## IN THE MATTER OF THE COMPANIES ACTS 1963 TO 2006

#### **AND**

# IN THE MATTER OF DCC plc, S&L INVESTMENTS LIMITED AND LOTUS GREEN LIMITED

## SUPPLEMENTAL DOCUMENTS SUBMITTED TO BILL SHIPSEY S.C.

WILLIAM FRY
Solicitors
Fitzwilton House
Wilton Place
Dublin 2

002439.0244.OOS/LOD

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- 1. DCC Properties Limited Report & Financial Statements for the year ended:
  - a. 31<sup>st</sup> March 1994
  - b. 31st March 1995
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Lotus Green Limited Report & Financial Statements for the year ended:

- a. 31<sup>st</sup> March 1997
- b. 31st March 1998
- c. 31<sup>st</sup> March 1999
- d. 31st March 2000
- e. 31st March 2001
- 2. Form B1 Lotus Green Limited.
- 3. Supplemental Materials prepared by John McCarroll BL and submitted to Bill Shipsey S.C. (the Inspector).
- 4. Part IV and Part V of The Companies Act 1990.
- 5. Section 236 of The Companies Act 1990.
- 6. Documents provided by Ger Whyte:
  - a. Company Report of Marjove Limited.
  - b. DCC memorandum dated 24 November 2008 from Ciara Drew to DCC International Holdings B.V. file.
- 7. Internal Memorandum dated 25 August 1994 from Daphne Tease to Fergal O'Dwyer re Flogas, with minutes of DCC plc and DCC Corporate Partners Limited attached.
- 8. Extract from letter dated 10 July 1995 from Pat O'Brien (KPMG) to Fergal O'Dwyer (DCC plc).
- 9. Minutes of DCC plc dated 16 January 1995 at 8.45a.m.
- 10. Minutes of DCC plc dated 31 July 1995 at 8.30a.m.
- 11. Minutes of S&L Investments Limited dated 3 August 1995 at 6.00p.m.
- 12. Fyffes Documents.
- 13. Letter dated 23 January 1997 from Coopers & Lybrand to the Collector General.
- 14. Section 67 Companies Act 1990 letters:
  - a. Re DCC plc dated 4 February 2000.
  - b. Re S&L Investments Limited dated 4 February 2000.
  - c. Re DCC plc dated 9 February 2000.

- 15. DCC plc placing of 3,297,320 Ordinary Shares of IR20p each at IR250p per share sponsored by AIB Capital Markets Corporate Finance Limited and J O Hambro Magan & Company Limited underwritten by AIB Capital Markets plc and UBS Limited.
- 16. Chairman's Statements & Chief Executive's Review:
  - a. 1989
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- 17. Fax dated 1 June 1995 from Peter van der Hoeven/Andrew Casley to John Kelly/Terry O'Driscoll.
- 18. DCC Memorandum dated 5 December 2008 from Gerard Whyte to File Examples of Board Minutes at which legal advice was considered.
- 19. Document highlighting the top five investments in 1995.
- 20. Record of George Young's attendance at Lotus Green Board Meetings.
- 21. Extract from DCC plc Annual Report & Financial Statements 1995.
- 22. Letter dated 30 April 1998 from Jim Flavin to Neil McCann;
- 23. Stock Exchange announcement made by DCC on 22 February 2007;
- 24. A summary of proxy votes from the DCC 2007 AGM held on 20 July 2007.

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## REPORT AND FINANCIAL STATEMENTS

FOR THE YEAR ENDED

31ST MARCH 1994

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## DIRECTORS AND OTHER INFORMATION

Directors:-

James Flavin Morgan Crowe David Gavagan Daphne Tease

Chairman Executive Executive

Executive

Secretary:-

Una Kinane

Bankers:-

Bank of Ireland, College Green, Dublin 2.

Solicitors:-

William Fry, Fitzwilton House, Wilton Place, Dublin 2.

Auditors:-

Coopers & Lybrand, Fitzwilton House, Wilton Place, Dublin 2.

Registered Office:-

DCC House, Stillorgan, Blackrock, Co. Dublin.

