 1995

No. of Pages to follow: 11

If this message is not received in full please contact Orla Byrne on +353 1 2831011.

Message:

Attached are various pieces of correspondence with TMcC in relation to France/Exampleco.

Perhaps we could talk about this sometime on Monday.

Regards,

Fergal.

DCC plc DCC House Brewery Road Stillorgan Blackrock Co Dublin Ireland
Tel: +353 1 2831011 Fax: +353 1 2831017 / 2831018

Coopers
&Lybrand

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668 2222
676 0008

fax (01) 676 5792
660 1782
DDE 101

Dublin Cork Waterford Limerick
Kilkenny Wexford

Fax Transmission Form

Fax No. - (01) 6765792

our reference

Confidential ☐ **Urgent** ☐ **Call on Receipt** ☐

Date: 23/6/95

To: Fergal O'Dwyer

Location: DCC

Fax No: 2831018

From: Terry O'Driscoll

Total Number of pages (including this page) 3

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[redacted]

Wakefield House,
Yart Road,
Dun Laoghaire,
Co. Dublin.

23rd June, 1995

Your Ref: TO'D/-

Coopers & Lybrand,
Chartered Accountants,
PO Box 1283,
Fitzwilton House,
Wilton Place,
Dublin 2.

Dear Mr. O'Driscoll,

Re: Drake

Many thanks for your fax of June 21st.

I have considered the proviso to Section 135(1) of the Corporation Tax Act, 1976, and could not agree with the views expressed by the other advisor. That proviso provides that references to a company ceasing to be a member of a group of companies does not apply to cases -

> "... where a company ceases to be a member of a group by being wound up or dissolved or in consequence of another member of the group being wound up or dissolved".

The consequence of the winding up of a company is that the liquidator must distribute the assets of the company in accordance with the provisions of the Companies Acts - those provisions require that surplus assets should be distributed to the contributories. Consequently a distribution by a liquidator is, in my opinion, made in consequence of a company being wound up - indeed in my opinion the reference to a company being wound up in the foregoing passage is not a reference to the dissolution of a company (which is the final step in a winding up) because the passage refers also to a dissolution but a reference to actions taken in the course of the company being wound up, which procedure commences with the presentation of the petition or the passing of the resolution as the case may be. I would have no hesitation in advising that the foregoing is the correct view - and I am supported in this by the facts that (a) the Special Commissioners in the United Kingdom adopted the same view, (b) the British Revenue, having adopted a contrary view, accepted

that decision and (c) I am instructed that all the United Kingdom commentators took the view, confirmed by the Special Commissioners, that the Revenue were incorrect.

As to the point upon which you desired me to comment in relation to Paragraph 2.5 of my Opinion (see the bottom of p. 11 thereof) of March 27th last - I think that your memo to the clients is satisfactory in all respects. I cannot of course give a guarantee in relation to Section 86 but I would be surprised if it were applied and even if it were it would seem likely that the most deleterious effect would be to accelerate the date on which tax became payable.

I return herewith your papers and I enclose herewith my fee note.

Yours sincerely,

Thomas S. McCann.

Encls.

Coopers & Lybrand

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DDE 101

Dublin Cork Waterford Limerick
Kilkenny Wexford

our reference

FAX TRANSMISSION FORM

FAX NO:- (01) 6765792

sent

DATE:	**21 June 1995**
TO:	**Thomas McCann SC**
LOCATION:	**Wakefield House** **York Road** **Dun Laoghaire**
FAX NO:	**2843658**
FROM:	**Terry O' Driscoll**

Total number of pages (including this page) 28

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Dear Mr McCann

Drake

You may remember that Pat Wall and I met with you some months ago in connection with the above. I attach a copy of our original brief together with the opinion you issued at the time.

The client is now implementing the proposal along the lines suggested in our original brief. Unfortunately, the matter has been somewhat complicated by the fact that another advisor to Drake has become involved and has suggested that the proviso to Section 135(1), CTA 1976 may be somewhat more limited than would appear on first sight.

The point at issue relates to circumstances where, on the liquidation of a parent company, a subsidiary leaves a CGT group by virtue of its shares being distributed in specie to the shareholders in satisfaction of their rights as shareholders. The critical issue is whether, in such circumstances, it can be said that the company is leaving the group in consequence of its parent being wound up. An argument is being put forward by the other advisor that in such a situation the company is leaving in consequence of the distribution of the shares by the liquidator of the parent and not in consequence of the liquidation of the parent. If this interpretation is correct, the proviso to Section 135(1) would only apply to a very limited set of circumstances.

I attach a copy of a note prepared by Drake's other advisors on the matter setting out a particular line of thinking on Section 135(1).

I should point out that we do not agree with the logic adopted in the accompanying paper. Indeed, as far as I am aware, I understand that Drake's other advisors do not think it is the correct interpretation of the legislation but are simply putting it forward as an area of possible concern. I should also point out that the UK Revenue did at one stage adopt a line of thinking similar to that set out in the paper but, apparently following legal advice and the reversal at the Special Commissioner's stage, they appear to have accepted that their interpretation was incorrect. The UK equivalent of our Section 135 was subsequently changed to incorporate the Inland Revenue's view on the matter and I attach a copy of the revised UK legislation.

I would appreciate your views on this matter. There is also one further issue on Section 86 which I would like to discuss with you.

Unfortunately the matter is of considerable urgency and I would greatly appreciate meeting with you sometime over the next couple of days, if this is at all possible.

I should be obliged if your secretary would telephone me to agree a suitable time.

Kind regards.

Yours sincerely

Terry O' Driscoll
for Coopers & Lybrand

Section 135 Corporation Tax Act 1976 - "Liquidation Exclusion"

1. Section 135 (1) Corporation Tax Act 1976 provides that references to a company ceasing to be a member of a group of companies do not apply to cases where a company ceases to be a member of a group by being wound up or dissolved or in consequence of another member of a group being wound up or dissolved.

2. The corresponding UK legislation was considered in Burman v Hedges & Butler.

   This case concerned the sale of the Bushmills Distillery to the Seagram Group. The transaction was effected by setting up a new company (Newco 1) in which Hedges & Butler held certain shares entitled only to par on a winding up but with no fixed dividend rights and in which Seagram held shares entitled to all surplus assets in a winding up. By reason of the number of shares and the rights attaching, Newco 1 was in a group with Hedges & Butler. Newco 1 owned all the shares in Newco 2. Hedges & Butler transferred Bushmills to Newco 2 at full market value, the consideration left outstanding. Newco 1 was put into liquidation, the Hedges & Butler shareholding being paid off in cash and the shares in Newco 2 being distributed to Seagram.

3. The Inland Revenue attacked the arrangements on a limited number of grounds. Accordingly, the decision in that case does not amount to an approval of the scheme. Rather, it merely indicates that certain lines of attack by the Inland Revenue, which are only some from among many, may not be effective.

4. In particular the case did not address the critical issue. This is whether or not it was in consequence of another company being wound up or dissolved that Newco 2 left the Hedges & Butler group. If it was in consequence of another company being wound up or dissolved, there would be no deemed disposal of the Bushmills shares on the ocassion of Newco leaving the group. If, on the other hand, Newco 2 left the Hedges & Butler group for some other reason, then it would be deemed to dispose of the Bushmills shares at open market value and the scheme would be ineffective.

5. The expression "wound up" and the expression "dissolved" are used in Section 135 (1) CTA 1976 but are not defined. Both provisions appear in the Companies Act in relation to the liquidation of companies. There the expression "wound up" refers to the conclusion of the process of "winding up the affairs of the company", an expression used in the Companies Act 1963. The expression "dissolved" in relation to a company means the action of the Registrar of Companies in removing a company from the Register of Companies. A dissolution occurs subsequent on the completion of the winding up of a company. Between the two events a general meeting of the company is held at which a report on the winding up is given and a return of that meeting is made to the Registrar, following which the dissolution occurs.

6. The tense in which "being wound up or dissolved" is used is somewhat ambiguous in Section 135. Having regard to the fact that the dissolution is a single act and not an ongoing process and having regard to the fact that "wound up" refers to the completion of the process of "winding up", it is arguable that the phrase means "in consequence of another company of the group having being wound up or having been dissolved". It does not mean "in consequence of something which occurs during the process of the winding up of the affairs of another member of the group, or as part of the process leading to the eventual dissolution of another member of the group".

7. The distinction between the two interpretations is fundamental. If we take the view that the phrase has the first suggested meaning, then it has quite a restricted meaning. It can refer only to a company leaving a group in consequence of the fact that its affairs had been fully wound up or that it had been dissolved. The only event which occurs as a necessary consequence of either act is that the shares in the company cease to exist. That would appear to be the time at which the company in liquidation ceased to be a member of the group.

8. Section 129 (4) states that for the purposes of the definition of a group, the passing of a resolution or any other act or the winding up of a company is not to be regarded as the ocassion of the company ceasing to be a member of the group of companies. Since a group is defined by reference to the ownership of certain shares, it follows that it is the point at which those shares are no longer owned that the group ceases to exist.

9. If it is correct to argue that Newco 1 remained a member of the Hedges & Butler group until the actual dissolution of Newco 1, then it is not in consequence of the company's dissolution that Newco 2 left the Hedges & Butler group. It had already left at some time before the dissolution.

10. The question, therefore, boils down to whether or not, where Newco 2's share are transferred to Seagram and cash is transferred to Hedges & Butler, being the final distribution of all of the assets of Newco 1 and being the last step required to complete the "winding up of the affairs of Newco 1", Newco 2 could be set to leave the group as the consequence of Newco 1 being wound up.

11. Strictly it should be held that Newco 1 is wound up in consequence of Newco 2 being transferred to Seagrams and the cash being transferred to Hedges & Butler rather than vice versa. Furthermore these transfers need to be complete before it can be said that Newco has been "wound up". It is arguable, therefore, that Newco 2 leaves the Hedges & Butler group in consequence of the shares in it being transferred from Newco 1 to Seagrams and not in consequence of anything else.

12. While this may seem a harsh interpretation, it may be helpful to compare it with an alternate course of action which might have occurred. The liquidator might have sold the shares in Newco 2 on the open market and transferred the cash (proceeds) to Seagram in respect of their shares in Newco 1. Would anyone suggest that the sale of Newco 2 was "in consequence of Newco 1 being wound up"?

13. In such a case it could certainly be said that the sale of the shares had occurred during the process of winding up and surely it could not be suggested that the sale of shares in such circumstances benefited from the exemption in Section 135 (1).

14. Accordingly, it can be argued that the exemption applies no more to a transfer in specie to the shareholders than it does to a sale to a third party and the transfer of cash to the shareholders. In both instances Newco 2 leaves the Hedges & Butler group in consequence of no longer being owned by Newco 1 and not in consequence of Newco 1 "being wound up or dissolved".

15. In summary the exemption in Section 135 (1) relating to a company leaving a group in consequence of another company being wound up relates only to a company leaving a group in consequence of the shares in another company ceasing to exist because of that company being wound up or dissolved and does not refer to any actions of the liquidator of that other company.

16. The obvious occasion upon which a company ceases to be a member of a group in consequence of the dissolution of another company is where company A owns company B (thus forming a group). Company B is put into liquidation. That fact in itself does not break the group. At the point of dissolution, shares in company B cease to exist but and for Section 135 (1) company A would then leave the group of which it was the principal company. However, in consequence of section 135 (1) company A is not deemed to dispose of any assets which had previously been transferred to it by company B.

17. The line of thought used by the Irish courts in deciding that the "abandonment of an option" exemption does not extend to the receipt of cash in return for the abandonment of an option is worth bearing in mind. The two issues are not the same but the option abandonment case does illustrate the willingness of the courts to place narrow interpretations upon exemptions where these exemptions are being used for the purpose of tax planning of a type to which Revenue take exception.

11384/45

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Fax No. - (01) 6765792

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Confidential ☐ Urgent ☐ Call on Receipt ☐

Date: 23/6/95

To: Floyd O'Dwyer

Location: D & C

Fax No: 2831018

From: Terry O'Donnell

Total Number of pages (including this page) 5

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Floyd.

These are copies of faxes requested by Mr McCann yesterday.

Terry.

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Fax Transmission Form

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our reference

Confidential ☐ Urgent ☐ Call on Receipt ☐

RECEIVED
23 JUN 1995

Date: 23 June 1995

To: Thomas McCann S.C.

Location: Wakefield House, York Road, Dun Laoghaire

Fax No: 284 3658

From: Terry O'Driscoll

Total Number of pages (including this page) 3

If Any Pages Are Not Received Or Are Illegible,
Please Advise Immediately

Dear Mr McCann

Drake

I refer to my fax of 21 June and to our subsequent telephone conversation in connection with the above. I wish to thank you for your speedy response in this matter and look forward to receiving your written opinion at your earliest convenience.

On the section 86 issue, which we discussed briefly yesterday, I attach a copy of a note which we sent to our client last week in your absence. I should be obliged if you would confirm that we have accurately summarised your views on section 86. Please feel free to make whatever changes you consider necessary to the draft note. Our client is somewhat concerned that, when writing your original opinion, you may have believed that a sale of the investment by the group was imminent and that this may have influenced your perception of the risks involved in the proposal.

If you have any query on the matter please do not hesitate to contact me.

Yours sincerely

Terry O'Driscoll
for Coopers & Lybrand

DRAFT

120 We would also recommend that you review recent board minutes and other relevant documentation of Drake plc to ensure that these contain nothing which would indicate that the shares are being transferred to Lotus Green as trading stock.

2. Option arrangement and Mc Grath case

201 As requested, we have reviewed the impact of changes made to the CGT legislation introduced by Finance Act 1989 following the McGrath case. We have concluded that the amendments to the CGT legislation have no impact on the current proposal. The 1989 changes related to transactions between connected persons and they only apply where an asset is disposed of between such persons and is subject to a restriction e.g. an option. No such transfer is envisaged in the proposal.

202 On a more general note, the use of the option is very much a secondary issue in the overall proposal. The benefit of the option arrangement was always somewhat marginal. Having reviewed the matter again in recent days we have concluded that the option does not add greatly to the proposal and, on balance, we would recommend that the option arrangement should not be proceeded with.

203 The only benefit of the option arrangement is that it pegs the value of Marjove's investment in Lotus Green and is designed to ensure that no charge to CGT arises on the liquidation of Marjove if the value of the shares increases in the period while owned by Marjove. As an alternative to the option arrangement, this CGT difficulty could be overcome by shortening the period between Lotus Green acquiring Exampleco and Marjove being liquidated. This would minimise the risk of movement in Exampleco's share price. Under the original proposal, it was envisaged that a month would elapse between the transfer and liquidation. In principle, there should be no difficulty in shortening this period. Lotus Green, for example, could acquire the shares after close of business on Friday evening and Marjove could be liquidated early Monday - it is most unlikely that there would have been any movement in the share price of Exampleco in that period.

204 We have considered whether shortening the period between the liquidation of Marjove and the acquisition of the Exampleco shares increases the risk attaching to the proposal. We have concluded that any increase is marginal. We have also considered the possibility of further arrangements designed to ensure that no CGT arises on the liquidation of Marjove. In our view, however, the most effective way of dealing with this difficulty is to liquidate Marjove shortly after the Exampleco transfer.

205 This revision to the original proposal does not affect the overall time scale but does impact on the timing of the individual steps. If you are in agreement with the revised proposal, we can agree a fresh timetable.

3. Section 86

301 You have queried whether, in the event of a successful section 86 challenge by the Revenue, payment of tax would be accelerated. In particular you are concerned with paragraph

DRAFT

2.5 on page 11 of Mr McCann's Opinion dated 27 March 1995. Mr McCann is out of the country at present but will be returning on Monday. We have therefore not had an opportunity of discussing with him the points raised by you in our recent telephone conversation.

302 Our brief to Counsel made it clear that there was no definite intention to dispose of the investment in ~~Examplco~~ and Mr McCann was aware of this at our meeting in March. His Opinion therefore has to be read in this light.

303 The issue regarding a possible Section 86 challenge which might accelerate payment of tax was discussed in detail at our meeting. The definition of "tax advantage" in the section includes "any potential or prospective charge or assessment". In theory, therefore, if the Revenue were to form the opinion that the current proposal falls within section 86 and the Courts agreed with this opinion and if the Revenue computed the potential tax advantage of having the shares in ~~Examplco~~ held by ~~Lotus Green~~ rather than by Drake plc, the payment of tax by the group would be accelerated.

304 Mr McCann's view on Section 86 could probably be fairly summarised as follows:-

(i) There is a "grave" risk that Section 86 is unconstitutional for the reasons set out on pages 10 and 11 of his Opinion.

(ii) He is of the opinion that Section 86 could not be successfully applied by the Revenue to the current proposal.

(iii) The possibility of a successful Revenue attempt to assess a potential tax advantage at, say, the time of the transfer of the shares to ~~Lotus Green~~ is, in his opinion, very unlikely. The Revenue would face extreme practical difficulties in calculating the potential tax advantage. For example, it would be impossible to know the likely date of sale to a third party and the eventual sale proceeds.

(iv) Notwithstanding the above, there can be no guarantee that the Revenue would be unsuccessful in seeking to apply the section particularly as the section has yet to come before the Irish courts. In Mr McCann's view, however, the section 86 risk "is not sufficient to prevent the proposals being adopted".

