

**IN THE MATTER OF DCC PLC, S & L INVESTMENTS LIMITED AND LOTUS  
GREEN LIMITED**

**AND IN THE MATTER OF THE COMPANIES ACT 1990**

**INTERIM PROGRESS REPORT OF THE INSPECTOR**

1. By Order of the High Court (Kelly J.) dated the 29<sup>th</sup> July 2008, on the application of the Director of Corporate Enforcement, I was appointed Inspector of DCC PLC, S & L Investments Limited and Lotus Green Limited pursuant to Section 8(1) of the Companies Act 1990 and Order 75B Rule 3(b) of the Rules of the Superior Courts 1986.

2. By the said Order I was directed to investigate and report on the affairs of the above named companies in respect of:

- (i) *the transactions which were related to the acquisition, maintenance, transfer and disposal of the beneficial and legal interests of the three above named companies in Fyffes plc between February 1995 and April 2000, with particular reference to the periods between early February 1995 and end September 1995 and early November 1999 to end April 2000, limited to those transactions, and*
- (ii) *whether Parts IV and V and any related provisions of the Companies Act 1990 were breached by the three companies their officers (including shadow directors), managers, employees, servants and agents at the relevant times and if so, to identify*

*the circumstances in question, the provisions involved, the persons in default and all of the associated evidence in each case.*

3. Immediately following my appointment William Fry Solicitors wrote to me confirming, inter alia, that they were acting for the three companies. They offered to provide such documentation as I might require for the purpose of carrying out my investigation.

Subsequently I was furnished with documentation including copies of the judgments of the High and the Supreme Court in the *Fyffes V DCC* and others case.

4. I commenced my investigation by reading the documentation that was provided to me. On the 18<sup>th</sup> September I met with William Fry Solicitors and Senior Counsel for the three companies to outline to them my initial requests for assistance from the three companies, their directors, officers and advisors and to explain to them how I intended to proceed.

5. I explained that the three initial phases of my investigation would be as follows:

- (i) document gathering;
- (ii) document review; and
- (iii) interviews with the directors, officers and advisors to the three companies.

6. I requested that an affidavit of discovery would be prepared and sworn by the Secretary of each of the three companies together with individual affidavits of discovery from each of the nineteen directors and eleven advisors to the three companies. The list of directors and advisors to the three companies in the relevant periods had been furnished to me, at my request, by the Solicitors for the three companies.

7. I further requested that each of the individual director deponents would briefly explain his or her position in the relevant company or companies and in the case of the advisors the precise role he or she played in relation to the transactions in 1995 and 2000.

8. In all cases the affidavits were required to contain all relevant documents within the possession, power or procurement of the deponent in respect of the transactions which were related to the acquisition, maintenance, transfer and disposal of the beneficial and legal interests of the three companies in the shares of Fyffes plc between 1<sup>st</sup> February 1995 and 30<sup>th</sup> September 1995 and 1<sup>st</sup> November 1999 and 30<sup>th</sup> April 2000.

9. I allowed the companies until the 17<sup>th</sup> October 2008 to swear and deliver to me their affidavits of discovery. I allowed the individual directors, officers and advisors until the 31<sup>st</sup> October 2008, to deliver theirs.

10. Subject to delivery of the affidavits and the documents scheduled therein within the said time limits, and the volume of same, I informed the companies that I intended to commence individual sworn interviews with the directors, officers and advisors, on Monday 17<sup>th</sup> November.

11. I sought confirmation from Messrs William Fry that they had authority to act for all of the named directors, officers and advisors.

12. Subsequently, Messrs William Fry, confirmed to me that they had authority to represent each of the directors, officers and advisors other than:

- (i) Susan Murray and Carmel Molloy (who were employees of the Law Society Company Formation Service and had been the initial directors of Lotus Green Limited before it was acquired on behalf of DCC plc).
- (ii) The PwC Amsterdam advisors, and
- (iii) Mr. Henri Roskam.