#### REPORT OF THE DIRECTORS

The Directors have pleasure in presenting their Report and Audited Financial Statements for the year ended 31st March 1994.

#### Activity and Review of the Business

The Company is an investment holding company. The Directors foresee no change in the nature of activity of the business.

#### Results and Dividends

The Company did not trade during the year. The Directors do not recommend the payment of a dividend.

#### Holding Company

The holding company is DCC plc.

#### Directors

The Directors at the date of the Report of the Directors are listed on page 2.

#### Directors' and Other Interests

The interests of the Directors and the Company Secretary in the share capital of DCC plc (the ultimate holding company) at 31st March 1994 and 31st March 1993 are set out below:

31/3/94	3	1/3/93
No. of	No. of	No. of
IR20p shares	IR20p shares	IR£1 shares
,	(restated for	
	share split)	
1,867,650	962,650	192,530
562,065	172,165	34,433
445,170	19,670	3,934
25,000	-	_

J. Fiavin M. Crowe D. Gavagan U. Kinane

None of the Directors or the Secretary had any interests in the Company or in any group company at 31st March 1994 except for those noted above. On 19th March 1994 the issued share capital of DCC plc was sub-divided from IR£1 ordinary shares into IR20p ordinary shares.

#### Responsibility for Financial Statements

The Companies Acts require the Directors to prepare financial statements which give a true and fair view of the results and state of affairs of the company. The Directors are also responsible for keeping proper books and records, selecting suitable accounting policies which are consistently applied, identifying and explaining any departure from accounting standards, making judgements and estimates which are responsible and prudent and safeguarding the assets of the company and preventing fraud.

#### Subsidiaries

Mullet Investment Company, an investment holding company incorporated in the Republic of Ireland, is a 100% subsidiary of the company.

#### Auditors

Coopers & Lybrand will continue in office in accordance with the provisions of Section 160 of the Companies Act, 1963.

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On Behalf of the Board:

James Flavin,

Morgan Crowe,

Director

DCC House, Stillorgan Blackrock, Co. Dublin.

Date: 8th May 1994

#### REPORT OF THE AUDITORS

#### TO THE MEMBERS OF

#### **DCC PROPERTIES LIMITED**

We have audited the financial statements on pages 5 to 6.

#### Respective responsibilities of directors and auditors

As described on page 3 the company's directors are responsible for the preparation of financial statements. It is our responsibility to form an independent opinion, based on our audit on those statements and to report our opinion to you.

#### Basis of opinion

We conducted our audit in accordance with Auditing Standards issued by the Auditing Practices Board. An audit includes examination, on a test basis, of evidence relevant to the amounts and disclosures in the financial statements. It also includes an assessment of the significant estimates and judgements made by the directors in the preparation of the financial statements, and of whether the accounting policies are appropriate to the company's circumstances, consistently applied and adequately disclosed.

We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or other irregularity or error. In forming our opinion we also evaluated the overall adequacy of the presentation of information in the financial statements.

#### Opinion

In our opinion the financial statements give a true and fair view of the state of the company's affairs at 31st March 1994 and have been properly prepared in accordance with the Companies Acts 1963 to 1990.

We have obtained all the information and explanations we consider necessary for the purposes of our audit. In our opinion, proper books of account have been kept by the company. The financial statements are in agreement with the books of account.

In our opinion, the information given in the directors' report on page 3 is consistent with the financial statements.

The net assets of the company as stated in the balance sheet on page 5 are more than half the amount of its called up share capital and, in our opinion, on that basis there did not exist at 31st March 1994 a financial situation which, under section 40(1) of the Companies (Amendment) Act 1983, would require the convening of an extraordinary general meeting of the company.

Chartered Accountants and Registered Auditors

Dublin

Date: 4 May 1984

## **BALANCE SHEET - 31ST MARCH 1994**

	Notes	<u>1994</u> IR£	<u>1993</u> IR£
FIXED ASSETS			
Financial assets			
- Shares in subsidiary undertakings	3	21,640	21,640
TOTAL ASSETS		21,640	21,640
CREDITORS - amounts falling due after more than one year Amounts due to parent undertaking		(21,540)	(21,540)
		100	100
CAPITAL AND RESERVES Called-up share capital	4 .	100	100

James Flavin,

Director

Morgan Crowe,

Director

The notes on page 6 form part of these financial statements.