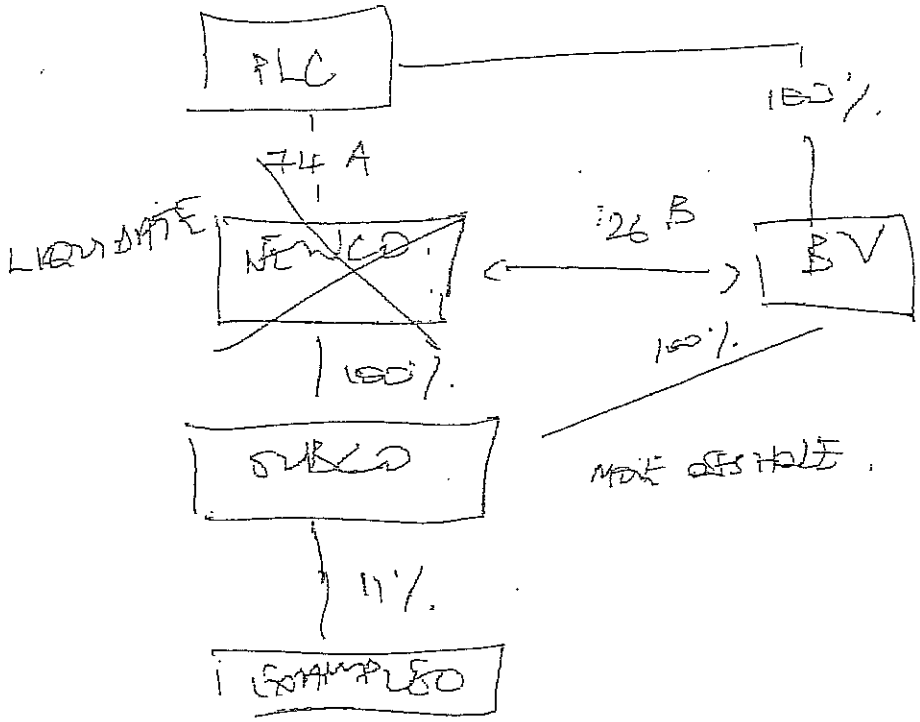
305 As mentioned above, Mr McCann is currently out of the country. If you think it would be useful, we will speak with him on his return and confirm that the above fairly reflects his view on the application of Section 86 to the present proposal.

4. UK law Post Burman v. Hedges & Butler

401 The case of Burman v. Hedges & Butler was heard in 1978. The case therefore pre-dates the case of Furniss v. Dawson which, in broad terms, laid down the principle that, for UK tax purposes, tax liabilities could be computed by ignoring certain pre-ordained transactions which are designed to avoid tax and which have no other commercial purpose. This so-called doctrine of "fiscal nullity" or "substance over form" was rejected by the Irish Supreme Court in the McGrath case (1988). In the UK, arrangements such as those put in

29

FINANCIAL ASSISTANCE

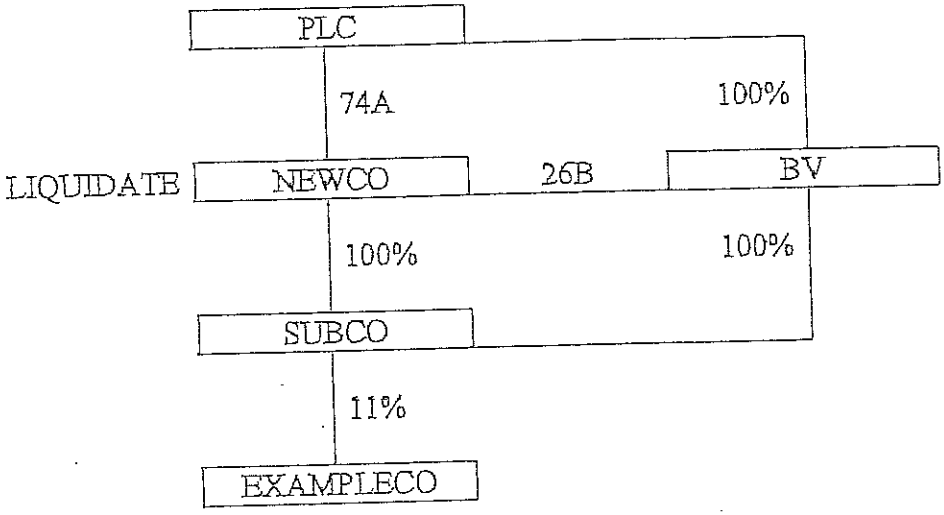


S 81 Letters.

Consider share charge again. 2 a/cs 177 / 100.

100,000 AIB Custodial No 3
AIB Custodial No 10
Bank of Scotland Limited Nominees
AIB Custodial No 3218
BoI Nominees 577
BoNY 101
AIB Cus Noms
B. I Noms 9111
Magnet Nominees
Allied Irish Banks Nominees A/c 14017
Masonic Trust

EXAMPLECO TRANSACTION



30

Responsibility and I'll to convince you as to why not.

CMcLaren off to Saker on Web's All.

CAEL is saying:

If anyone wants to deal – the stocks they are required to notify the Chairman.

AL is concerned that we are transferring ownership to an entity that is not under our control (for tax purposes) .. it amounts to a transfer of ownership of the

we don't control the BT.

But they are aware of it they want clarity and to make sure that no notification is required.

Responsibility on DCC to convince you as to why not

CMcCann off to States on Weds. AM

Carl is saying:

If anyone wants to deal in the stock they are required to notify the Chairman.

He is concerned that we are transferring ownership to an entity that is not under our control (for tax purposes) ... it amounts to a transfer of ownership O/S the

We don't control the BV.

Since they are aware of it they want chapter and verse to make sure that no notification is required.

31

Fyffes

Fyffes plc
1 Beresford Street
Dublin 7
Ireland

Telephone (01) 8730733
Fax (01) 8730546

Date

Reference

23 June 1995

Mr Jim Flavin
Development Capital Corporation Ltd.
DCC House
Brewery Road
Stillorgan
Blackrock
Co. Dublin

Dear Jim,

I have spoken to Michael and we have faxed him a copy of a letter of today's date from Michael Meghen.

There may be an obligation to notify the Chairman in advance, in writing, of a prospective transaction about which you recently informed us.

Kind regards,

Yours sincerely,

Carl McCann

D-1-X8

Fyffes

Fyffes plc
1 Beresford Street
Dublin 7
Ireland

Telephone (01) 8730733
Fax (01) 8730546

Mr Jim Flavin
Development Capital Corporation Ltd.
DCC House
Brewery Road
Stillorgan
Blackrock
Co. Dublin

Date
23 June 1995

Reference
X17 [redacted]

M/S

We are note
to keep on file.

Dear Jim,

I have spoken to Michael and we have faxed him a copy of a letter of today's date from Michael Meghen.

There may be an obligation to notify the Chairman in advance, in writing, of a prospective transaction about which you recently informed us.

Kind regards,

Yours sincerely,

Carl McCann

JAMES O'DWYER JOHN V. O'DWYER WILLIAM JOHNSTON BIDELIAN DOWNEY BÉARNUS DIVEN
PAUL McLAUGHLIN RONAN WALSH GERARD M. BOHAN CARL O'SULLIVAN CONSULTANTS
IAN A. SCOTT EUGENE F. FANNING EUGENE McCADUE ISABEL FOLEY VINCENT WALSH
JOHN G. FISH DONOGH CROWLEY NICHOLAS G. MOORE JOHN MEADE DENIS J. KEEGAN
DANIELE O'CONNOR JOHN G. WALSH DECLAN HAYES CONOR McDONNELL CHRISTOPHER HAMILTON
PETER McLAUGHLIN MICHAEL MEGHEN DAVID O'DONOHOE PATRICK McGOVERN NIALL McLAUGHLIN
ROBERT ROLTON JOSEPH LEYDEN COLM DUGGAN GRAINNE HENNESSY DAVID R. FIGOT
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48 ST. STEPHEN'S GREEN
DUBLIN 2
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ALSO AT 118 EAST 57th STREET, SUITE 1220, NEW YORK, N.Y. 10022, TELEPHONE (212) 758 6808, FAX (212) 355 3884

ARTHUR COX

our reference: MM/PR

your reference:

date: 23rd June, 1995

We are transmitting 2 page(s) including this cover note. If you do not receive all pages, please telephone Dublin 676 4661 or telefax Dublin 668 8906 or 668 8893.

FROM : Michael Meghen

TO : Carl McCann

COMPANY : Fyffes plc

NUMBER : 8730546

RE : DCC - Proposed transfer of shares

Dear Carl,

Further to my letter of Wednesday, I received a phone call yesterday from Michael Schofield in the course of which he gave me a brief outline of what is proposed. In essence I understand that the beneficial ownership of the shares in Fyffes plc currently registered in the name of DCC will be transferred to a non-resident BV.

Not sure

Whilst I do not have detail as to the precise steps which will be involved in the proposed transaction it appears on the face of it that the provisions of Chapter II of the Companies Act, 1990 ("the Act") may be applicable.

The Sections of the Act which are particularly relevant to the proposed transaction are Sections 67, 77 and 91. I set out below a brief synopsis of the relevant Sections.

Section 67

Provides that where a person to his knowledge acquired an interest in voting shares in a public limited company or ceases to be interested in such shares he shall be under an obligation to make notification to the company of the interest which he has, or had, in its shares.

Section 77 (2)

Provides that a reference to an "interest" in shares is to be read as including an interest of any kind whatsoever in the shares.

Section 91 (2)

Provides that where a person becomes aware that he has acquired or ceased to have an interest in shares to which that Section applies he shall, in addition to the obligation of disclosure to the company under Section 67, be under an obligation to notify the Exchange of his interest in the said shares.

In view of the foregoing I would be interested to know on what basis it has been determined that the proposed transaction does not fall within Chapter II of the Act.

Yours sincerely,

P. Meghen

MICHAEL MEGHEN
pp ARTHUR COX

32

Fyffes

Fyffes plc
1 Beresford Street
Dublin 7
Ireland

Telephone (01) 8730733
Fax (01) 8730546

X 17

Date 23 June 1995

Reference

Mr Jim Flavin
Development Capital Corporation Ltd.
DCC House
Brewery Road
Stillorgan
Blackrock
Co. Dublin

W/S

We are note
Keep on file

Dear Jim,

I have spoken to Michael and we have faxed him a copy of a letter of today's date from Michael Meghen.

There may be an obligation to notify the Chairman in advance, in writing, of a prospective transaction about which you recently informed us.

Kind regards,

Yours sincerely,

Carl McCann

Private and Confidential.
Proposed Transfer of Shares from DCC to Offshore Company.

JF had mentioned informally that he was considering setting up an offshore company and Carl was wondering if this meant formal notification. He mentioned the matter to Jim and to Mike Meghen. Mike thought that disclosure and formal request might be necessary. Carl passed on this view to Jim who was somewhat upset and seemed to think we were being difficult. He said there had been careful investigation of the situation and he had taken advice from his Solicitors, Accountants, Tommy McCann, Coopers, Alvin Price and others. He was certain that there was no problem and he was now going ahead as a matter of urgency. In fact he spoke to Carl on Friday the 23rd June saying he was going on holidays on Sunday and the matter could not wait. At this stage, he had not set out a case on paper nor had he advised us that the matter was urgent until then.

Jim rang Miltown on Friday evening looking for me and asking would I take a call from him early on Saturday morning to deal with a particular problem which was most urgent as he was going on holidays the following day. He duly rang on Saturday morning the 24th and explained the situation in broad outline. I told him that I was not familiar with the problem as I had only heard about it in the last few days and I was not aware that there was a deadline. He told me that he was absolutely familiar with all the details and he knew there was no necessity for him to make a formal application for permission. I said to him if he wasn't asking me for a decision and if he felt he had no occasion to approach me for an opinion either formally or otherwise, then I didn't have any decision to make. He also assured me that as far as DCC were concerned, this transfer changed nothing in the existing DCC obligations. The new company would be the same as a subsidiary of DCC and would have the same obligations regarding transfers and permission as DCC itself. I asked him to confirm that he wasn't asking me for a decision and that he is sure he doesn't need to advise me formally. He said that this was the case.

I suggested to him that it might be helpful, for the sake of good order, if Alvin Price wrote me a Letter of Comfort - acceptable to Mike Meghen - confirming the situation that there was no problem and that they would take responsibility for ensuring that everything is in order. I agreed to this immediately and, in fact, said that he would get Alvin Price to contact Mike Meghen so that they could liaise to prepare an acceptable Letter of Comfort.

As of Friday evening Jim had stressed to Carl that Saturday was the absolute deadline and that the wheels were being put in motion the following Monday or Tuesday. I thought it was a little odd on Saturday morning when Jim said he thought it was unlikely that anything would happen while he was away.

M. Meghen rang me today to say he had a phone call from Alvin Price saying that technically he thought Mike's opinion was correct but commercially DCC will probably go ahead. However, he was not saying this positively and I think there may have been a change of view. There was no mention of a Letter of Comfort.

Spoke to Alvin Price during week commencing 3rd July regarding Letter of Comfort. He waffled on a bit and indicated that he was not familiar with the arrangement and said that the project did not appear to be a matter of urgency at the moment. However, he felt sure the matter would be raised again.

→ 5 July 1995.

33

Coopers &Lybrand

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Tax Lawyers and Consultants

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TELEFAX MESSAGE

☒ Confidential ☒ Urgent

Company: Dcc Plc

Attn.: Mr Fergal O'Dwyer and Mrs Daphne Tease

Faxno.: 00 - 353 1 283 1017

From: Peter G.A. van der Hoeven

Coopers & Lybrand, Amsterdam

Date: July 7, 1995

Re:

Comments:

Number of pages (including this page): 3

If any of the pages have not been received properly, please call (020) 568 6904

Solutions for Business

Coopers &Lybrand

Belastingadviseurs
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1090 GR Amsterdam
The Netherlands

Telephone +31-20-568 66 66
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TELEFAX

Mr Fergal O'Dwyer
and Mrs Daphne Tease
DCC Plc
DCC House
Brewery Road
Stillorgan, Blackrock
DUBLIN
Ireland

July 7, 1995

Dear Fergal and Daphne

DCC INTERNATIONAL HOLDINGS B.V., LOTUS GREEN LIMITED

1. With reference to the Dutch tax ruling regarding DCC International Holdings B.V. and Lotus Green Limited, which was signed by the tax inspector on June 30, 1995, we would like to comment as follows.

2. As mentioned in the ruling request (paragraph 25) it is the intention that Lotus Green Limited, after liquidation of its parent company Marjove Limited, will change its residence to the Netherlands. Please note that in order to become a resident tax payer in the Netherlands, the following conditions should be met:

(i) the company should rent an office in the Netherlands;

(ii) the company will have to register with the Chamber of Commerce and the tax authorities;

(iii) the company should appoint a Dutch managing director(s), who will deal with the day-to-day management of the company;

(iv) Board meetings and shareholders' meetings should be held in the Netherlands.

Please note that the Dutch tax inspector may check, based on the above conditions, whether the residence of the company has actually been changed.

Coopers &Lybrand

Belastingadviseurs
Tax Lawyers and Consultants

Mr Fergal O'Dwyer
and Mrs Daphne Tease
DCC Plc
Dublin

3. Could you please inform us when the company is going to move residence to the Netherlands. We would be pleased to assist you in drafting the documents which need be filed (registration forms etc.). We assume you will use the offices of Hein Roskam at the Keizersgracht in Amsterdam and will appoint Hein Roskam as director.

4. Can we bring Hein Roskam up to date about the facts as described in the ruling?

Please do not hesitate to contact us should you require any additional information or assistance.

Yours sincerely

COOPERS & LYBRAND

Peter G.A. van der Hoeven

C.c. Pat Wall, Terry O'Driscoll (C&L Dublin)

34

X19

DCC

Memorandum

To: Jim

From: Michael

Date: 7th July 1995

Re: Example Co Transaction

Thank you.
We have spoken.
Kieran can please

Alvin Price finally managed to speak with Michael Meghan at the end of the week ended 30th June in relation to the above. According to Alvin he had a good telephone conversation with Michael, whose attitude he felt was positive. While Michael pointed out that the legislation if applied to the letter could be interpreted to provide that any transfer of interest was notifiable, it is my understanding that he accepted that the intent of a legislation was not such and that he did not disagree with Alvin's argument that the proposed transfer was not necessarily notifiable.

I endeavoured this week to contact Michael to confirm this interpretation and ensure he was entirely happy but I found he was on holidays, to be back in the office on 10th July.

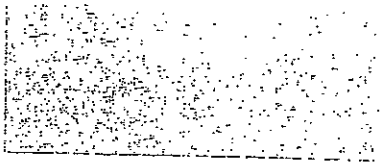
Michael Meghan did not raise with Alvin any of the other arguments raised by Carl with me relating to any requirements on a director of Example Co to notify dealings of a company of which he was a director. However I took the opportunity to confirm clearly with Alvin that under company law and the Model Code there are no such requirements (unless the director controls that company) and I don't believe Example Co.'s Code of Dealing Practice extends these principles.

Michael

Michael

35

D-2-948



MS/cl
10th July 1995

Mr Carl McCann
Fyffes plc
22-23 Mary's Abbey
Dublin 7.