13. I received affidavits sworn by Ms. Murray and Ms. Molloy prepared for them by Messrs O'Connor Solicitors. Having satisfied myself from the contents of these affidavits that they had no involvement in the transactions with which I am concerned I informed their Solicitors, that I would not require them to attend for interview.

14. As a result of further effort on the part of William Fry and PwC in Dublin, contact was made with PwC in Amsterdam. I was informed that none of the three advisors who were involved in 1995 and 2000 were still with PwC Amsterdam but that it was hoped that one of the three, namely Mr. Van der Hoeven, who had retired to the South of France, might be able to provide an affidavit.

15. In so far as Mr. Henri Roskam was concerned I was reliably informed that his health situation was such that he would not be able to swear an affidavit or provide any assistance to me.

16. In compliance with my request for assistance affidavits of discovery on behalf of the three companies (together with several boxes of the documents therein scheduled) were delivered to me on 17<sup>th</sup> October 2008.

17. On 24<sup>th</sup> October William Fry wrote to inform me by way of clarification that none of the companies had discovered any documentation which may have originated from Fyffes discovery in the Fyffes litigation.

18. In further compliance with my request for assistance, affidavits of discovery from all of the directors and officers of the companies (save for Mr. Roskam, Ms. Murray and Ms. Molloy) and from most of the advisors were delivered to me on the 31<sup>st</sup> October 2008.

19. Following receipt of the affidavits and the documents scheduled therein I reviewed them for the purpose of the investigation.

20. On the 1<sup>st</sup> November 2008 I wrote to William Fry informing them that it was my intention to interview the directors and officers first and to then proceed to interview the advisors. I also informed them that I was minded to start with the 1995 transactions at the initial interviews.

21. The interviews commenced, as scheduled, on Monday 17<sup>th</sup> November and continued on a total of 16 days, in both Dublin and Amsterdam, until Monday December 15<sup>th</sup> 2008.

22. The interviews were conducted under oath with the benefit of a stenographer and a full transcript of each interview was obtained. Most of the interviews were conducted in Arran Square, in Dublin but interviews with the Dutch directors and one advisor were conducted at the offices of Orangefield Trust, the company secretary of Lotus Green Limited, over a period of two days, in Amsterdam.

23. The interviews with the directors, officers and advisors were confined to the transactions which were effected in 1995.

24. I have therefore concluded phase 1 of the interviews in relation to the 1995 transactions. The 1995 transactions were for the most part internal to the three companies and, subject to one qualification, I am of opinion that I do not need to seek assistance from parties outside the companies.

25. The next step is for me to review and consider the transcripts of these interviews together with the documentation to determine whether any potentially adverse finding or findings arise. In the event that same does or do I will of course afford the party or parties an opportunity to address same.

26. In so far as the 2000 transactions are concerned these are more complex and potentially more involved. I have provisionally fixed dates for further interviews with the directors, officers and advisors in respect of these 2000 transactions between March and May 2009. I have determined, on a provisional basis, that I will need to seek co-operation from persons outside the companies and accordingly it is likely that the interviews and the investigation into the 2000 transactions will be lengthier than the investigations into the 1995 transactions.

27. As for finalising the investigation and completing my report is concerned, I would hope, based on progress to date in relation to the 1995 transactions, to have finalised all of the investigative phase of my work by the end of July. Subject to what arises from the further interviews and the totality of the investigations which I will have conducted by then I would

hope to be in a position to conclude the remainder of my work by October with a view to writing my report and presenting it to this Honourable Court by December of this year.

28. I would propose to prepare a further short progress report for the benefit of the Court on or before July 28<sup>th</sup> next.

29. I wish to record and acknowledge that to date the companies, their directors, officers and advisors have been providing me with the utmost co-operation and have responded promptly to my requests for assistance. Certain follow up matters arising from the interviews to date are being dealt with by correspondence between me and the Solicitors for the three companies.

Bill Shipsey S.C.

High Court Inspector

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Dublin 7

January 26th