Auditors' Report - page 4

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#### DCC PROPERTIES LIMITED

#### NOTES TO THE FINANCIAL STATEMENTS - 31ST MARCH 1994

#### 1. PREPARATION OF FINANCIAL STATEMENTS

As the Company has not traded during the year a profit and loss account or statement of total recognised gains and losses has not been prepared.

### 2. ACCOUNTING POLICIES

The financial statements have been prepared under the historical cost convention.

3.	SHARES IN SUBSIDIARY UNDERTAKINGS	<u>1994</u> R£	<u>1993</u> IR£
	Shares at cost	21,640	21,640
	This represents 100% shareholding in Mullet Investment C	Company.	
4.	CALLED-UP SHAƘE CAPITAL	<u>1994</u> IR€	1993 IR£
	Authorised - Ordinary shares of IR£1 each	5,000	5,000

100

#### 5. ULTIMATE PARENT COMPANY

The Company is a wholly owned subsidiary of DCC plc.

Allotted and fully paid - Ordinary shares of IR£1 each

The Company regards DCC pic, a company incorporated in the Republic of Ireland, as the ultimate parent company. The largest and smallest group in which the results of the company are consolidated is that headed by DCC plc. Copies of the group financial statements of DCC plc are available from its registered office: DCC House, Stillorgan, Blackrock, Co. Dublin.

#### 6. REPORTING CURRENCY

The currency used in these financial statements is the Irish pound which is denoted by the symbol "IR£".

## APPROVAL OF FINANCIAL STATEMENTS

The financial statements were approved by the Board of Directors on 8th May 1994.

# REPORT AND FINANCIAL STATEMENTS FOR THE YEAR ENDED 31ST MARCH 1995

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# DIRECTORS AND OTHER INFORMATION

Directors:-

Jim Flavin Morgan Crowe David Gavagan Fergal O' Dwyer Daphne Tease Chairman Executive Executive Executive

Secretary:-

Una Kinane

Bankers:-

Bank of Ireland, College Green, Dublin 2.

Solicitors:-

William Fry,
Fitzwilton House,
Wilton Place,
Dublin 2.

Auditors:-

Coopers & Lybrand, Fitzwilton House, Wilton Place, Dublin 2.

Registered Office:-

DCC House, Stillorgan, Blackrock, Co. Dublin.

#### REPORT OF THE DIRECTORS

The Directors have pleasure in presenting their Report and Audited Financial Statements for the year ended 31st March 1995.

## Activity and Review of the Business

The Company is an investment holding company. The Directors foresee no change in the nature of activity of the business.

### Results and Dividends

The Company did not trade during the year. The Directors do not recommend the payment of a dividend.

## Holding Company

The holding company is DCC plc.

#### Directors

The Directors at the date of the Report of the Directors are listed on page 2. Mr. Fergal O' Dwyer was appointed to the board with effect from 1st September 1994.

## Directors' and Other Interests

The interests of the Directors and the Company Secretary in the share capital of DCC plc (the ultimate holding company) at 31st March 1995 and 31st March 1994 are set out below:-

J. Havin		
M. Crowe		
D. Gavagan		
U. Kinane	(Secretary)	
F. O' Dwyer		
D. Tease		

31/3/95	31/3/94
No. of	No. of
IR20p shares	IR20p shares
1,695,330	1,867,650
602,065	562,065
380,170	445,170
25,000	25,000
112,500	112,500*
1200	-

None of the Directors or the Company Secretary had any interests in the Company or in any group company at 31st March 1995 except for those noted above.

<sup>\*</sup> At date of appointment as a director.

## REPORT OF THE DIRECTORS - continued

## Directors' Responsibility for Financial Statements

Company law requires the directors to prepare financial statements for each financial year which give a true and fair view of the state of affairs of the company and of the profit or loss of the company for that period. In preparing those financial statements, the directors are required to

- select suitable accounting policies and then apply them consistently;
- make judgements and estimates that are reasonable and prudent;
- \* state whether applicable accounting standards have been followed, subject to any material departures disclosed and explained in the financial statements;
- \* prepare the financial statements on the going concern basis unless it is inappropriate to presume that the company will continue in business.