Dear Carl,

I refer to your letter of 23 June 1995 to Jim Flavin and Michael Meghen's fax to you of the same date which you copied to me. Jim has asked me, as Group Compliance Officer of DCC, to write to you in relation to this matter.

I believe that both you and Michael Meghen are informally aware of the proposed actions which will take place entirely within the DCC Group. DCC has been advised on the matter by Alvin Price of William Fry. We have taken great care to consider closely the legal and Stock Exchange implications for the proposal. It is our view having taken appropriate legal advice that no formal notification to you under the Companies Acts is required.

Since your letter of 23 June I have arranged for Alvin Price to speak directly with Michael Meghen on the legal issues raised by Michael in his fax of 23 June. I understand that the interpretation of Sections 67, 77 and 91 of the Companies Act 1990 is not necessarily clear cut but that Michael and Alvin were able to agree it was not intended to refer to transactions between a company and its wholly owned subsidiaries. Indeed we have not come across any record of such transactions having been notified. On this basis I understand that our respective legal advisers agreed that it is a reasonable interpretation of the relevant sections to conclude that they do not give rise to an obligation to make a formal notification in this instance..

You did raise one other issue with me in connection with the interpretation of Fyffes plc's Code of Practice in relation to Directors Dealings. This follows the Model Code set out in the Listing Rules of The Stock Exchange. As a listed company DCC is also obliged to observe these rules. The Model Code provides that a director of a listed company is obliged to notify a transaction in the shares of that company by another company with which he is connected only if the director has a controlling interest in that second company. Since Jim Flavin does not have a controlling interest in DCC, he is not obliged either under the Model Code or under the Fyffes Code of Practice to formally notify a transaction of the nature proposed in the shares of Fyffes plc. As you are aware Jim has informally made both yourself and the Chairman aware of the nature of the proposal, although he was under no obligation to do so. I am sure you appreciate that this reflects both Jim's and DCC's consideration and regard for the long standing and excellent relationship between the parties.

I hope this letter answers in full any concerns you may have in relation to this matter.

Yours sincerely,

Michael Scholefield
Group Compliance Officer

Dear Carl,

I refer to your letter of 23 June 1995 to Sir Alvin Price who has asked me, as Group Compliance Officer of DCC, to write to you in relation to this matter.

I believe that both Michael Meagher and you are informally aware of the proposed DCC Group by Alvin Price of William Fry have taken closely the Legal and Stock Exchange implications for the proposal. It is our view that no notification appropriate legal advice that no notification upon is required.

Since your letter of 23 June I have arranged for Alvin Price to speak directly with Michael Meagher on the legal issues raised by Michael in his fax of 25 June. I understand that Alvin Price has stated that the interpretation of Sections 67 and 91 of the Companies Act 1990 is not necessarily clear cut but that Michael and Alvin were able to agree it was not intended to catch transactions between a company and its wholly owned subsidiaries. Certainly we have not come across any record of such transactions having been notified. On this basis I understand that Michael Meagher considers that the relevant sections is not given rise to an obligation to notify as a reasonable interpretation.

You did raise the issue with me in connection with the operation of the Rights Practice in relation to Directors Dealings. Broadly follows the Model Code set out in the Listing Rules. As a listed company DCC also has Stock Exchange the Model Code provides that a those rules also listed company is obliged to notify Directors of a listed that company by one

company with which he is connected only if ~~he~~ he ~~directs~~ has a controlling interest in that second company. Since Jim Morris does not have a controlling interest in ACC he is not obliged either under the Model Code or under the Listing Code of Practice to formally notify a transaction of the nature proposed in the case of Smiths plc. As you and counsel J. have informally made both yourself and the Chairman aware of the nature of the proposal, although under no obligation to do so I am sure you appreciate that this reflects both this and ACC's continuing and regard for the long standing relationship between the parties and excellent.

I hope this letter answers in full any concerns you have raised with us.

Yours sincerely

MS
Group Compliance officer
ACC plc

9605 ÷ 3.76

0.5 13.09% 2.40

1.27 + 6.16. 20%

Ok 20%

27

127 ÷ 15% = 8

(8) REC

127 × 25%
= 32 TAX
(19)
13 EXTRA

CRIT = 100 + 8
−(13)
95

36

087 413856

Stokes Kennedy Crowley

Chartered Accountants

1 Stokes Place
St. Stephen's Green
Dublin 2
Ireland

Telephone +353 1 708 1000
Telefax +353 1 708 1122

Our Ref pob/lc/11394/42
Your Ref

10 July 1995

Ms Daphne Tease
DCC Plc
DCC House
Brewery Road
Stillorgan
Blackrock
Co Dublin

Dear Daphne

I refer to our telephone conversation this morning and I now attach the original of my letter to Fergal which perhaps you would pass to him on his return from leave.

Yours sincerely

Pat O'Brien
Partner

encl

KPMG Stokes Kennedy Crowley

Chartered Accountants

1 Stokes Place
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Ireland

Telephone +353 1 708 1000
Telefax +353 1 708 1122

Our Ref pob/lc/11384/4
Your Ref

10 July 1995

Mr Fergal O'Dwyer
Chief Financial Officer
DCC Plc
DCC House
Brewery Road
Stillorgan
Blackrock
Co Dublin

Dear Fergal

You have asked me to comment on the capital gains tax planning structure which has been proposed with a view to minimising any future Irish tax liabilities on a possible disposal of your shares in France.

My understanding of the proposed structure, and my comments below, are based on a Brief which was presented to Tommy McCann SC on 16 March 1995 (the text which I have is marked "draft" but I assume it is the final paper submitted to Mr McCann) and on his Opinion dated 27 March 1995. I understand that you have taken tax advice (which I have not seen) from Coopers & Lybrand.

The following summarises the comments on the structure which I made at our meeting.

1. Profile

Even if there is not an early sale of the shares in France, I believe the tax structure should be assessed against the likelihood that it may have a reasonably high profile with Irish Revenue. As I mentioned, the transfer by Drake of the shares in France to Subco will be a disposal and acquisition for tax purposes in the hands of Drake and Subco, respectively. The establishment of Newco will be an acquisition for tax purposes by Drake while the (admittedly small) distribution on liquidation of Newco will be a disposal for Drake (probably in the same accounting period as the acquisition). Any non-cash liquidation distributions made by Newco (the prime example here is, of course, the distribution to Drake BV of the shares in Subco) will be a disposal for tax purposes by Newco. Finally, the change of residence of Subco will mark the end and beginning of tax accounting periods for that company (section 9, Corporation Tax Act 1976) if the change of residence takes place on a date other than the normal accounting date of the company. In any event, the change of residence of Subco is something to which one would want to draw the attention of Irish Revenue.

I make these points not to suggest any weakness in the tax structure proposed. Rather, I am pointing out that, given the number of steps in the structure which have some Irish tax significance, it must be possible that Irish Revenue will take some interest in it even if the shares in France are not sold for some time.

2. General Approach

As I mentioned when we spoke, the approach which I took in reviewing the papers was to look at what I think are the relevant technical tax issues before considering the possible impact of section 86. I will reverse the sequence here and comment first briefly on section 86.

3. Section 86 Finance Act 1989

As you are aware, Section 86 was introduced following the failure of Irish Revenue to persuade the Supreme Court to take a "substance over form" approach in applying tax law to commercial transactions. The facts in the McGrath case were very similar to those in earlier UK cases where Inland Revenue had been successful. Once the Supreme Court declined to follow the UK precedent, the Irish authorities felt that they had little choice but to introduce a general anti-avoidance section.

Developments over the past few years in the UK and Ireland would suggest that the taxpayer's win in McGrath was something of a Pyrrhic victory. UK case law over the past decade has seen a narrowing of the potential scope of the earlier decisions in the UK McGrath-type cases. The result is that taxpayers and their advisers have some practical guidance as to the scope of the substance over form doctrine.

In Ireland, we have a very widely-drafted general anti-avoidance section. We have no case law guidance on its possible scope or limitations for the very simple reason that the Irish authorities have not taken any case under the section.

I would expect Revenue to be very cautious in their use of section 86. It is probably stating the obvious to say that they will only take a case which they are very confident of winning. However, experience on the UK side would suggest that even a judgement in favour of Revenue might result in some narrowing of the perceived potential scope of the section. That seems to me to be a risk which Revenue would sensibly run only if the potential upside in terms of tax yield is sufficiently attractive. Thus it would be strange to see Revenue running a case under section 86 where the tax involved is, say, £100,000 but they might feel they had little to lose where the tax involved is, say, £50m. It would be little more than speculation to hazard a guess as to where £7m lies on this continuum!

I would like to make two comments on section 86 in its possible application to your proposed structure.

When we first met, I wondered whether Counsel was assuming an early sale of the shares in France in the light of his comment (at page 12 of the Opinion) "as the amounts are so large and as there does not appear to be any serious downside risk involved with the transaction, if a section 86 attack should be successful". The Brief made it quite clear (at paragraph 1.1) that Drake has no definite intention to dispose of its investment in France. Nevertheless, in the light of the extract from the Opinion which I have just quoted I have suggested that it would be prudent to ask Counsel what he had in mind in drafting that.

One of the points which we discussed when we met was whether section 86 could in any event be applied by Revenue prior to the sale of the shares in France. My own view is that the section could be so applied and I have two reasons for saying this.

If section 86 is to be applied, the Revenue Commissioners must form the opinion that a transaction is a tax avoidance transaction. This involves the Revenue Commissioners forming the opinion that a transaction gives rise to, or would but for section 86 give rise to, a tax advantage. The term "tax advantage" is defined in section 86 (1) to mean "a reduction, avoidance or deferral of any charge or assessment to tax, including any potential or prospective charge or assessment". This wording seems to me to be sufficiently broad as to catch a transaction even where there is no current tax saving.

Assume for the moment that I am incorrect in what I have just suggested so that it is necessary to point to a current tax saving achieved by the transaction if section 86 is to apply. It seems to me that we could still be within the ambit of section 86 even if the ultimate sale of the shares in France has not taken place. The reason for this is that a straight sale of the shares in France by Drake to Drake BV would give rise to a tax liability in Drake on the basis of an assumed open-market price for the transaction. Thus it could be argued that the various steps which result in the shares in France being owned by a Dutch-resident wholly-owned subsidiary of Drake BV are susceptible to attack under section 86 even if the ultimate sale of the shares in France has not taken place.

In any event, my main purpose in raising these points is to suggest to you that Mr McCann be asked (which I understand he has been) to clarify the extract quoted above from his Opinion. To the extent that the transaction proceeds on the basis of his view that section 86 should not apply, I think you might usefully ask whether he would be equally confident in this conclusion if, as the Brief clearly envisages, the shares in France might not be sold for some time, if at all. Clearly the worst possible answer is that you end up paying tax where you have not realised a third-party sale of the shares in France. A second concern, and one which I think should also be put to Counsel, is the timing of any possible tax charge in the event of the successful application of section 86 by Revenue. The concern here is that a reduction in the value of the shares in France prior to their sale outside the group might give a higher tax liability than would have been suffered if no planning had been done.

Mr McCann's main thesis in relation to section 86 is that Revenue would have difficulty in applying it on constitutional grounds. I am very aware of the strength of feeling of Counsel on this point but I fear it is not something on which I can usefully comment since I have no expertise in constitutional law. Nevertheless I would say that Mr McCann's opinion on Section 86 is as strong as you could hope to get on this matter.

4. Timing

Since the shares in France are quoted securities, I think we need to be careful that movements in the share price in the course of the implementation of the proposed structure do not give rise to tax costs. As the Brief notes (at paragraph 2.4.1), the distribution to Drake BV of Newco's shares in Subco would be regarded as a disposal for Irish tax purposes. The Brief suggests that no capital gains tax will arise since the shares in Subco would have no value.

The question which I have here is whether the time which will elapse between the transfer of the shares in France to Subco and the distribution in specie of the shares in Subco to Drake BV in the course of the liquidation of Newco might leave some value in the shares in Subco arising from an increase in the underlying value of the shares in France. You mentioned that some form of option arrangement might be put in place to cap this but I cannot comment on these arrangements because I do not have any information on them. However, I did say that the effectiveness of any such arrangements should be assessed in the light of provisions in section 33 Capital Gains Tax Act 1975 dealing with transactions between connected persons.

The impact of any increase in the value of the shares in France should also be assessed at the level of Drake BV. In this case the question, which I understand you are having addressed, is whether an increase in the value of the shares in France (which would result in an increase in the value of the shares in Subco and of Drake BV's shares in Newco) would cause any tax issue in the Netherlands or would be covered by the participation exemption.

5. Trading

The Brief to Counsel makes it clear that the shares in France are not trading stock for Drake. For the reasons which I outlined at our meeting, and which I summarise below, I think it is equally important to be satisfied that the shares will not be seen as trading stock of Subco.

Briefly, section 131 Corporation Tax Act 1976, when combined with paragraph 15 of Schedule 1 to the Capital Gains Tax Act 1975, provides that where a group company (Subco) acquires an asset (the shares in France) as trading stock from another group member (Drake) for which the asset was not trading stock, the acquiring company is treated as having acquired the asset as a capital asset and then as having disposed of and re-acquired the asset at its market value. The net result of this is that the transferee company is taxed on the chargeable gain but gets an uplift to market value in the carrying cost of the asset as trading stock. The tax charge on the capital gain can be avoided if the transferee (Subco on our facts) elects that its carrying cost of the asset as trading stock be reduced by the amount of the chargeable gain. The intended effect of this is that the gain should be picked up as an income gain when the property is ultimately sold.

Notwithstanding my earlier comments on the profile which this overall transaction may have with Revenue in any event, I think one would be reluctant to give the structure the additional prominence which an election made under paragraph 15 would involve. In addition it should be noted that an election under paragraph 15, with a view to avoiding the tax charge on the unrealised capital gain, may be made only where the taxpayer "is chargeable to income tax (or corporation tax) in respect of the profits of the trade under Case 1 of Schedule D". It could certainly be argued that this condition is met in circumstances where Subco is in the first instance resident in Ireland but it is not, I think, an argument which I would like to be running in the event of a fairly quick change in the residence of Subco.

In summary, I believe everything possible should be done, consistent with the overall tax planning for your group companies, to ensure that Subco cannot be regarded as a trading company. In doing this, I think some attention should be paid to UK tax cases which have been decided on the corresponding UK legislation (while these cases dealt with attempts to convert capital losses into income losses rather than with chargeable gains, the findings as to what did and did not constitute a trade are interesting). I think it would also be important to be able to reach a fairly firm conclusion on this point, even against the possible background of a fairly early disposal of the shares in France. One of the key factors in a determination of trading status is the intention of the taxpayer with regard to the asset when it was acquired. However, we should bear in mind that Revenue are invariably looking at matters such as this with the benefit of hindsight.

6. Residence

I agree with the analysis in the Brief (at section 6.2.3) that the purported change in residence of Subco is one of the most likely areas of attack from Revenue. As I mentioned earlier, the change of residence is something to which you will want to draw the attention of Revenue. It [illegible] that all possible steps be taken to support the desired tax position.

As you are aware, there is no statutory definition of residence for Irish corporation tax purposes. Old UK case law, which is binding here in this matter, points to corporate residence being located at the place where the central management and control of the company is exercised. The location of a company's central management and control is a question of fact to be determined in the light of the available evidence.

Under the proposed structure, it is as important that Subco be resident in Ireland at the outset (in order to facilitate a tax-free transfer to it of the shares in France under section 130) as it is that Subco should be resident outside Ireland at the time of the ultimate disposal of the shares in France (with a view to avoiding a charge to Irish tax on the disposal). Thus it would be necessary at some stage to be able to point to a change in residence of Subco and to be able to point to facts which support this.

If Subco's only purpose is to hold the shares in France, it occurs to me that the only times at which evidence might be available as to the location of significant strategic decision-making on behalf of the company is on the acquisition of the shares from Drake and on the ultimate sale of the shares in France to a third party. At all other times it seems likely that the Board of Subco will have little to do but to observe the normal statutory formalities. For this reason, and with a view to giving the board some ocassion to meet and make decisions at the time of its purported change in residence (which by definition will have to precede a decision on the sale of the shares in France), I suggest that you consider having some other activity or investment in Subco.

If this is not done, I would certainly have some concern about the point which you raised on Friday about the parent company consent which will be required for any sale of the shares in France. Presumably the consent is a shareholder consent but it is my understanding that such a consent would normally involve a recommendation from the directors of the parent company. The immediate concern which you raised is that the exercise in Ireland of the functions which lead to the shareholder consent might have some implications for the residence position of Subco.

I think this concern is well founded.