The directors are responsible for keeping proper accounting records which disclose with reasonable accuracy at any time the financial position of the company and to enable them to ensure that the financial statements comply with the Companies Acts. They are also responsible for safeguarding the assets of the company and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities.

## Subsidiaries

Mullet Investment Company, an investment holding company incorporated in the Republic of Ireland, is a 100% subsidiary of the company.

#### Auditors

The auditors, Coopers & Lybrand, will continue in office in accordance with the provisions of Section 160 of the Companies Act, 1963.

On Behalf of the Board:

Jim Flavin.

DCC House, Stillorgan

Blackrock, Co. Dublin.

Date: 8th May 1995

#### REPORT OF THE AUDITORS

#### TO THE MEMBERS OF

#### DCC PROPERTIES LIMITED

We have audited the financial statements on pages 6 and 7.

## Respective responsibilities of directors and auditors

As described on page 4 the company's directors are responsible for the preparation of financial statements. It is our responsibility to form an independent opinion, based on our audit on those statements and to report our opinion to you.

#### Basis of opinion

We conducted our audit in accordance with Auditing Standards issued by the Auditing Practices Board. An audit includes examination, on a test basis, of evidence relevant to the amounts and disclosures in the financial statements. It also includes an assessment of the significant estimates and judgements made by the directors in the preparation of the financial statements, and of whether the accounting policies are appropriate to the company's circumstances, consistently applied and adequately disclosed.

We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or other irregularity or error. In forming our opinion we also evaluated the overall adequacy of the presentation of information in the financial statements.

#### Opinion

In our opinion the financial statements give a true and fair view of the state of the company's affairs at 31st March 1995 and have been properly prepared in accordance with the Companies Acts 1963 to 1990.

We have obtained all the information and explanations we consider necessary for the purposes of our audit. In our opinion, proper books of account have been kept by the company. The financial statements are in agreement with the books of account.

In our opinion, the information given in the directors' report on pages 3 and 4 is consistent with the financial statements.

The net assets of the company as stated in the balance sheet on page 6 are more than half the amount of its called up share capital and, in our opinion, on that basis there did not exist at 31st March 1995 a financial situation which, under section 40(1) of the Companies (Amendment) Act 1983, would require the convening of an extraordinary general meeting of the company.

Charlered Accountants and Registered Auditors

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Dublin

Date: 81 May 1995

#### BALANCE SHEET - 31ST MARCH 1995

	Notes	<u>1995</u> IR£	<u>1994</u> TR£
FIXED ASSETS Financial assets - Shares in subsidiary undertaking	3	21,640	21,640
TOTAL ASSETS		21,640	21,640
CREDITORS - amounts falling due after more the Amounts due to parent undertaking	an one year	(21,540)	(21,540)
		100	100
CAPITAL AND RESERVES Called-up share capital	4	100	100

Jim Flavin,

Director

Morgan Crowe

The notes on page 7 form part of these financial statements.

## NOTES TO THE FINANCIAL STATEMENTS - 31ST MARCH 1995

## 1. PREPARATION OF FINANCIAL STATEMENTS

As the Company has not traded during the year a profit and loss account or statement of total recognised gains and losses has not been prepared.

## 2. ACCOUNTING POLICIES

The financial statements have been prepared under the historical cost convention.

3. SHARES IN SUBSIDIARY UNDERTAKING 1995
IR£ IR£

Shares at cost <u>21,640</u> <u>21,640</u>

This represents 100% shareholding in Mullet Investment Company, an investment holding company, whose registered office is DCC House, Stillorgan, Blackrock, Co. Dublin.

4. CALLED-UP SHARE CAPITAL

Authorised - Ordinary shares of IR£1 each

Allotted and fully paid - Ordinary shares of IR£1 eac

1995
IR£

5,000

100

## 5. ULTIMATE PARENT COMPANY

The Company is a wholly owned subsidiary of DCC plc.