The following extract from Taxation of Companies and Company Reconstructions (Bramwell, 4th Edition, paragraph 12.03) is in point:

"The central management and control, or as it is sometimes expressed "the superior and directing authority" of a company is not the same as the day-to-day supervision of the company's business although the two may often be vested in the same person or body of persons. It is the authority which decides upon matters of general policy relating to the company's business. For example, it will decide whether the company will continue to carry on an existing business or diversify into other activities, whether the company should carry on business at all, how the business of the company should be financed. In other words, a body will exercise the central management and control of a company if it takes decisions on "strategic" or fundamental questions of policy relating to the direction of the business. Thus in one case where the directors of a company, carrying on business in America, held regular meetings of a committee of the Board of Directors in America, but reserved matters of major importance for board meetings in the United Kingdom, it was held that the company was resident in the United Kingdom. The Lord Chancellor said:

> "...it is clear that the directorate in Manchester was a directorate of paramount authority as is shown not only by the fact that the reserved subjects are kept for them in extraordinary session, but by this that....they were constantly supervising and guiding the policy of the company, even as regards matters which belonged to manufacture and

I attach for your information a copy of a Statement of Practice issued by the UK Inland Revenue in July 1983 on Company Residence. I would refer you in particular to the material in paragraphs A-07 and A-08. From this it will, I think, be clear that the fact that a decision to sell the shares in France will be subject to approval in Ireland will cause some concern on residence. This concern will not be eliminated by having other matters which engage the attention of the directors of Subco but I do think it will be helpful if the shares in France do not constitute the only business asset of Subco so that one can point to activities of the directors of Subco in other areas as a counterbalance to the significance which might be attached to the Irish approval of the sale of the shares in France.

7. Bushmills Precedent

The Brief (at section 5) refers to the two arguments made by the Inland Revenue in the Bushmills case (Burman v Hedges & Butler) and Counsel in his Opinion gives it as his view that these arguments, if advanced in an Irish court, would not be successful.

Since that case is sixteen years old, I think it would be useful also if the opinions which you have taken on this proposal were to refer to a line of thinking advanced far more recently by Inland Revenue on the scope of the "liquidation exclusion" from the charge to tax under section 135 Corporation Tax Act 1976. Inland Revenue expressed the view, at a time when the legislation was identical to ours, that the proviso which prevents a charge to capital gains tax in the case of a liquidation applies only in a case in which an asset is transferred from a single subsidiary to its parent and the subsidiary is subsequently liquidated so that the group constituted by these two companies ceases to exist.

The UK introduced legislation in 1992 (but effective November 1991) which is intended to confirm this narrower interpretation of the proviso. The Inland Revenue's contention that the legislation prior to its amendment should also be interpreted in this narrow way found little favour with UK tax commentators. However, since the 1991/92 amendment was somewhat controversial and might be looked at by an Irish Inspector of Taxes seeking to levy tax on your proposed structure, I think it would be as well that the matter is included in the opinions which you have. I should say that it is my view that the narrower interpretation is simply incorrect and that, subject to meeting the various requirements of the legislation, a tax charge would not arise under section 135 by virtue of the liquidation of Newco. I understand that Counsel has now addressed this specific point and that his conclusion is favourable.

8. Shareholdings in Newco

There may be some Dutch tax advantage from having a 75%-25% rather than a 76%-24% shareholding arrangement in Newco. This will not present any Irish difficulties since the requirement for an Irish group structure is that Drake should hold at least 75% of the ordinary share capital of Newco.

9. Funding of Subco

I understand that the current intention in relation to the funding of Subco is that Drake will make an interest-free loan to it. In the event that you have some taxable income in the Netherlands and that Subco, following the transfer of its residence to the Netherlands, is part of the Drake BV tax consolidation group (fiscal unity) it might be interesting to consider whether there is any case for a claim for a deduction for deemed interest expense on the inter-company loan applying arms-length principles.

10. Interest Relief

I understand that the various steps in the proposed structure have been assessed to ensure that they do not cause any difficulty for any of your existing interest relief claims under section 33 Finance Act 1974/Section 10 Corporation Tax Act 1976.

11. Stamp Duty

I understand that William Fry are looking at the Stamp Duty implications of the proposal and I make no comments on this.

12. Conclusion

As I mentioned when we first spoke. I have seen this structure used before in circumstances where a sale of the underlying asset was imminent so that the only alternative to the implementation of the plan was to pay the tax on the gain. I have some reservations about using the plan where a third-party sale of the underlying shares is uncertain, my concern being that a tax charge could arise before cash (from an external sale of the shares) is available to pay it. If the points which I have made in this letter can be addressed in implementation. it should be the case that such a tax charge could arise only by reference to Section 86. As I have acknowledged above, the Opinion which you have from Counsel on Section 86 is as strong as you could reasonably expect to get in this difficult area.

This letter responds to your request for a second view on the issues relevant to the proposed plan. Since I have not been involved in devising the plan or in its implementation, you will appreciate that I cannot and do not accept responsibility for any tax costs which may arise from implementation.

Yours sincerely

Pat O'Brien
Partner

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DCC

X21

Facsimile Message

To:	Michael Meghen	Fax No:	6688906
From:	Michael Scholefield	Date:	11 July 1995

No. of Pages to follow: 1

If this message is not received in full please contact Clare on +353 1 2831011.

Message:

Further to our telephone conversation in relation to the letter agreed to be sent to Neil McCann, perhaps you could consider whether it would be appropriate to send something in the attached form.

DCC plc DCC House Brewery Road Stillorgan Blackrock Co Dublin Ireland
Tel: +353 1 2831011 Fax: +353 1 2831017 / 2831018

Mr Neil McCann
Chairman
Fyffes plc etc.

Dear Neil,

I have talked to Alvin Price of William Fry about the proposed transfer by DCC within their group of their holding in Fyffes plc.

Notification obligations in relation to a share transfer lie with the shareholder rather than the company in which the holding is held.

It is for DCC to decide whether a notification is required under the Act.

Alvin Price is advising DCC that as the transfer is within the same group a notification is not necessary.

Yours sincerely etc.

c.c. Jim Flavin

TRANSACTION REPORT

11-JUL-95 TUE 15:57

DATE	START	RECEIVER	TX TIME	PAGES	TYPE	NOTE	M#
11-JUL	15:56	6688906	41"	2	SEND	OK	

38

DCC

Facsimile Message

To: Alvin Price

Fax No: 6688208

From: Daphne

Date: 14 July 1995

No. of Pages to follow: 1

If this message is not received in full please contact Michael Scholefield on +353 1 2831011.

Message:

Alvin, re the attached Michael is anxious to get a rather more specific letter setting out the situation with regard to Companies Acts, Yellow Book, Blue Book etc.
I am on holiday 15/7/95 - 30/7/95 inclusive so if you would revert to Michael on this, please.

I hope you enjoyed your holiday,
Best regards,

Daphne

WILLIAM FRY

SOLICITORS

FITZWILTON HOUSE, WILTON PLACE, DUBLIN 2, IRELAND
TELEPHONE (353-1) 668 1711

PRINCIPAL FAX NUMBER (353-1) 668 7016

ATTENTION OF	Ms. Daphne Tease
COMPANY	DCC plc
FAX NO.	283 1017
FROM	Alvin Price
OUR REF.	2439-002-AP
NO. OF PAGES INCLUDING THIS ONE	1 DATE 7 April 1995

IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE TELEPHONE (353-1) 668 1711 AND ASK FOR - LIZ

MESSAGE

Dear Daphne,

I refer to our telephone conversation and wish to confirm that in my view where there is no change in the registered shareholder and no movement of the beneficial ownership of the relevant shares in a company (say, Company A) outside the shareholder's 100% owned Group, no new requirement to notify Company A arises.

Yours sincerely,

E. Price

p.p. Alvin F.M. Price
WILLIAM FRY
Solicitors

646111

Companies Acts
Yellow Book
Blue Book.

TRANSACTION REPORT

14-JUL-95 FRI 14:12

DATE START	RECEIVER	TX TIME	PAGES	TYPE	NOTE	M#
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F23

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Memorandum

To: Jim cc: Fergal Tommy

From: Daphne

Date: 14 July 1995

Re: ExampleCo. Tax Planning

Pat O'Brien is making the point in his letter of 10 July 1995 that a tax charge could arise before cash (from an external sale of the shares) is available to pay it.

This could arise because of

1. assessment under Section 86

or

2. SubCo. held to be a company trading in shares => crystallisation of CGT liability on acquisition of shares by SubCo. (Section 131 CTA 1976)

Because of the possibility of the above, SKC have only seen the planned tax structure used where a sale was immiment => if CGT payable, realisation proceeds available to pay it.

I discussed Pat O'Brien's conclusion (page 7 of letter) with Terry O'Driscoll of Coopers. He made the following points:

If restructuring postponed until sale imminent:

1. because of the short time frame between restructuring and disposal => more difficult to establish the tax residency of SubCo offshore

2. increases the risk of SubCo being seen a trading company

3. enables the Revenue to quantify tax saved for the purpose of a Section 86 assessment.

He also made the point that if we postpone the tax restructuring we run a not insignificant risk of a change in the Irish legislation to close the loophole as in UK.

However we have to assess the risks of getting caught with a tax liability pre disposal outside of the Group if we go ahead with the restructuring.

Re Section 86

I am quoting from Fergal's memo to you of 15 June 1995 as follows:

"The possibility of a successful attempt to assess a potential tax advantage at say, the time of transfer of the shares in ExampleCo. to SubCo. is, in the opinion of Counsel, very unlikely. The Revenue would face extreme practical difficulties in calculating the potential tax advantage. Notwithstanding the above, there can be no guarantee that the Revenue would be unsuccessful in seeking to apply Section 86 particularly as the section has yet to come before the Irish courts. In Counsel's opinion, however, the Section 86 risk is not sufficient to prevent the proposals being adopted. He also believes that there is a "grave risk that Section 86 is unconstitutional" "

Counsel's opinion was given in the light of being aware that no definite intention to dispose of ExampleCo. => he was not assuming that sale imminent.

Re Section 131 CTA 1976 (SubCo. deemed to be a trading company)

Terry O'Driscoll of Coopers thinks it would be very difficult for the Revenue to establish that SubCo. is a trading company in advance of the sale of the ExampleCo. shares by SubCo.

1. He referred to the statement made in the application to the Dutch tax authorities for the participation exemption re ExampleCo. - no intention to sell the shares in the near future etc.
2. The loan agreement between DCC Properties Ltd and SubCo. whereby Properties is lending the funds to SubCo. to buy the ExampleCo. shares is being amended to be of a 15 year term and subordinated.

In addition, he is advising us to review all minutes to ensure that they contain nothing which would indicate that the shares in ExampleCo. are for sale. I have discussed this point with Tommy re Executive WIH minutes and he is going to review those.

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✓ To discuss Rana - Paul.

✓ Bring Shareholder list.

AB Cns Noms ?/B

General Conditions.

Market Gossip.

DCC / Finance Survey

Over/underweighting

Sun Alliance - O/seas ?

Doing more ✓ less than others.

Comments on Annual Report.

Stock Exchange Notice Information

Proposed to Transfer ownership of Shares (proposed)
- bypass from DCC and STL
initially to: XYZ - and then to SV

Shares must go outside the group
and registered holding is the same
advise that there is no requirement to notify.

Calls Matter 1817

(1) Record of all Annual Report - Accounts since 1977.
Record of Accounts - [illegible]

(2) AGM Minutes amendments

(3) JP Morgan Inv. Relations.

(4) Aislinn O'Farrell - UK Directors
- UK Examples, implications

(5) Michael Meghey - a letter to NHE

CL 0171 5884000

Jock Maxwell MacDonald
Rowan Simmons.

Proposal to transfer beneficial ownership of shares in Fyffes from DCC and S&L initially to XYZand then to BV.

Shares wont go outside the Group and registered holding is the same
advise that there is no requirement to notify.

O/S Calls Matters 18/7

1. Record of all Annual Report & Accounts since 1977 – Record of Accounts ?
2. AGM Minutes amendments
3. JP Morgan Inv. Relations
4. Aislinn O'Farrell - UK Directors - UK Exampleco implications
5. Michael Meghen – a letter to NMcC

C&L 0171 5884000
Jock Maxwell MacDonald
Rowan Simmons

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FAX TRANSMISSION FORM

FAX NO:- (01) 6765792

our reference F22 [redacted]

DATE: 18 July 1995

TO: Feargal O' Dwyer

LOCATION: DCC Plc

FAX NO: 2831018

FROM: John Kelly

Total number of pages (including this page) 10

If any pages are not received, or are illegible, please advise immediately

Dear Feargal

There follows a copy of the Dutch tax ruling in respect of DCC International Holdings BV, signed by the Dutch Tax Inspector.

Regards.

John P Kelly
for Coopers & Lybrand

COOPERS & LYBRAND 20-3008030 31 20 NR.015 P.03

Coopers & Lybrand

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Belastingdienst Ondernemingen I
T.a.v. mevrouw mr P.M. Warnaar
Kingsfordweg 1
1040 BH AMSTERDAM

1 juni 1995

Geachte mevrouw Warnaar

DCC INTERNATIONAL HOLDINGS B.V., MARJOVE LTD, LOTUS CARAM LTD

1. Namens in hoofde genoemde vennootschappen vragen wij u aandacht voor het volgende. De feiten en omstandigheden zoals hieronder uiteengezet hebben betrekking op de toepassing van de deelnemingenvrijstelling gedurende en na afloop van een interne reorganisatie binnen de DCC groep met betrekking tot DCC International Holdings B.V. en mogelijke overnames in de toekomst.

DCC Plc

2. DCC Plc ("DCC") is begonnen als een herstelpuntimmerbedrijf, maar in het begin van de jaren negentig hadden veel van haar eerdere investeringen zich goed ontwikkeld en de vennootschap werd omgevormd tot een zogenaamde "Industrial Holding company". In 1994 De vennootschap is opgericht naar het recht van de Ierse Republiek, alwaar zij sindsdien gevestigd als gerealiseerd. Kopieën van de jaarrekeningen 1993 en 1994 zijn bijgesloten.

3. De activiteiten van de vennootschap bestaan uit het doen van strategische investeringen en het assisteren van de vennootschappen waarin zij investeert om hun potentieel te ontwikkelen. Haar doelstelling is het tot stand brengen of vergroten van de marktpositie en winstgevendheid van haar dochtermaatschappijen en deelnemingen door direct in het management en de strategische beslissingen van deze vennootschappen te participeren. Daartoe zal DCC in het algemeen trachten een vertegenwoordiging te verkrijgen in de Raad van Bestuur en verkrijgt zij dikwijls gelaidelijk een meerderheidspakket in haar investeringen. De pagina's 8-17 van de jaarrekening 1994 geven een goed inzicht in het investeringsprofiel. De vennootschap richt zich op de volgende sectoren:

(i) levensmiddelen
(ii) dienstverlening aan de computerindustrie
(iii) energie en afgeleverkte olie
(iv) gezondheidszorg

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AMSTERDAM

4. Door zich te specialiseren in deze vier sectoren, kan DCC verzekeren dat de vaardigheden van haar personeel aansluiten bij die sectoren waarin haar dochtermaatschappijen en deelnemingen actief zijn, om aldoende de toegevoegde waarde van hun betrokkenheid bij de ondernemingen te vergroten. DCC wil zich in het bijzonder concentreren op het ontwikkelen van een gedetailleerde kennis van de bedrijfsactiviteiten van een dochtermaatschappij of deelneming, het adviseren welke gebieden verder ontwikkeld dienen te worden, waar de energie van het management zich op dient te richten en hoe deze doelstellingen gerealiseerd moeten worden. Daarnaast assisteert de Corporate Finance afdeling van DCC dochtermaatschappijen en deelnemingen bij het aan- en verkopen van deelnemingen, door te adviseren bij acquisities en desinvesteringsbeslissingen, "targets" te identificeren en te assisteren bij de implementatie.

Plannen voor ontwikkeling

5. DCC is van mening dat haar structuur, die tot nu toe goed voldeed voor haar rol van participatiemaatschappij, verbeterd moet worden vanwege haar groeiende succes en ontwikkeling en omvorming tot een "Industrial Holding company". De overwegingen hierbij zijn o.a.:

(a) DCC's activiteiten worden steeds internationaler, aangezien zij haar natuurlijke grens in de Ierse Republiek bereikt heeft;

(b) zij is van plan in de toekomst acquisities te plegen op het Europese vasteland, het Verenigde Koninkrijk en Noord Amerika.

(c) als een volgroeid bedrijf is DCC plc in een proces van reorganisatie om haar bestaande activiteiten, welke grotendeels waren gecentraliseerd in één vennootschap, DCC Ltd, te reorganiseren, opdat zowel vanuit een management oogpunt als divisie perspectief een betere structuur ontstaat;

(d) tevens zal bij de reorganisatie de lange termijn planning in ogenschouw worden genomen.

6. Om deze redenen zal een aantal veranderingen plaats moeten hebben.

7. DCC zal haar bestaande Ierse structuur verbeteren met inachtneming van de verschillende operationele activiteiten die zij ontplooit: prospectfinancieringsactiviteiten vinden al plaats in twee separate dochtermaatschappijen (één in Ierland en één in het Verenigd Koninkrijk), andere activiteiten van DCC plc zullen worden overgebracht naar

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7. (vervolg)

dochtermaatschappijen hoofdzakelijk met het doel het bestuur en de activiteiten van elk te versterken.

8. Daarbij heeft DCC de intentie om de rol van haar bestaande Nederlandse dochtervennootschap DCC International Holdings B.V. uit te breiden, zowel door uitbreiding van haar rol binnen de bestaande activiteiten van de groep alsmede door te verzekeren dat DCC International Holdings B.V. de potentie heeft om een belangrijkere rol te spelen bij mogelijk toekomstige acquisities in Europa en de Verenigde Staten.

DCC International Holdings B.V.

9. DCC International Holdings B.V. ("DCC BV") is een vennootschap opgericht naar Nederlands recht en gevestigd te Amsterdam. De aandelen in DCC BV worden gehouden door DCC Plc (100% van de A-aandelen) en DCC Limited (het enige uitgegeven B-aandeel).

10. DCC Limited is opgericht naar het recht van the Isle of Man, alwaar de vennootschap tevens is gevestigd. Zij is een 100% dochtermaatschappij van DCC Plc en was vele jaren de belangrijkste niet Ierse investerings-vennootschap van de groep. Als onderdeel van de hierboven uiteen gezette reorganisatie, is de groep van plan het gebruik van DCC Limited te verminderen of te beëindigen.

11. DCC BV werd opgericht in 1993 in verband met het centraliseren van de Engelse investeringen onder één enkele Engelse houdstervennootschap, DCC Holdings (UK) Ltd. DCC BV bezit een 100%-belang in DCC Holdings (UK) Ltd. Het was tevens de bedoeling dat zij de investering van de groep zou houden in Healthdrive corporation, een Amerikaanse vennootschap actief in de mobiele gezondheidszorg.

12. Ongeveer 23 miljoen Ierse Ponden van de liquide middelen van de groep worden gehouden in DCC BV tegenover rentevrije leningen welke verkregen zijn vanuit Ierland. Deze liquide middelen zijn momenteel uitgezet op deposito en zijn voorbestemd voor toekomstige acquisities. Daarnaast is de DCC groep momenteel haar faciliteiten bij banken aan het heronderhandelen, hetgeen inhoudt dat nog eens 60 miljoen Ierse Ponden voor toekomstige acquisities vrijkomt.

13. De groep zoekt actief naar mogelijke "targets", hoewel momenteel nog niets concreets is geïdentificeerd. Aangezien elke toekomstige aankoop beoordeeld zal worden op zijn individuele merites, zint het het management een duidelijke rol voor DCC BV als de tussenhoudstermaatschappij voor alle niet-Ierse ondernemingen waarin zij acquisities plaatst.

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De reorganisatie

14. Als onderdeel van de reorganisatie zoals hierboven beschreven, is de groep van plan enkele van haar deelnemingen over te dragen aan DCC BV.

15. Eerst zal DCC Limited haar 40,6% belang in HealthDrive Corporation overdragen aan DCC BV, waarna de Nederlandse vennootschap een belang van 47,5% zal bezitten.

16. Healthdrive Corporation is een vennootschap opgericht naar het recht van de staat Massachusetts en aldaar gevestigd, zoals de naam al aangeeft, is de vennootschap actief in de gezondheidszorg, één van de vier ondernemingssectoren van de DCC groep. Zij is in de Verenigde Staten onderworpen aan een belasting naar de winst. De DCC groep speelt een actieve rol in de strategische beslissingen en het management van de vennootschap.

17. Ten tweede zal DCC BV het belang verkrijgen dat de groep houdt in een andere deelneming, Fyffes Plc, waarin de groep momenteel 11% van het gewone aandelenkapitaal en 8% van de converteerbare preferente aandelen bezit. De DCC groep bezit het belang in Fyffes Plc sinds 1981.

18. Fyffes Plc is een vennootschap opgericht naar het recht van de Ierse Republiek, alwaar zij ook is gevestigd. De vennootschap is genoteerd aan de Internationale Effectenbeurs van Londen en de Effectenbeurs van Dublin. De vennootschap is een groot distributeur van bananen en verse producten en heeft activiteiten in zowel Noord Amerika, het Verenigd Koninkrijk en het Europese vasteland als in Ierland. De vennootschap is onderworpen aan een belasting naar de winst in Ierland en is niet onderworpen aan een speciaal belastingregime (bijv. de Dublin Financial Services Centre of de Shannon Free Zone).

19. DCC Plc verantwoordt haar deelneming in Fyffes Plc als een "associated company", hetgeen onder Ierse en Engelse "accounting standards", betekent dat zij er een belangrijke invloed op heeft.

20. De DCC groep neemt op verschillende manieren deel in het management van Fyffes Plc. Ten eerste, door vertegenwoordiging in de Raad van Bestuur van Fyffes Plc, aangezien de oprichter en Presidént Directeur van DCC, de heer J. Flavin, reeds vele jaren lid is van de Raad van Bestuur van Fyffes Plc. Hij is bovendien lid van de "audit"-commissie en de "compensation" commissie. Ten tweede, door de betrokkenheid van DCC Corporate Finance, dat Fyffes Plc sinds 1981 adviseert bij belangrijke transacties. In 1981 adviseerde DCC Plc inzake haar gang naar de "Unlisted Securities Market" in Dublin en Londen en in 1987 heeft DCC de notering van Fyffes op de effectenbeurs geregeld.

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20. (vervolg)

In 1986 heeft Fyffes Plc een belangrijke Engelse concurrent overgenomen, waarbij ze actief werd bijgestaan door DCC. In 1991 heeft Fyffes Plc haar eigen vermogen met 62,2 miljoen Ierse Pondan verhoogd en DCC heeft bij deze transactie gunstig geadviseerd. DCC heeft afgesproken om alle aandelen te kopen die niet door het publiek zijn gekocht. Een kopie van de jaarstukken 1994 van Fyffes Plc is bijgevoegd. U zult opmerken dat DCC Corporate Finance staat aangemerkt als de belangrijkste financieel adviseur van de vennootschap.

21. Ten einde de deelneming in Fyffes Plc over te dragen zoals omschreven in paragraaf 17 hierboven, heeft (zal) een aantal stappen plaatsgevonden (plaatsvinden). Twee overzichten zijn bijgevoegd, opdat het onderstaande voor u makkelijker te volgen zal zijn.

22. Ten eerste is Marjove Limited opgericht naar het recht van de Ierse Republiek, alwaar zij ook is gevestigd. DCC BV heeft ingeschreven op 100% van de B-aandelen in Marjove. De A-aandelen zijn in het bezit van DCC Property Limited, een 100% dochter van DCC Plc, opgericht naar het recht van de Ierse republiek en aldaar gevestigd. De A-aandelen hebben een beperkt recht op terugbetaling van kapitaal, met als gevolg dat DCC BV gerechtigd zal zijn tot elk onverdeeld surplus in geval van liquidatie.

23. Marjove zal Lotus Green Limited oprichten als haar 100% dochter, tevens naar het recht van de Ierse Republiek. Lotus Green zal een renteloze lening ontvangen van DCC Plc, waarmee zij de deelneming van de groep in Fyffes Plc zal verwerven.

24. Zodra de stappen beschreven in de paragrafen 22 en 23 voltooid zijn, zal Marjove worden geliquideerd en de aandelen in Lotus Green zullen worden overgedragen aan DCC BV als haar aandeel in de liquidatie uitkering.

25. Het is de bedoeling dat Lotus Green haar zetel zal verplaatsen naar Nederland. In Ierland zal een slotaangifte vennootschapsbelasting worden gedaan en de vennootschap zal kantoorruimte huren in Amsterdam. Lotus Green zal in Nederland worden geregistreerd bij de Kamer van Koophandel en de Belastingdienst. Haar Raad van Bestuur zal bestaan uit zowel ingezetenen als niet-ingezetenen van Nederland. Bestuursvergaderingen en aandeelhoudersvergaderingen zullen uitsluitend in Nederland worden gehouden.

26. Indien Lotus Green inwoner van Nederland wordt, zal het niet betalen van rente op de lening van DCC Plc worden beschouwd als een verdeelde verstrekt door de moedermaatschappij in haar hoedanigheid van aandeelhouder en worden verwerkt als een informele kapitaalstorting in Lotus Green. De fictieve rente op de lening zal dientengevolge onderworpen zijn aan een jaarlijkse heffing van kapitaalsbelasting van 1%.

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26. (vervolg)

Op grond van artikel 13 lid 1 van de Wet op de Vennootschapsbelasting 1969, zal de fictieve rente welke wordt gerapporteerd door Lotus Green niet aftrekbaar zijn, omdat zij verband houdt met een buitenlandse deelneming.

Belastingregeling

27. Hemens DCC BV en, indien zij inwoner van Nederland wordt, Lotus Green, verzoeken zij u op basis van de hierboven vermelde feiten het volgende te bevestigen:

(i) DCC BV zal niet worden geacht de aandelen in vennootschappen met ondernemingen in de vier sectoren, opgenoemd in paragraaf 4 hiervoor, te houden als belegging als vermeld in artikel 13 lid 2 van de Wet op de Vennootschapsbelasting 1969, noch de aandelen in andere tussenhoudstermaatschappijen wier activa voor meer dan 70% bestaan uit directe of indirecte deelnemingen in dergelijke ondernemingen. In het bijzonder zal DCC BV niet worden geacht haar aandelen in HealthDrive Corporation, DCC Holdings (UK) Ltd, Harjove Ltd and Lotus Green Ltd te houden als voorraad of als belegging zoals vermeld in artikel 13 paragraaf 2 van de Wet op de Vennootschapsbelasting 1969. Mits aan de overige vereisten genoemd in artikel 13 van de Wet op de Vennootschapsbelasting 1969 wordt voldaan, zal ter zake de deelnemingsvrijstelling van toepassing zijn.

(ii) Lotus Green Ltd zal niet worden geacht de aandelen in Fyffes Plc te houden als voorraad of als belegging als bedoeld in artikel 13 lid 2 van de Wet op de Vennootschapsbelasting 1969. Derhalve zal, mits aan de overige vereisten van artikel 13 van de Wet op de Vennootschapsbelasting wordt voldaan, ter zake de deelnemingsvrijstelling van toepassing zijn.

(iii) Indien en zolang DCC BV, en Lotus Green indien van toepassing, optreden als houdstermaatschappij ter zake van de in (i) en/of (ii) genoemde deelnemingen, zullen zij ter zake van hun managementactiviteiten teneinde 25% van de in Nederland daaraan verbonden kosten als bijdrage aan de winst aangeven.

(iv) Deze ruling zal gelden voor een periode van ten hoogste vier volledige boekjaren, te rekenen vanaf het moment waarop de aandelenemissies waarop de ruling betrekking heeft in Nederland zijn aangevangen.

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AMSTERDAM

- 7 -

(iv) (vervalt)

De ruling kan daarna verlengd worden voor een nieuwe periode van ten hoogste vier boekjaren, tenzij verlenging in strijd zou zijn met wetgeving of jurisprudentie.

(v) Verlenging kan evenmin plaatsvinden indien deze in strijd is met het op dat moment geldende beleid met betrekking tot het afgeven van rulings. Indien op grond van het gepubliceerde beleid op dat moment geen nieuwe ruling kan worden afgegeven, kan verlening van de ruling desalniettemin plaatsvinden tot ten hoogste twee volledige boekjaren na de datum van publikatie van het gewijzigde beleid.

(vi) Deze ruling kan op ieder moment beëindigd worden, indien blijkt dat aan de belastingautoriteiten van Nederland of van een ander land een onjuist of onvolledig beeld is gegeven van de activiteiten van belanghebbende of de fiscale behandeling daarvan in Nederland.

Indien u met het bovenstaande accoord kunt gaan, verzoeken wij u bijgevoegde kopie van deze brief te ondertekenen en aan ons te retourneren.

Hoogachtend

COOPERS & LYBRAND

mr P.J.M. van der Hoeven / A. Oosley

30 JUNI 1995

Voor gezien

Drs. A. van Dijk

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DCC LTD
DCC BV
DCC HOLDINGS (UK) LTD
UK COMPANIES
HEALTHDRINK CORPORATION
USA
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FYFFES PLC
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OTHER INVESTMENTS

42

F21

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ARTHUR COX

our reference
MM/PR

your reference

date
19th July, 1995

By Fax: 2831018

Michael Scholefield Esq.,
DCC plc,
DCC House,
Brewery Road,
Stillorgan,
Blackrock,
Co. Dublin.

Re : Possible Share Transfer - Application of Chapter II of the Companies Act, 1990

Dear Michael,

I refer to our telephone conversations of last week in connection with the above and to the draft letter which you forwarded to me under cover of your fax of July 11th.

I had cause to speak with Neil McCann on Friday morning on another matter and took the opportunity to bring him up to date on my discussions with yourself and Alvin Price.

In summary I explained to Neil that Alvin had no fundamental disagreement with the points made in my fax to Carl of June 23rd and I pointed out that it was for DCC to decide whether it is incumbent upon them to make any notification under the Act.

In view of my conversation with Neil McCann I do not propose to write to him in relation to this matter unless there are new developments of which he should be made aware.

Many thanks.

Regards.

Yours sincerely,

MICHAEL MEGHEN
ARTHUR COX

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DCC

Memorandum

F20

To: Jim

From: Fergal

Date: 20th July, 1995

Re: ExampleCo

Before proceeding with the proposed transfer of ExampleCo I have reviewed again the various exposures that exist and in particular those that might accelerate a tax liability without there having been an actual disposal.

Section 86

The Irish Revenue could pursue DCC on the grounds that DCC had gained a "tax advantage" i.e. a reduction avoidance or deferral of any charge or assessment to tax, including any potential or prospective charge or assessment.

C&L have advised as follows:

- it is Counsel's view that there is a "grave" risk that Section 86 is unconstitutional and he is of the opinion that Section 86 could not be successfully applied to the ExampleCo proposal

- the possibility of a successful Revenue attempt to assess a potential tax advantage at say the time of transfer of ExampleCo to Subco is in Counsels opinion very unlikely. The Revenue would face extreme practical difficulties in calculating the potential tax advantage

I believe the risk of Section 86 being used by the Revenue to accelerate a tax payment is remote.

In the event of any future disposal of ExampleCo however the Revenue might resort to Section 86 to pursue the matter. The additional remote downside here is that the Revenue calculate the tax due based on the transfer value of Exampleco into Subco which might be higher than any ultimate realisation value.

Section 131

Subco might be deemed to be a sharetrader and would be deemed to have disposed of ExampleCo at market value and then bought it back at the same value thereby accelerating an immediate taxable gain.

C&L have advised as follows:

"It is difficult to be categorical on this issue as so much depends on the facts of each case and the conclusions that may be drawn from these facts by the Courts. Based on our knowledge of facts in the present case, however, in our view it would be extremely difficult for the Revenue to establish that the shares in ExampleCo are being acquired as trading stock".

Facts that support this would be:

- ExampleCo is an associate of the DCC group i.e. held for the long term
- Subco is receiving a long term subordinated loan from DCC to acquire ExampleCo i.e. not a short term trading loan
- there is nothing in DCC's/Subco's minutes/documentation which would suggest any intention to dispose of the shares in ExampleCo
- in a scenario where the Revenue would use Section 131 to attack the scheme in advance of a disposal - clearly there would have been no disposal, at that time, of ExampleCo by Subco.

I believe the risk of Section 131 being used by the Revenue to accelerate a tax liability is remote.

Obviously the Revenue might consider using Section 131 if Subco were to dispose of ExampleCo very soon after it acquired it. Notwithstanding that there is no current intention to dispose of ExampleCo it is always possible that, in certain circumstances, the shares might be sold by Subco after acquisition. However, this does not mean that the transaction is necessarily a trading transaction. Much would depend on the circumstances surrounding the sale e.g. if a purchaser were to make a general offer to all shareholders and Subco was unaware of this at the time of the acquisition, the acquisition of the shares in ExampleCo is less likely to be a trading transaction than if Subco, immediately after its acquisition of the ExampleCo shares place these shares on the market. However, the only additional downside here in this situation, over and above the situation which already exists, is that the ultimate disposal price is less than the price at which the shares were transferred to i.e. tax is calculated on a higher disposal profit than that actually earned.

Section 135

This is the particular relief that prevents any CGT gain crystallising in Subco when it leaves the DCC Irish tax group as a "consequence of another member of the group being wound up or dissolved". Clarification was required as to whether a dividend in specie of the shares in ExampleCo by the liquidator of Newco falls within this relief or whether a more narrow definition of "ceasing to exist" could be applied i.e. the final act of striking the company off the Company's Register.

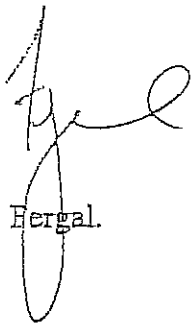
Both Counsel and C&L are particularly strong on this fact having researched the matter in some detail.

If it is an issue I believe it is a very remote one.

Conclusion

In summary, if we proceed with the transfer of ExampleCo to Subco and then change the residence of Subco to Holland, I believe the risks of this accelerating a tax liability are remote.

Notwithstanding the fact that there is no current intention to dispose of the shares in ExampleCo, any ultimate disposal, would, given the materiality of the transaction, give rise to a fair amount of scrutiny by the Revenue and a possible action under any of the above headings. Again however compared to the existing situation in relation to the CGT on the potential gain on ExampleCo shares, the only additional downside would be that ultimately CGT is calculated on a profit which is higher than any realised profit. The question of the costs of defending against any action by the Revenue would also have to be considered.



Fergal.