The Company regards DCC plc, a company incorporated in the Republic of Ireland, as the ultimate parent company. The largest and smallest group in which the results of the company are consolidated is that headed by DCC plc. Copies of the group financial statements of DCC plc are available from its registered office: DCC House, Stillorgan, Blackrock, Co. Dublin.

#### REPORTING CURRENCY

The currency used in these financial statements is the Irish pound which is denoted by the symbol "IR£".

## 7. APPROVAL OF FINANCIAL STATEMENTS

The financial statements were approved by the Board of Directors on 8th May 1995.

# REPORT AND FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 1996

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## DIRECTORS AND OTHER INFORMATION

Directors:-

Jim Flavin

**Executive Chairman** 

Chief Executive

Secretary:-

Daphne Tease

Morgan Crowe

Solicitors:-

William Fry, Fitzwilton House, Wilton Place, Dublin 2.

Auditors:-

Coopers & Lybrand,

Chartered Accountants and

Registered Auditors, George's Quay, Dublin 2.

Registered Office:-

DCC House,

Stillorgan, Blackrock, Co. Dublin.

#### REPORT OF THE DIRECTORS

The Directors have pleasure in presenting their Report and Audited Financial Statements for the year ended 31 March 1996.

#### Activity and Review of the Business

The Company is an investment holding company. The Directors foresee no change in the nature of activity of the business.

## Results and Dividends

The profit before taxation for the year amounted to IR£32,529. The Directors do not recommend the payment of a dividend.

#### **Holding Company**

The holding company is DCC plc.

#### **Directors and Secretary**

The Directors and Secretary at the date of the Report of the Directors are listed on page 2. Mr. David Gavagan resigned from the Board with effect from 28 September 1995. Mr. Fergal O'Dwyer and Mrs. Daphne Tease resigned from the Board with effect from 26 April 1996. Ms Una Kinane resigned as Secretary and Mrs Daphne Tease was appointed as Secretary on 12 May 1995.

#### Directors' and Other Interests

The interests of the Directors and the Company Secretary in the share capital of DCC plc (the ultimate holding company) at 31 March 1996 and 31 March 1995 are set out below:-

	31 March 1996 No of IR20p shares	31 March 1995 No of IR20p shares	
J. Flavin	1,945,330	1,695,330	
M. Crowe	627,065	602,065	
F, O' Dwyer	137,500	112,500	
D. Tease	18,700	1,200	

At 31 March 1996, J. Flavin had a non-beneficial interest in 1,981 DCC plc IR20p fully paid ordinary shares. At 31 March 1995, J. Flavin had a non-beneficial interest in 3,420 Flogas Share Units.

None of the Directors or the Company Secretary had any interests in the Company or in any Group company at 31 March 1996 except for those noted above.



#### REPORT OF THE DIRECTORS - continued

## Directors' Responsibility for the Financial Statements

Company law requires the directors to prepare financial statements for each financial year which give a true and fair view of the state of affairs of the company and of the profit or loss of the company for that period. In preparing those financial statements the directors are required to

- · select suitable accounting policies and then apply them consistently;
- · make judgements and estimates that are reasonable and prudent;
- state whether applicable accounting standards have been followed, subject to any material departures disclosed and explained in the financial statements;
- prepare the financial statements on the going concern basis unless it is inappropriate to presume that the company will continue in business.

The directors are responsible for keeping proper accounting records which disclose with reasonable accuracy at any time the financial position of the company and to enable them to ensure that the financial statements comply with the Companies Acts. They are responsible for safeguarding the assets of the company and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities.

#### Subsidiaries

Mullet Investment Company, an investment holding company incorporated in the Republic of Ireland, is a 100% subsidiary of the company.

#### Auditors

The auditors, Coopers & Lybrand, will continue in office in accordance with the provisions of Section 160 of the Companies Act, 1963.

On Behalf of the Board:

Jim Flavin,

Acres Crome

DCC House, Stillorgan,

Blackrock.

Co. Dublin,

Date: 7 May 1996

#### REPORT OF THE AUDITORS

#### TO THE MEMBERS OF

#### DCC PROPERTIES LIMITED

We have audited the financial statements on pages 6 to 8.