WILLIAM FRY

SOLICITORS

FITZWILTON HOUSE, WILTON PLACE, DUBLIN 2, IRELAND
TELEPHONE (353-1) 668 1711

PRINCIPAL FAX NUMBER (353-1) 668 7016	
ATTENTION OF	Michael Scholefield Esq
COMPANY	DCC plc
FAX NO.	283 1018
FROM	Alvin Price
OUR REF.	2439-131-AP
NO. OF PAGES INCLUDING THIS ONE	3 DATE 21 July 1995

IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE TELEPHONE (353-1) 668 1711 AND ASK FOR - LIZ

MESSAGE

Letter follows.

WILLIAM FRY

SOLICITORS

FITZWILTON HOUSE, WILTON PLACE, DUBLIN 2, IRELAND.
TEL 01-668 1711, FAX 01-668 7018.
TELEX 93469, D.D.E. BOX NO. 023.

YOUR REF

IN REPLY PLEASE QUOTE

2439-131-AP

21 July 1995

Michael Scholefield Esq
DCC plc
DCC House
Brewery Road
Stillorgan
Blackrock
Co Dublin

Dear Michael,

I refer to previous discussions in regard to the proposal whereby the beneficial ownership of the DCC Group's shareholding ("the Relevant Shares") in the relevant plc ("the Relevant Plc") is intended to move from the two existing wholly owned DCC Group companies by which the Relevant Shares are currently held ("the Existing Holders") to a third wholly owned DCC Group company.

As you know, the question that has arisen is whether this internal move within the wholly owned DCC Group must be notified to the relevant plc and to the Stock Exchange.

A somewhat unusual feature of what is proposed here is that only the beneficial ownership (i.e. not the legal ownership) is to move and the Relevant Shares will at all relevant times remain registered in the names of the two DCC Group companies which are the Existing Holders.

As a matter of pure contract law, the beneficial ownership of any or all of the Relevant Shares can be (and always could be) moved around within the DCC Group any number of times without any involvement by the Relevant Plc or any third party, since no legal transfer of the Relevant Shares is involved.

The question which arises, therefore, is whether the 1990 Act has created an obligation to notify a movement of this type in an intra Group situation.

WILLIAM FRY

Undoubtedly, the relevant provisions of the 1990 Act are very widely drawn, in that they refer to an acquisition or disposal by a person of any interest of any kind whatsoever and, therefore, on a strictly literal basis, an argument can be made that the individual wholly owned DCC Group companies should therefore notify their respective acquisitions and disposals of an interest in the Relevant Shares. When construed on a purposeful basis, however, a contrary view can be taken, in that the purpose of the relevant Sections of the 1990 Act are clearly to enable public limited companies and the public to know who are the true owners of a particular substantial block of shares, such as the Relevant Shares. In this case, I take the view that the true owner is the DCC Group, and the Relevant Plc and public have already been very clearly notified of that fact in accordance with the requirements of the 1990 Act, and that the 1990 Act should not be construed in the literal manner which would now require a further notification of essentially the same information. The wording of S.72(3) of the 1990 Act provides support for this view i.e. that one should for these purposes treat a group of companies as a single person.

While making notification is clearly the more cautious approach, I should stress, as previously advised, that this issue is strictly one for the DCC Group alone to decide upon, given the legal and commercial considerations involved. The Relevant Plc would only become involved if the Relevant Shares are presented for registration or, of course, if the relevant DCC Group companies decided to make a formal notification.

Yours sincerely,

Alvin F.M. Price
WILLIAM FRY
Solicitors

6920LL

45

WILLIAM FRY

SOLICITORS

FITZWILTON HOUSE, WILTON PLACE, DUBLIN 2. IRELAND.
TEL 01-668 1711, FAX 01-668 7016.
TELEX 93469, D.D.E. BOX NO. 023.

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YOUR REF

IN REPLY PLEASE QUOTE

2439-131-AP

25 July 1995

Michael Scholefield Esq
DCC plc
DCC House
Brewery Road
Stillorgan
Blackrock
Co Dublin

Dear Michael,

I refer further to the proposed intra Group transaction referred to in my letter of Friday last dealing with the issue of the possible notification of that transaction under the 1990 Companies Act.

I confirm that very similar considerations arise in relation to applicability to that transaction of the insider dealing provisions of the Companies Acts. Again, for essentially the same reasons as were outlined in my letter of last Friday, in our view there would be no question of any criminal or civil liability arising under those insider dealing provisions in consequence of the movement of the beneficial ownership of the relevant shares within the wholly owned DCC Group of companies.

Kind regards.

Yours sincerely,

Alvin F.M. Price
WILLIAM FRY
Solicitors

6930LL

46

EXAMPLECO

1. Tell FOD, MS has DT's CGT planning file. X29 [redacted]
2. Listus Green and Marjorie Secretarial Files
3. LG and M Legal Files
4. C+L to review all draft minutes with the express purpose of assessing whether we need to add anything to strengthen case that Subsco is not a trading Co S137.
5. Tax Issues:
   CGT (FOD)
   Notification (MS)
6. Option Agreement now redundant.
7. New loan Agreements to be reviewed by FOD/MS and C+L.
   - 15 year term
   - subs. to creditors
8. Share purchase agreements fine apart from signature.

Discussion

A. No 4 as above.

B. DB to confirm whether two directors to be appointed.

C. A Browning of Frys to contact MS with changed Memos + Articles.

D. Minutes with company (BF only to Stage 1) MS/FOD to approve Mins.

E. If existing two Cos have B.I. a/cs (anywhere) this will be sufficient. NB All instructions must be …

Martin Cristian needs some money

47

B1 (c

Sectoral Review

Food - Quarter to 30 June 1995

[redacted]

DCC's share of Fyffes plc's results for the three months to 31 January 1995 is included in DCC's results for the quarter to 30 June 1995. Despite a lower than budget performance in June 1995, overall Fyffes plc has had a strong start to its financial year and its operating profit contribution to DCC of IR£0.308 million was IR£0.533 million (236.9%) ahead of budget and IR£0.471 million (289.0%) ahead of the previous financial year. [redacted]

[redacted]

48

AS1

[redacted]

6. CHANGES IN BENEFICIAL OWNERSHIP WITHIN THE DCC GROUP OF SHARES HELD

We are planning to transfer the beneficial ownership in the Group's shareholding in Fyffes plc, which is currently held in Ireland, to a Dutch subsidiary of DCC. Whilst there is no current intention to dispose of the Group's shareholding in Fyffes plc, we have been advised that any gain arising on a disposal of this shareholding would not be taxed in Holland. Appendix 1 contains letters from Alvin Price of William Fry re Companies Act provisions on the notification of interests and insider dealing on which I wish to have an agreed board position.

[redacted]

49

Coopers & Lybrand

P.O. Box 1283
Fitzwilton House
Wilton Place
Dublin 2

telephone (01) 661 0333
660 2222
676 0305

fax (01) 676 5792
660 1702
DDE 101

F19

FAX TRANSMISSION FORM

our reference

DATE: 3 August 1995

TO: Daphne Tease

LOCATION: DCC plc

FAX NO.: 2831017

FROM: Terry O'Driscoll

Copy for Fergal

Total number of pages (including this page) 2

If any pages are not received, or are illegible, please advise immediately

RE: EXAMPLECO

Dear Daphne,

Further to our meeting yesterday we have had discussions with C&L Amsterdam as regards the currency of the loan between DCC Properties and Lotus Green Limited.

Our conclusion is that the loan should initially be expressed in IR£ but should be re-denominated in Dutch Guilders (NLG) on Lotus Green changing tax residence to the Netherlands. The purchase price of the shares in Exampleco will be in IR£.

We have reviewed the draft loan agreement to be put in place between DCC Properties and Lotus Green Limited and would suggest that the following clause be inserted to ensure that the agreement does not constitute a "debt on security" for Irish tax purposes:-

> "Assignment
>
> Neither party may assign or transfer any of its rights or obligations under this agreement to any other party".

I am copying Alvin Price with this fax to advise him of the suggested amendment.

I shall be obliged if you would let me have final drafts of the various board resolutions as soon as possible.

Kind regards.

Yours sincerely,

Terry O'Driscoll,
for Coopers & Lybrand.

lh.
a:\daphne-f

50

Coopers
&Lybrand

chartered accountants

P.O. Box 1283
Fitzwilton House
Wilton Place
Dublin2

telephone (01) 661 0333
668 2222
676 0305

fax (01) 660 1782
DDE 101

our reference
JLM/BOH/gd

your reference

9 August 1995

The Directors
DCC plc
DCC House
Brewery Road
Stillorgan
Co Dublin

Dear Sirs

Lotus Green Limited
Marjove Limited

We refer to our letter of engagement for DCC plc and subsidiary companies.

Following our appointment as auditors to the above named companies we now confirm that the terms of the letter of engagement will apply to these companies.

Would you please confirm, in writing, your agreement to this or alternatively sign and return the enclosed copy which will remain effective from one audit appointment to another until it is replaced.

Yours truly

Coopers & Lybrand

Coopers & Lybrand

The above terms are accepted:-

Signature

9 August 1995

Date

51

E22

04.08.95

S & L INVESTMENTS LIMITED

- and -

LOTUS GREEN LIMITED

SHARE PURCHASE AGREEMENT

WILLIAM FRY
Solicitors
Fitzwilton House
Wilton Place
Dublin 2

2439-131-AP

TABLE OF CONTENTS

SECTION 1.0 - SHARE PURCHASE AND SALE

SECTION 2.0 - GENERAL PROVISIONS

THIS AGREEMENT is made on 9th August 1995

BETWEEN:

S & L INVESTMENTS LIMITED
having its registered office
at DCC House, Stillorgan,
Blackrock, County Dublin
(hereinafter called the "Vendor")

- and -

LOTUS GREEN LIMITED
having its registered office
at Fitzwilton House, Wilton Place,
Dublin 2
(hereinafter called the "Purchaser")

WHEREAS:

A. The Vendor is the registered and beneficial owner of 7,667,500 Ordinary Shares of IR5p in the capital of Fyffes plc (the "Ordinary Shares").

B. The Purchaser has agreed to purchase and the Vendor has agreed to sell the Ordinary Shares upon and subject to the terms and conditions hereinafter contained.

.OW THIS AGREEMENT WITNESSETH that in consideration of mutual covenants, conditions, agreements, warranties and payments hereinafter set forth as provided for the parties hereto respectively covenant with each other as follows:-

SECTION 1.0 - SHARE PURCHASE AND SALE

1.1 Purchase and Sale. The Vendor hereby agrees to sell and the Purchaser agrees to purchase the Ordinary Shares free from any lien, charge or encumbrance and together with all accrued benefits and rights for the consideration referred to in Clause 1.2 and on the terms herein set out. The Purchaser shall not be obliged to complete the purchase of any of the Ordinary Shares unless the purchase of all of the Ordinary Shares is completed simultaneously.

1.2 Consideration. The consideration payable in respect of the Ordinary Shares shall be an amount of IR£8,050,875-00 all of which shall be payable by the Purchaser (by bank transfer) on the tenth business day next following the execution hereof (hereinafter called the "Completion Date").

1.3 Warranties and Undertakings. The Vendor hereby undertakes with and warrants to the Purchaser and its successors in title that it has and will at the Completion Date continue to have full power and authority to sell the Ordinary Shares on the terms set out herein and to pass to the Purchaser the beneficial ownership of the Ordinary Shares.

1.4 Completion. Completion shall take place at the registered office of the Vendor at 12.00 noon on the Completion Date or such later time, place and date as the parties hereto may agree. Upon Completion, the Purchaser shall make payment of the consideration payable as provided for in Clause 1.2 hereof and the Vendor shall deliver to the Purchaser:-

(a) share certificates in respect of the Ordinary Shares; and

(b) forms of transfer duly executed and made in favour of the Purchaser or its nominee.

SECTION 2.0 - GENERAL PROVISIONS

2.1 Survival of Obligations. The representations undertakings and warranties contained in this Agreement together with any of the provisions of this Agreement which shall not have been performed at Completion shall remain in full force and effect notwithstanding Completion.

2.2 Binding on Successors. This Agreement shall enure to the benefit of and be binding upon the respective parties hereto and their respective successors personal representatives and assigns. The Vendor agrees that the benefit of any provision of this Agreement may be enforced by the beneficial owner for the time being of the Ordinary Shares and accordingly the benefit of any provision of this Agreement may be assigned by the Purchaser and its successors in title without the consent of the Vendor.

2.3 Further Assurance. At the request of the Purchaser the Vendor shall (and shall procure that any other necessary parties shall) execute and do all such documents acts and things as may reasonably be required subsequent to Completion by the Purchaser for assuring to or vesting in the Purchaser (including its nominee or nominees) the legal or beneficial ownership of the Ordinary Shares.

2.4 Waiver. Any liability to a party hereto under the provisions of this Agreement may in whole or in part be released varied compounded or compromised by such party in its absolute discretion as regards the other party under such liability without in any way prejudicing or affecting its rights against the other party under the same or a like liability whether joint and several or otherwise. A waiver by a party hereto of any breach by the other party hereto of any of the terms provisions or conditions of this Agreement or the acquiescence of a party hereto in any act (whether of commission or omission) which but for such acquiescence would be a breach as aforesaid shall not constitute a general waiver of such term provision or condition or of any subsequent act contrary thereto.

2.5 Counterparts. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts each of which when executed and delivered shall constitute an original all such counterparts together constituting but one and the same instrument.

2.6 Business Days. If any action or duty to be taken or performed under any of the provisions hereof would, apart from the provisions of this Clause, fall to be taken or performed on a day which is not a Business Day such action or duty shall be taken or performed on the Business Day next following such date.

2.7 Notices.

(a) Any notice or other communication required or permitted to be given or made hereunder shall be addressed and sent to the intended recipient at its registered office as hereinafter set out or to such other postal address as that party may from time to time have notified to the other party hereto in writing in accordance with the provisions hereof.

(b) Any notice or other communication required or permitted to be given or made hereunder shall be validly given or made if delivered personally or if despatched by pre-paid letter post addressed as aforesaid and shall be deemed to be given or made:

(i) if delivered by hand - at the time of delivery; or

(ii) if sent by post - forty eight hours after the same shall have been posted.

2.8 Announcements. The Vendor and the Purchaser shall consult together as to the terms of, timetable for and manner of publication of, any announcement to shareholders, employees, customers, suppliers or to The Stock Exchange or other authorities or to the media or otherwise which either may desire or be obliged to make regarding the subject matter of this Agreement. Subject as aforesaid and save as may be required by law, neither the Vendor nor the Purchaser shall make or authorise any announcement concerning the subject matter of this Agreement.

2.9 Headings and Captions. The Section headings and captions to the Clauses in this Agreement are inserted for convenience of reference only and shall not be considered a part of or affect the construction or interpretation of this Agreement.

2.10 Governing Law. This Agreement shall in all respects (including the formation thereof and performance thereunder) be governed by and construed in accordance with the laws of Ireland.

IN WITNESS whereof these presents have been entered into the day and year first herein written.

PRESENT when the common seal of S & L INVESTMENTS LIMITED was affixed hereto:-

Director

Director

PRESENT when the common seal of LOTUS GREEN LIMITED was affixed hereto:-

Director

Director

1167BH:11

52

04.08.95

E23

DCC plc

- and -

LOTUS GREEN LIMITED

SHARE PURCHASE AGREEMENT

WILLIAM FRY
Solicitors
Fitzwilton House
Wilton Place
Dublin 2

2439-131-AP

TABLE OF CONTENTS

SECTION 1.0 - SHARE PURCHASE AND SALE

SECTION 2.0 - GENERAL PROVISIONS

THIS AGREEMENT is made on 9th August 1995

BETWEEN:

DCC plc
having its registered office
at DCC House, Stillorgan,
Blackrock, County Dublin
(hereinafter called the "Vendor")

- and -

LOTUS GREEN LIMITED
having its registered office
at Fitzwilton House, Wilton Place,
Dublin 2
(hereinafter called the "Purchaser")

WHEREAS:

A. The Vendor is the registered and beneficial owner of 23,109,507 Ordinary Shares of IR5p in the capital of Fyffes plc (the "Ordinary Shares") and 4,621,901 IR8.25p (net) Convertible Cumulative Preference Shares of IR£1 each in the capital of Fyffes plc (the "Preference Shares").

B. The Purchaser has agreed to purchase and the Vendor has agreed to sell the Ordinary Shares and the Preference Shares upon and subject to the terms and conditions hereinafter contained.

NOW THIS AGREEMENT WITNESSETH that in consideration of mutual covenants, conditions, agreements, warranties and payments hereinafter set forth as provided for the parties hereto respectively covenant with each other as follows:-

SECTION 1.0 - SHARE PURCHASE AND SALE

1.1 Purchase and Sale. The Vendor hereby agrees to sell and the Purchaser agrees to purchase the Ordinary Shares and the Preference Shares free from any lien, charge or encumbrance and together with all accrued benefits and rights for the consideration referred to in Clause 1.2 and

on the terms herein set out. The Purchaser shall not be obliged to complete the purchase of any of the Ordinary Shares or the Preference Shares unless the purchase of all of the Ordinary Shares and all the Preference Shares is completed simultaneously.

1.2 Consideration.

(a) The consideration payable in respect of the Ordinary Shares shall be an amount of IR£24,264,982-35 all of which shall be payable by the Purchaser (by bank transfer) on the tenth business day next following the execution hereof (hereinafter called the "Completion Date").