#### Respective responsibilities of directors and auditors

As described on page 4 the company's directors are responsible for the preparation of financial statements. It is our responsibility to form an independent opinion, based on our audit on those statements and to report our opinion to you.

#### Basis of opinion

We conducted our audit in accordance with Auditing Standards issued by the Auditing Practices Board. An audit includes examination, on a test basis, of evidence relevant to the amounts and disclosures in the financial statements. It also includes an assessment of the significant estimates and judgements made by the directors in the preparation of the financial statements, and of, whether the accounting policies are appropriate to the company's circumstances, consistently applied and adequately disclosed.

We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or other irregularity or error. In forming our opinion we also evaluated the overall adequacy of the presentation of information in the financial statements.

#### Opinion

In our opinion the financial statements give a true and fair view of the state of the company's affairs at 31 March 1996 and have been properly prepared in accordance with the Companies Acts 1963 to 1990, applicable to small-sized companies.

We have obtained all the information and explanations we considered necessary for the purposes of our audit. In our opinion, proper books of account have been kept by the company. The financial statements are in agreement with the books of account.

In our opinion, the information given in the directors' report on pages 3 and 4 is consistent with the financial statements.

The net assets of the company as stated in the balance sheet on page 7 are more than half the amount of its called up share capital and, in our opinion, on that basis there did not exist at 31 March 1996 a financial situation which, under section 40(1) of the Companies (Amendment) Act 1983, would require the convening of an extraordinary general meeting of the company.

Chartered Accountants and Registered Auditors

Dublin 7 17 1996

Date:

#### PROFIT AND LOSS ACCOUNT

#### FOR THE YEAR ENDED 31 MARCH 1996

	<u>Notes</u>	<u>1996</u> ∏R£	<u>1995</u> IR£
Profit on ordinary activities before taxation	2	32,529	-
Taxation			
Profit on ordinary activities after taxation and retained for the year		32,529	<u> </u>

In arriving at the result for the year, all amounts dealt with above relate to continuing operations.

The Company has no recognised gains and losses other than those included in the profit and loss account above, and therefore no separate statement of total recognised gains and losses has been presented.

There is no difference between the profit on ordinary activities before tax and the profit retained for the year stated above, and their historical cost equivalents.

Jim Flavin,

Director

Morgan Crowe

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## **BALANCE SHEET - 31 MARCH 1996**

	<u>Notes</u>	<u>1996</u> <u>R£</u>	1995 <u>IR£</u>
FIXED ASSETS Financial assets - Shares in subsidiary undertaking	3	21,640	21,640
CURRENT ASSETS  Debtor - Amount due after more than 1 year from group company  Bank		38,495,515 71_	-
NET CURRENT ASSETS		38,495,586	
CREDITORS - amounts falling due after more than one year Amounts due to parent undertaking Amount due to group company		(30,433,722) (8,050,875)	(21,540)
		32,629	100
CAPITAL AND RESERVES			
Called-up share capital Profit and Loss Account	4	100 32,529	100
TOTAL SHAREHOLDERS' FUNDS - EQUITY INTERESTS		32,629	100

Jim Flavin,

Director

Morgan Crower

The notes on page 8 form part of these financial statements.

Auditors' Report - page 5

## NOTES TO THE FINANCIAL STATEMENTS - 31 MARCH 1996

#### ACCOUNTING POLICIES

The financial statements have been prepared under the historical cost convention.

## PROFIT ON ORDINARY ACTIVITIES BEFORE TAXATION

The Company has no employees and all administration expenses including directors' and auditors' remuneration are borne by the ultimate holding company DCC plc.

#### 3. SHARES IN SUBSIDIARY UNDERTAKINGS

	1996 <u>IR£</u>	1995 <u>IR£</u>
Shares at cost	21,640	21,640

This represents 100% shareholding in Mullet Investment Company, an investment holding company, whose registered office is DCC House, Stillorgan, Blackrock, Co. Dublin.

#### 4. CALLED UP SHARE CAPITAL

	<u>1996</u> IR£ ·	<u>1995</u> <u>IR£</u>
Authorised - Ordinary shares of IR£1 each	<u>5,000</u>	5,000
Allotted and fully paid - Ordinary shares of IR£1 each	<u>100</u>	<u>100</u>

## 5. EXEMPTION FROM PREPARING GROUP ACCOUNTS

In accordance with regulation 8 (1) of the Group Accounts Regulations the Company is exempt from preparing group financial statements as the Company is a wholly-owned subsidiary of a company which prepares group financial statements.

## 6. ULTIMATE PARENT COMPANY

The company is a wholly owned subsidiary of DCC plc.

The company regards DCC plc, a company incorporated in the Republic of Ireland, as the ultimate parent company. The largest and smallest group in which the results of the company are consolidated is that headed by DCC plc. Copies of the group financial statements of DCC plc are available from its registered office, DCC House, Stillorgan, Blackrock, Co. Dublin.

#### 7. REPORTING CURRENCY

The currency used in these financial statements is the Irish pound which is denoted by the symbol "IR£".

## 8. APPROVAL OF FINANCIAL STATEMENTS

The financial statements were approved by the Board of Directors on 7 May 1996.

## APPENDIX

## DETAILED PROFIT AND LOSS ACCOUNT

## FOR THE YEAR ENDED 31 MARCH 1996

	<u>1996</u> TR£	<u>1995</u> IR£
INCOME		
Foreign exchange gain on inter-group loan	32,529	
Operating profit before taxation	32,529	



# REPORT AND FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 1997

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## DIRECTORS AND OTHER INFORMATION

Directors:-

G.A.L.R. Diepenhorst

Gerard Jansen Venneboer

Fergal O'Dwyer Henri Roskam George Young

Secretary:-

ING Trust (Nederland) BV

Solicitors:-

Ekelmans Den Hollander,

Frediksplein 42,

1017 XN Amsterdam.

Auditors:-

Coopers & Lybrand,

Chartered Accountants and

Registered Auditors, George's Quay,

Dublin 2.

Registered Office:-

Fitzwilton House,

Wilton Place, Dublin 2.

Head Office:-

Keizersgracht 534,

1017 EK Amsterdam.

#### REPORT OF THE DIRECTORS

The Directors have pleasure in presenting their Report and Audited Financial Statements for the year ended 31 March 1997.

#### Activity and Review of the Business

The Company is an investment holding company. The Directors do not foresee any change in the activities of the Company.

#### Results and Review of Activities

The profit before taxation for the year amounted to NLG 2,629,232. The Company paid a dividend of NLG 2,990,000 during the year.

#### Directors and Secretary

The Directors and Secretary at the date of the Report of the Directors are listed on page 2.

## Directors' and Other Interests

The interests of the Directors and the Company Secretary in the share capital of DCC plc (the ultimate holding company) at 31 March 1997 and 31 March 1996 are set out below:-

	31 March 1997 No of IR20p shares	31 March 1996 No of IR20p shares
G.A.L.R. Diepenhorst	-	
Gerard Jansen Venneboer	-	
Fergal O'Dwyer	152,500	137,500
Henri Roskam	-	<u></u>
George Young	185,690	145,690
ING (Nederland) Trust (Secretary)	-	

None of the Directors or the Secretary had any interests in the Company or in any group company at 31 March 1997 except for those noted above.

#### REPORT OF THE DIRECTORS - continued

#### **Ultimate Holding Company**

The Company is a wholly-owned subsidiary of DCC International Holdings B.V. The ultimate holding company is DCC plc.

## Directors' Responsibility for the Financial Statements

Company law requires the directors to prepare financial statements for each financial year which give a true and fair view of the state of affairs of the company and of the profit or loss of the company for that period. In preparing those financial statements the directors are required to

- select suitable accounting policies and then apply them consistently;
- make judgements and estimates that are reasonable and prudent;
- state whether applicable accounting standards have been followed, subject to any material
  departures disclosed and explained in the financial statements;
- prepare the financial statements on the going concern basis unless it is inappropriate to presume that the company will continue in business.