(b) The consideration payable in respect of the Preference Shares shall be an amount of IR£6,147,128.33 all of which shall be payable by the Purchaser (by bank transfer) on the Completion Date.

1.3 Warranties and Undertakings. The Vendor hereby undertakes with and warrants to the Purchaser and its successors in title that it has and will at the Completion Date continue to have full power and authority to sell the Ordinary Shares and the Preference Shares on the terms set out herein and to pass to the Purchaser the beneficial ownership of the Ordinary Shares and the Preference Shares.

1.4 Completion. Completion shall take place at the registered office of the Vendor at 12.00 noon on the Completion Date or such later time, place and date as the parties hereto may agree. Upon Completion, the Purchaser shall make payment of the consideration payable as provided for in Clause 1.2 hereof and the Vendor shall deliver to the Purchaser:-

(a) share certificates in respect of the Ordinary Shares and the Preference Shares; and

(b) forms of transfer duly executed and made in favour of the Purchaser or its nominee.

SECTION 2.0 - GENERAL PROVISIONS

2.1 Survival of Obligations. The representations undertakings and warranties contained in this Agreement together with any of the provisions of this Agreement which shall not have been performed at Completion shall remain in full force and effect notwithstanding Completion.

.2 Binding on Successors. This Agreement shall enure to the benefit of and be binding upon the respective parties hereto and their respective successors personal representatives and assigns. The Vendor agrees that the benefit of any provision of this Agreement may be enforced by the beneficial owner for the time being of the Ordinary Shares or the Preference Shares and accordingly the benefit of any provision of this Agreement may be assigned by the Purchaser and its successors in title without the consent of the Vendor.

2.3 Further Assurance. At the request of the Purchaser the Vendor shall (and shall procure that any other necessary parties shall) execute and do all such documents acts and things as may reasonably be required subsequent to Completion by the Purchaser for assuring to or vesting in the Purchaser (including its nominee or nominees) the legal or beneficial ownership of the Ordinary Shares and/or the Preference Shares.

2.4 Waiver. Any liability to a party hereto under the provisions of this Agreement may in whole or in part be released varied compounded or compromised by such party in its absolute discretion as regards the other party under such liability without in any way prejudicing or affecting its rights against the other party under the same or a like liability whether joint and several or otherwise. A

waiver by a party hereto of any breach by the other party hereto of any of the terms provisions or conditions of this Agreement or the acquiescence of a party hereto in any act (whether of commission or omission) which but for such acquiescence would be a breach as aforesaid shall not constitute a general waiver of such term provision or condition or of any subsequent act contrary thereto.

2.5 Counterparts. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts each of which when executed and delivered shall constitute an original all such counterparts together constituting but one and the same instrument.

2.6 Business Days. If any action or duty to be taken or performed under any of the provisions hereof would, apart from the provisions of this Clause, fall to be taken or performed on a day which is not a Business Day such action or duty shall be taken or performed on the Business Day next following such date.

2.7 Notices.

(a) Any notice or other communication required or permitted to be given or made hereunder shall be addressed and sent to the intended recipient at its registered office as hereinbefore set out or to such other postal address as that party may from time to time have notified to the other party hereto in writing in accordance with the provisions hereof.

(b) Any notice or other communication required or permitted to be given or made hereunder shall be validly given or made if delivered personally or if despatched by pre-paid letter post addressed as aforesaid and shall be deemed to be given or made:

(i) if delivered by hand - at the time of delivery; or

(ii) if sent by post - forty eight hours after the same shall have been posted.

2.8 Announcements. The Vendor and the Purchaser shall consult together as to the terms of, timetable for and manner of publication of, any announcement to shareholders, employees, customers, suppliers or to The Stock Exchange or other authorities or to the media or otherwise which either may desire or be obliged to make regarding the subject matter of this Agreement. Subject as aforesaid and save as may be required by law, neither the Vendor nor the Purchaser shall make or authorise any announcement concerning the subject matter of this Agreement.

2.9 Headings and Captions. The Section headings and captions to the Clauses in this Agreement are inserted for convenience of reference only and shall not be considered a part of or affect the construction or interpretation of this Agreement.

2.10 Governing Law. This Agreement shall in all respects (including the formation thereof and performance thereunder) be governed by and construed in accordance with the laws of Ireland.

IN WITNESS whereof these presents have been entered into the day and year first herein written.

PRESENT when the common seal
of DCC plc
was affixed hereto:-

DIRECTOR

SECRETARY

PRESENT when the common seal
of LOTUS GREEN LIMITED
was affixed hereto:-

DIRECTOR

DIRECTOR.

1157BE:11

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)4.08.95

E24

DCC PROPERTIES LIMITED

- and -

LOTUS GREEN LIMITED

LOAN AGREEMENT

WILLIAM FRY
Solicitors
Fitzwilton House
Wilton Place
Dublin 2

2439-133-0360AP

THIS AGREEMENT is made on 9th August 1995

BETWEEN:

DCC PROPERTIES LIMITED
having its registered office
at DCC House, Brewery Road,
Stillorgan, Blackrock, Co Dublin
(hereinafter called the "Lender")

- and -

LOTUS GREEN LIMITED
having its registered office
at Fitzwilton House, Wilton Place,
Dublin 2
(hereinafter called the "Borrower")

WHEREAS The Lender has agreed to make a loan to the Borrower on the terms set out herein.

NOW THIS AGREEMENT WITNESSETH:-

1. Amount. On the signing hereof, the Lender shall make available to the Borrower a loan in the sum of IR£38,462,985. (hereafter called the "loan").

2. Interest. The loan shall be free of interest for the first year of the Term and each subsequent year the Lender and Borrower shall agree whether the loan is to bear interest for that year and, if so, the applicable rate.

3. Purpose. The proceeds of the loan shall be applied by the Borrower in the purchase by it of shares in Fyffes plc.

4. Repayment. The loan made by the Lender to the Borrower hereunder shall be repayable at the end of the Term. Without prejudice to the foregoing, the loan shall become automatically and immediately repayable if:-

(a) an order is made, or an effective resolution is passed for the winding up of the Borrower other than for the purpose of reconstruction or amalgamation

while solvent on terms which have been previously approved by the Lender in writing or an examiner is appointed to it; or

(b) any security created by any mortgage or charge granted by the Borrower or a judgment mortgage obtained against the Borrower shall become enforceable whether or not the mortgagee or chargee takes any steps to enforce the same or the Lender by notice in writing to the Borrower indicates that the Lender is reasonably of the opinion (having made all reasonable enquiries) that any such event is likely to occur; or

(c) the Borrower is unable to pay its debts within the meaning of Section 214(b) or (c) of the Companies Act, 1963 (as amended); or

(d) the Borrower disposes of all of its assets for cash or other consideration in money's worth.

5. Term. The term of the loan will be fifteen years commencing on the date hereof (herein referred to as the "Term").

Notices. Any notice or other communication whether required or permitted to be given hereunder shall be given in writing and shall be deemed to have been duly given if delivered by hand against receipt of the addressee or his duly authorised agent or if sent by prepaid registered post addressed to the party to whom such notice is to be given at the address set out for such party herein (or such other address as such party may from time to time designate in writing to the other party hereto in accordance with the provisions of this Clause). Any such notice shall be deemed to have been duly given if delivered at the time of delivery and if sent by prepaid registered post as aforesaid forty eight hours after the same shall have been posted.

7. Subordination. The provisions relating to repayment under this Agreement will be subordinate to the rights of all other creditors of the Borrower (other than creditors with subordinated rights) whose claims as creditors shall rank in priority to the Lender's claim in respect of the Loan in any liquidation or receivership of the Borrower.

8. Assignment. Neither party may assign or transfer its rights or obligations under this Agreement to any other party.

9. Headings and Captions. The Section headings and captions to the Clauses in this Agreement are inserted for convenience of reference only and shall not be considered a part of or affect the construction or interpretation of this Agreement.

10. Governing Law. This Agreement shall in all respects (including the formation thereof and performance thereunder) be governed by and construed in accordance with the laws of Ireland.

IN WITNESS whereof these presents have been entered into the day and year first herein written.

Signed by MORGAN CROWE AND FERGAL O'DWYER
for and on behalf of
DCC PROPERTIES LIMITED
in the presence of :-

Director

Signed by THOMAS BREEN AND KEVIN MURRAY
for and on behalf of
US GREEN LIMITED
in the presence of:-

0360AP:11

54

DCC

Memorandum

69

[redacted]

To: ExampleCo File

From: Fergal

Date: 9th August 1995

Re: Telephone conversation with Paul Burke of Davys at 3.40p.m.

I enquired from Paul Burke as to the current share price of Fyffes plc.

The ordinary share dealt at IR£1.05 and the convertible preference shares last dealt at IR£1.33.

Fergal.

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911

Facsimile Message

To: David Ryan

Fax No: 604 4062

From: Barry O'Neill

Date: 9th August 1995

No. of Pages to follow: 6

If this message is not received in full please contact Lisa on +353 1 2831011.

Message:

I attach the revised flow chart and bank transfer instructions re Exampleco. These instructions have been appropriately authorised and are not marked Confirmation Only as I understand you will liase with 2 College Green regarding the issuance of same. As you are aware the transfer amounts are subject to finalisation at 4pm today, and I will call you at that point to confirm or to inform you of any final amendments to the amounts. It is imperative that we complete this transaction this evening.

Kind regards,

Yours sincerely,

Barry O'Neill

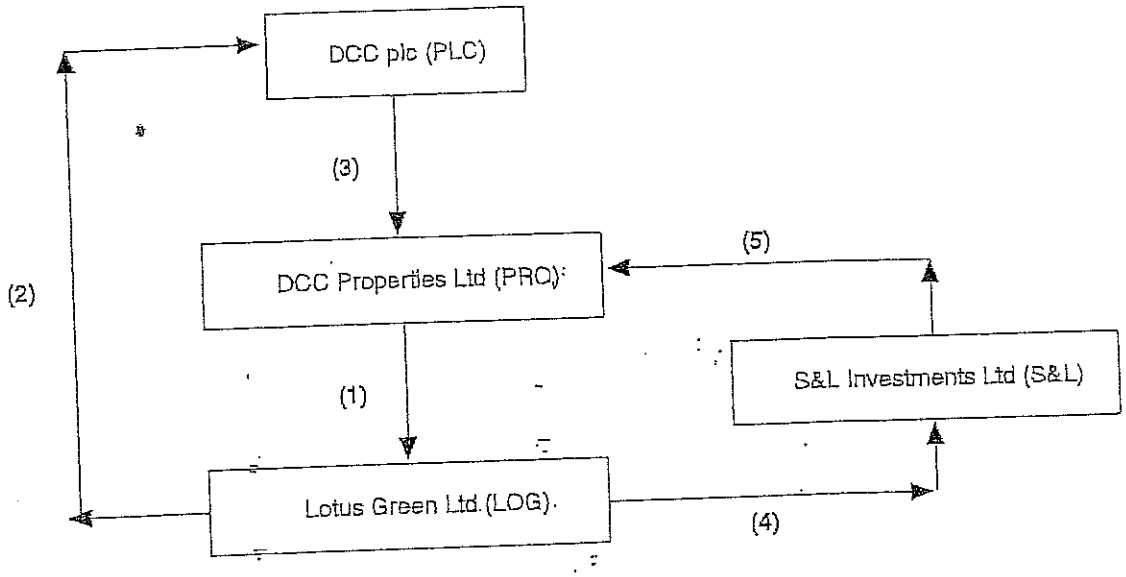
09-Aug-95

File : CGTFYFFE
Range : PROFIT

DCC plc : Exampleco

	DCC	S&L	Total
No. of ordinary shares	23,109,507.00	7,667,500.00	30,777,007.00
Latest traded price	1.05	1.05	1.05
Market value - ordinary	24,264,982.35	8,050,875.00	32,315,857.35
No. of prefrence shares	4,621,901.00		4,621,901.00
Latest traded price	1.33		1.33
Market value - preference	6,147,128.33	0.00	6,147,128.33
Total market value	30,412,110.68	8,050,875.00	38,462,985.68
Cost per investment ledger			
- ordinary shares	8,508,363.00	5,032,949.00	13,541,312.00
- preference shares	5,084,091.00		5,084,091.00
Unrealised profit	16,819,656.68	3,017,926.00	19,837,582.68

EXAMPLECO



(1) PRO advances a loan to LOG of IR£38,462,985.68

(2) LOG purchases PLC's investment in EXAMPLECO for a consideration equal to its current market value of IR£30,412,110.68

(3) PLC advances a loan to PRO of IR£30,412,110.68

(4) LOG purchases S&L's investment in EXAMPLECO for a consideration equal to its current market value of IR£8,050,875.00

(5) S&L advances a loan to PRO of IR£8,050,875.00

DCC Properties Ltd
DCC House
Stillorgan
Blackrock
Co. Dublin

9th August, 1995

Business Desk,
Bank of Ireland,
2 College Green,
Dublin 2.

To whom it concerns:

We confirm our instruction given earlier today as follows:

Please transfer from: DCC Properties Limited
a/c no. 6027 4046
IR£38,462,985.68

and transfer to Lotus Green Ltd
a/c no. 6027 3967

value today, Wednesday, 9th August, 1995

Yours faithfully

Authorised Signatory

Countersigned

Authorised Signatory

Lotus Green Limited
Fitzwilton House
Wilton Place
Dublin 2

9th August, 1995

Money Transfers,
Bank of Ireland,
2 College Green,
Dublin 2.

To whom it concerns:

We confirm our instruction given earlier today as follows:

Please transfer from: Lotus Green Limited
a/c no. 6027 3967
IR£30,412,110.68

and transfer to DCC plc
a/c no. 6905 4226

value today, Wednesday, 9th August, 1995

Yours faithfully

Authorised Signatory

Countersigned

Authorised Signatory

DCC

9th August, 1995

Business Desk,
Bank of Ireland,
2 College Green,
Dublin 2.

To whom it concerns:

We confirm our instruction given earlier today as follows:

Please transfer from: DCC plc
a/c no. 6905 4226
IR£30,412,110.68

and transfer to: DCC Properties Ltd
a/c no. 6027 4046

value today, Wednesday , 9th August, 1995.

Yours faithfully

Authorised Signatory

Countersigned

Authorised Signatory

DCCplc DCC House Brewery Road Stillorgan Blackrock Co Dublin Ireland
Tel: +353 1 283 1011 Fax +353 1 283 1017

Lotus Green Limited
Fitzwilton House,
Wilton Place,
Dublin 2.

9th August, 1995

Business Desk,
Bank of Ireland,
2 College Green,
Dublin 2.

To whom it concerns:

We confirm our instruction given earlier today as follows:

Please transfer from: Lotus Green Ltd
a/c no. 6027 3967
IR£8,050,875.00

and transfer to: S&L Investments Ltd
a/c no. 1458 3577

value today, Wednesday, 9th August, 1995.

Yours faithfully

Authorised Signatory

Countersigned

Authorised Signatory

S&L Investments Limited
DCC House
Stillorgan
Blackrock
Co. Dublin

9th August, 1995

Business Desk,
Bank of Ireland,
2 College Green,
Dublin 2.

To whom it concerns:

We confirm our instruction given earlier today as follows:

Please transfer from: S&L Investments Ltd
a/c no. 1458 3577
IR£8,050,875.00

and transfer to: DCC Properties Ltd
a/c no. 6027 4046

value today, Wednesday, 9th August, 1995.

Yours faithfully

Authorised Signatory

Countersigned

Authorised Signatory

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DCC

Facsimile Message

To:	David Ryan	Fax No:	604 4062
From:	Barry O'Neill	Date:	9th August 1995

No. of Pages to follow: 0

If this message is not received in full please contact Lisa on +353 1 2831011.

Message:

Further to my fax re Exampleco this morning, I now confirm the transfer amounts remain as per the instructions which accompanied that fax i.e. the amounts involved are:-

1. IR£38,462,985.68
2 IR£30,412,110.68
3 IR£30,412,110.68
4. IR£8,050,875.00
5. IR£8,050,875.00

Can you please instruct Bank of Ireland, 2 College Green to process the transactions with immediate effect. I will send the originals by post to Sheila Cunningham this evening.

Kind regards,

Yours sincerely,

Barry O'Neill
Manager

P.01

TRANSACTION REPORT

8-AUG-95 WED 16:15

DATE START	RECEIVER	TX TIME	PAGES	TYPE	NOTE	M#
8-AUG 16:14	8044062	27"	1	SEND	OK	

57

Coopers & Lybrand

P.O. Box 1289
Fitzwilton House
Wilton Place
Dublin 2

telephone (01) 661 0333
668 2222
676 9308

fax (01) 678 5792
660 1792
DDE 101

F13

FAX TRANSMISSION FORM

our reference

DATE: 14 August 1995

TO: Fergal O'Dwyer

LOCATION: DCC plc

FAX NO.: 2831018

FROM: Terry O'Driscoll

Total number of pages (including this page) 1

If any pages are not received, or are illegible, please advise immediately

RE: EXAMPLECO

Dear Fergal,

I refer to our recent discussions in connection with the above. I understand that Lotus Green Limited will hold a board meeting in the Netherlands either this week or next week.

The meeting should deal with the following issues:-

1. Resignation and appointment of directors.
2. Closing the existing deposit account and opening a deposit account in the Netherlands.
3. The re-denomination (from IR£ to NLG) of the loan from DCC properties to Lotus Green. Perhaps you might discuss with Alvin Price how this can best be effected.

Peter van der Hoeven wrote to you on July 7 advising on the various steps which need to be taken to ensure that Lotus Green will be treated as tax resident in the Netherlands for Dutch tax purposes. This requires the filing of certain forms and I assume that you will liaise directly with Peter on this. If we can be of any assistance, however, please let me know.

Kind regards,

Yours sincerely,

Terry O'Driscoll,
for Coopers & Lybrand.

lh.tr\dapros

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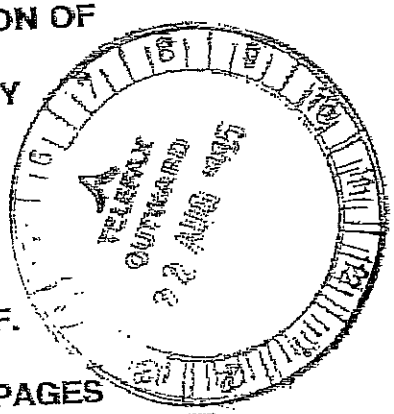
WILLIAM FRY

SOLICITORS

FITZWILTON HOUSE, WILTON PLACE, DUBLIN 2, IRELAND
TELEPHONE (353-1) 668 1711

PRINCIPAL FAX NUMBER (353-1) 668 7016

ATTENTION OF	Ms Daphne Tease
COMPANY	DCC plc
FAX NO.	283 1018
FROM	Alvin Price
OUR REF.	2439-131-AP
NO. OF PAGES INCLUDING THIS ONE	5 DATE 22 August 1995



*IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE TELEPHONE (353-1) 668 1711 AND ASK FOR - LIZ

MESSAGE

Dear Daphne,

Thank you for sending me the translation of the Articles of the BV company. Frankly, I am not sure how relevant this is to Lotus Green Limited.

Lotus Green Limited is and will remain an Irish registered company governed by the Irish Companies Acts, and, therefore, I feel we need to to some lengths to support the contention that its place of management not in Ireland. In that respect, I enclose draft resolutions amending Articles of Association which we prepared in another case to support change of tax residency (in that case to Jersey). The crucial resolutions are those at paragraphs 2 and 3 but you will see that each of the other resolutions are designed to demonstrate that the Company is severing its links with Ireland (other than the link which cannot be severed, namely its place of original incorporation). Perhaps we could have a word when you have reviewed the attached.

Kind regards.

Yours sincerely,

Alvin F.M. Price
WILLIAM FRY
Solicitors

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THIS AGREEMENT MADE BETWEEN AND ENTERED INTO BY:

1. Internationale Nederlanden (Nederland) Trust B.V., with trade name ING (Nederland) Trust (hereinafter referred to as "the Secretary")

and

2. Lotus Green Limited, a company duly organised and existing under the laws of the Republic of Ireland, with registered office at Fitzwilton House, Wilton Place, Dublin 2, Republic of Ireland and Head Office at Keizersgracht 534, 1017 EK Amsterdam, The Netherlands (hereinafter referred to as "the Company"), represented herein by Mr Fergal O'Dwyer ("A" Director) and Mr Gerard Jansen Venneboer ("B" Director).

WITNESSETH:

WHEREAS the Company has requested the Secretary to provide services to the Company and to assist the Directors of the Company ("the Management") in managing and controlling the conduct of the Company's business and to provide such facilities to the Company as may be appropriate or deemed useful for the principal operating and general business of the Company in The Netherlands;

WHEREAS the Secretary is willing to act as Company Secretary of the Company and to provide such facilities to the Company as may be appropriate or deemed useful for the principal operating and general business of the Company in The Netherlands, subject to and in accordance with the terms and provisions set forth hereinafter.

Now, THEREFORE, in consideration of the premises and the mutual covenants contained herein it is agreed by and between the parties hereto as follows:

Article I APPOINTMENT

The Secretary has been appointed Company Secretary of the Company as of 25th August 1995. As Company Secretary, the Secretary will assist in managing the business of the Company in accordance with the terms and conditions of this agreement.

Article II DUTIES

1. The Secretary will assist the Management with the control and the conduct of the business of the Company in accordance with the Company's Articles of Association, the resolutions of meetings of its shareholders, the laws of the Republic of Ireland, the laws of The Netherlands and any other written instructions the Secretary may receive from the Company.

2. The Secretary will assist the Management in maintaining the proper existence and good standing of the Company under the laws of The Netherlands.

3. The Secretary will provide such facilities to the Management as may be appropriate or deemed useful, including company secretarial services.

4. In the execution of its duties, the Secretary shall take due care of the interests of the Company to the best of its ability.

Article III LIABILITY

The Secretary shall be liable to the Company for any breach of its obligations, laid down in this agreement, as well as any gross negligence or wilful misconduct in the performance of its duties under this agreement. The Company shall safeguard the Secretary or its employees and hold it free and harmless against any claim, which may be made upon the Secretary, provided such claim arises from or is related to the Secretary's performance of its duties under this Agreement and provided such claim is not the result of any breach of the Secretary's obligation under this Agreement or of any gross negligence or wilful misconduct in the performance of the Secretary's duties under this Agreement.

Article IV TERMINATION

1. Either the Secretary or the Company may terminate this Agreement, without any obligation to state any reason therefor, on three months' prior notice by way of registered letter or cable to the Mailing Address of the other party.

2. Either the Company or the Secretary is entitled to terminate this Agreement forthwith by registered letter upon the occurrence of any of the following events:

   (a) failure by the other party to perform or to comply with any obligation embodied in this Agreement;

   (b) bankruptcy or moratorium of debts of the other party; or

   (c) liquidation of the other party.

   Furthermore, the Secretary is entitled to terminate this Agreement forthwith by registered letter upon the occurrence of any of the following events:

   (a) any act or omission of the Company or its shareholder(s) or beneficial owner(s) in respect of the Company that, at the sole discretion of the Secretary, makes it unacceptable to it to continue to assist in managing the business of the Company;

   (b) transfer of any share by any shareholder without prior approval by the Secretary of the transferee, which approval shall not be unreasonably withheld; or

   (c) appointment of an employee on its payroll or appointment of another Director or officer to the Company who is or has become unacceptable as such to the Secretary.

3. In the event of termination of this Agreement the Company shall inform the Secretary to whom the day to day management of the Company will be transferred. In the absence of such instructions, the Secretary shall inform appropriate parties of the

termination of this Agreement. Upon termination of the Agreement, the Secretary shall return forthwith to the Company all documentation of the Company or related to the business of the Company.

Article V FEES AND EXPENSES

1. In consideration of the services to be rendered under this agreement, the Company will pay to the Secretary a fee varying from NLG 75.00 to NLG 250.00 exclusive of VAT per hour of company secretarial services.

2. Furthermore the Secretary shall charge to the Company out-of-pocket expenses including, but not limited to, costs of telex, telefax, telephone and postage.

3. The reimbursement of costs due to the Secretary under this article will be charged to the Company on a quarterly basis in arrears. Final settlement of fees and costs will be made at the end of each calendar year.

4. In the event of an increase in the operating expenses of the Secretary, the Secretary shall be allowed to increase the fees, referred to in paragraph 1, accordingly, provided the Company agrees to this increase in writing, it being understood that such approval shall not be unreasonably withheld. The Company will be advised of such envisaged price increases by registered letter at least four months in advance.

5. All amounts due to the Secretary under this article will be paid without set-off or counter claim and free and clear of, and without deduction or withholding for or on account of, any taxes, levies, imports, duties, fees, assessments or other charges of whatever nature.

Article VI MISCELLANEOUS

The term "the Secretary" will include any individual employee of INTERNATIONALE NEDERLANDEN (NEDERLAND) TRUST B.V. with trade name ING (Nederland) Trust, or its subsidiaries put at the disposal of the Company to which the Secretary may have delegated any duty under this Agreement.

Article VII NON-EXCLUSIVE

This Agreement will not preclude the Secretary from having company secretarial assistance agreements with other companies.

Article VIII MAILING ADDRESS

Until prior written notice of any change thereof the Mailing Addresses are as follows:

for the Secretary :

Internationale Nederlanden
(Nederland) Trust B.V.
with trade name: ING (Nederland) Trust
Prinses Irenestraat 61
1077 WV Amsterdam
The Netherlands

telephone: (31) (20) 540 5800
telefax: (31) (20) 644 7011

for the Company :

Lotus Green Limited
Keizersgracht 534
1017 EK Amsterdam
The Netherlands

telephone: (31) (20) 620 9119
telefax: (31) (20) 623 8728

Article IX GOVERNING LAW

This Agreement is subject to the laws of The Netherlands.

This Agreement has been executed and signed in duplicate on the dates stated below.

The Secretary :

Internationale Nederlanden
(Nederland) Trust B.V.
with trade name: ING (Nederland) Trust

Date:

The Company :

Lotus Green Limited

Fergal O'Dwyer	Gerard Jansen Venneboer
"A" Director	"B" Director
Date:	Date:

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3 sets of originals sent to Lyceard Rumpf.

THIS Agreement MADE BETWEEN AND ENTERED INTO BY:

1. Mr. G.A.L.R. Diepenhorst (hereinafter referred to as "the Manager");

2. Lotus Green Limited, a Company duly organised and existing under the laws of the Republic of Ireland, with registered office at Fitzwilton House, Wilton Place, Dublin 2, Ireland and Head Office at Keizersgracht 534, 1017 Ek Amsterdam, The Netherlands (hereinafter referred to as "the Company", represented herein by Mr. Fergal O'Dwyer (Director) and Mr. Jansen Venneboer (Director); and

3. DCC International Holdings B.V., a Company duly organised and existing under the laws of The Netherlands, with statutory seat and registered office at Prinses Irenestraat 61, 1077 WV Amsterdam, the beneficial owner of the total issued share capital of the Company, (hereinafter referred to as "the Beneficial Owner"), represented herein by Mr. Fergal O'Dwyer and Mr. Hein Roskam, members of the Board of Managing Directors.

WITNESSETH:

WHEREAS the Company has requested the Manager to perform the day to day management of the Company and to provide other facilities to the Company upon its request as may be appropriate or seem useful for the principal operating and general business of the Company in the Netherlands and to be appointed for this purpose as a member of the Board of Directors of the Company as a B Director;

WHEREAS the Manager is willing to act as a B Director of the Company and to provide such facilities to the Company as may be appropriate or deemed useful for the principal operating and general business of the Company in The Netherlands, subject to and in accordance with the terms and provisions set forth hereinafter.

Now, THEREFORE, in consideration of the premises and the mutual covenants contained herein it is agreed by and between the parties hereto as follows:

Article I APPOINTMENT

The Manager has been appointed by the Directors of the Company as the general manager of the Company's activities and has been appointed a B member of the Board of Directors for an indefinite period of time. As general manager, the Manager shall take care of the day to day management of the Company, in accordance with the terms and conditions set out in this agreement.

Article II DUTIES

1. The Manager will render domicile and provide day to day management of the Company in accordance with its articles of association, the resolutions of (the meetings of) the Board of Directors and/or of the shareholders and any other written instructions the Manager may receive from the Beneficial Owner.

2. The Manager will provide such facilities to the Company as he may deem appropriate or useful, all in consultation with and with prior written approval from the Beneficial Owner.

3. The Manager may sub-contract one or more of his duties to third parties, all in consultation with and with prior written approval from the Beneficial Owner.

4. In the execution of his duties the Manager shall take due care of the interests of the Company to the best of his ability.

Article III LIABILITY

The Manager shall be liable vis-à-vis the Company for any breach of his obligations, laid down in this agreement, as well as any gross negligence or wilful misconduct in the performance of his duties under this agreement. The Company shall safeguard the Manager or his employees and hold him free and harmless against any claim, which may be made upon the Manager, provided such claim arises from or is related to the Manager's performance of his duties under this Agreement and provided such claim is not the result of any breach of the Manager's obligations under this Agreement or of any gross negligence or wilful misconduct in the performance of the Manager's duties under this Agreement.

Article IV TERMINATION

1. Either the Manager or the Company may terminate this Agreement, without any obligation to state any reason therefor, on three months' prior notice by way of registered letter to the Mailing Address of the other party.

2. The Company as well as the Manager is entitled to terminate this Agreement forthwith by registered letter upon the occurrence of any of the following events:

   a. failure by the other party to perform or to comply with any obligation embodied in this Agreement;
   b. bankruptcy or moratorium of debts of the other party;
   c. liquidation of the other party.

   Furthermore, the Manager is entitled to terminate this Agreement forthwith by registered letter upon the occurrence of any of the following events:

   d. any act or omission of the Company or its shareholder(s) or beneficial owner(s) in respect of the Company, that at the sole discretion of the Manager makes it unacceptable to him to continue to manage the Company;
   e. transfer of any share by any shareholder without prior approval by the Manager of the transferee, which approval shall not unreasonably be withheld;
   f. appointment of an employee on its payroll or appointment of another managing director or officer to the Company who is or has become unacceptable as such to the Manager.

3. In the event of termination of this Agreement, the Company shall inform the Manager as to whom the day to day management of the Company will be transferred. In the absence of such instructions, the Manager shall inform other parties concerned on the termination of this Agreement.

Upon termination of the Agreement the Manager shall return forthwith to the Beneficial Owner all documentation of the Company or related to the business of the Company.

Article V FEES AND EXPENSES

1. In consideration of the services to be rendered under this agreement the Company will pay to the Manager:

   a. a Management and Domiciliation fee of NLG7,500.00 exclusive of VAT per calendar year as a director's fee;

   b. an hourly fee of NLG 250.00 exclusive of VAT per hour of management services;

2. Furthermore the Manager shall charge to the Company out-of-pocket expenses, including but not limited to costs of telex, telefax, telephone and postage.

3. The management fee due to the Manager per calendar year may be charged to the Company in advance. When the Manager has only been in office for a part of a year, the fees are only due over that part of the year whereas any part of a month shall be computed as a whole month.

   The management fee is charged for 5 hours (i.e. NLG750.00 + VAT) in advance per calendar year, which hours will be settled against hours spent on the Company's business.

   The reimbursement of costs and management fee due to the Manager under this article may be charged to the Company on a quarterly basis in arrears. Final settlement of fees and costs will in principle be made at the end of each calendar year.

4. In the event of an increase in the operating expenses of the Manager, the Manager shall be allowed to increase the fees, referred to in paragraph 1, accordingly, provided the Company agrees to this increase in writing, it being understood that such approval shall not be unreasonably withheld. The Company will be advised of any such envisaged price increases by registered letter at least four months in advance.

5. All amounts due to the Manager under this article will be paid without set off or counterclaim and free and clear of, and without deduction or withholding for or on account of, any taxes, levies, imports, duties, fees, assessments or other charges of whatever nature.

6. The Manager is authorised to debit the bank accounts of the Company for any amount due by the Company to the Manager under this article, after prior written approval of the Beneficial Owner. If debiting the accounts has resulted in a debit balance on the bank accounts of the Company, the Manager will immediately inform the Beneficial Owner.

Article VI MISCELLANEOUS

1. If and when an external audit of the reports of the Company is required, such request must be directed in writing to the Manager, specifying the name and address of the audit firm, to be approached by the Manager. Auditing costs are charged directly to the Company.

2. As soon as the annual report has been made, the Manager is authorised to reserve the corporate income tax, due by the Company, on a separate account in Netherlands' currency.

3. The Manager will include any individual employee of INTERNATIONALE NEDERLANDEN BANK N.V. or its subsidiaries put at the disposal of the Company to which the Manager may have delegated any duty under this Agreement.

4. The Manager shall debit the bank accounts of the Company for payment of tax assessments at the time such taxes are due, after prior written instruction from the Beneficial Owner or from its tax advisors. If debiting the Bank accounts of the Company will result in a debit balance, the Manager will immediately inform the Beneficial Owner. The Beneficial Owner herewith agrees and guarantees to supply the funds necessary to re-establish a credit balance on the Company's bank accounts immediately.

Article VII NON-EXCLUSIVENESS

This Agreement will not preclude the Manager from acting as managing director of other corporations.

Article VIII MAILING ADDRESS

Until prior written notice of any change thereof the Mailing Addresses are as follows:

for the Manager:
Internationale Nederlanden (Nederland) Trust B.V.
Prinses Irenestraat 61, 1077.WV Amsterdam
P.O. Box 2838, 1000 CV Amsterdam

Telephone: (31) (20) 5405800
Telefax: (31) (20) 6447011

for the Company:
Keizersgracht 534,
1017 Ek Amsterdam,
The Netherlands

Article IX GOVERNING LAW

10.1 This Agreement has been construed in accordance with and shall be subject to the laws of The Netherlands.

10.2 Any conflicts arising from or related to this Agreement shall be decided exclusively in first instance by the Court (Arrondissementsrechtbank) at Amsterdam.

This Agreement has been executed and signed in quadruplicate on the dates stated below.

The Manager: Mr. G.A.L.R. Diepenhorst

Date: 1995 Date: 1995

The Company: Lotus Green Limited

Fergal O'Dwyer Hein Roskam

Date: 1995 Date: 1995

The Beneficial Owner: DCC International Holdings B.V.

Fergal O'Dwyer Gerard Jansen Venneboer

Date: 1995 Date: 1995