The directors are responsible for keeping proper accounting records which disclose with reasonable accuracy at any time the financial position of the company and to enable them to ensure that the financial statements comply with the Companies Acts. They are responsible for safeguarding the assets of the company and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities.

#### Auditors

The auditors, Coopers & Lybrand, will continue in office in accordance with the provisions of Section 160 of the Companies Act, 1963.

On Behalf of the Board:

Tom Diepenhorst,

Director

Fergal O'Dwyer,

Director

Registered Office:-Fitzwilton House, Wilton Place, Dublin 2.

Date: 22 April 1997

## REPORT OF THE AUDITORS

#### TO THE MEMBERS OF

#### LOTUS GREEN LIMITED

We have audited the financial statements on pages 6 to 10.

#### Respective responsibilities of directors and auditors

As described on page 4 the company's directors are responsible for the preparation of financial statements. It is our responsibility to form an independent opinion, based on our audit on those statements and to report our opinion to you.

#### Basis of opinion

We conducted our audit in accordance with Auditing Standards issued by the Auditing Practices Board. An audit includes examination, on a test basis, of evidence relevant to the amounts and disclosures in the financial statements. It also includes an assessment of the significant estimates and judgements made by the directors in the preparation of the financial statements, and of, whether the accounting policies are appropriate to the company's circumstances, consistently applied and adequately disclosed.

We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or other irregularity or error. In forming our opinion we also evaluated the overall adequacy of the presentation of information in the financial statements.

#### Opinion

In our opinion the financial statements give a true and fair view of the state of the company's affairs at 31 March 1997 and of its profit for the year then ended and have been properly prepared in accordance with the Companies Acts 1963 to 1990, applicable to small-sized companies.

We have obtained all the information and explanations we considered necessary for the purposes of our audit. In our opinion, proper books of account have been kept by the company. The financial statements are in agreement with the books of account.

In our opinion, the information given in the directors' report on pages 3 and 4 is consistent with the financial statements.

The net assets of the company as stated in the balance sheet on page 7 are more than half the amount of its called up share capital and, in our opinion, on that basis there did not exist at 31 March 1997 a financial situation which, under section 40(1) of the Companies (Amendment) Act 1983, would require the convening of an extraordinary general meeting of the company.

Chartered Accountants and Registered Auditors

Dublin

Date: 22 April 1997

#### PROFIT AND LOSS ACCOUNT

## FOR THE YEAR ENDED 31 MARCH 1997

	Notes	Year ended <u>31-Mar-97</u> NLG	Period ended <u>31-Mar-96</u> NLG
Operating profit before interest and taxation		3,384,286	2,393,728
Interest receivable - net		78,975	12,570
Profit on ordinary activities before taxation	2	3,463,261	2,406,298
Taxation charge	3	(834,029)	(597,996)
Profit on ordinary activities after taxation		2,629,232	1,808,302
Dividend paid		(2,990,000)	
Loss/profit retained for year		(360,768)	1,808,302
Profit retained at 1 April		1,808,302	
Profit retained at 31 March		1,447,534	1,808.302

In arriving at the result for the period, all amounts dealt with above relate to continuing operations.

The Company has no recognised gains and losses other than those included in the profit and loss account above, and therefore no separate statement of total recognised gains and losses has been presented.

There is no difference between the profit on ordinary activities before tax and the loss retained for the period stated above, and their historical cost equivalents.

Tom Diepenhorst,

Director

Fergal O'Dwyer,

Director

The notes on pages 8 to 10 form part of these financial statements.

Auditors' Report - page 5

## **BALANCE SHEET - 31 MARCH 1997**

	Notes	<u>1997</u> NLG	<u>1996</u> NLG
FIXED ASSETS			
Financial Assets	4	100,148,950	100,138,383
CURRENT ASSETS Debtors Bank	5	1,698,660 26,351	1,367,064 629,309
		1,725,011	1,996,373
CREDITORS - amounts falling due within one year	6	(288,039)	(56,721)
NET CURRENT ASSETS		1,436,972	1,939,652
CREDITORS - amounts falling due after more than one year Amount due to group company Amount due to parent company		(100,138,383)	(100,138,383) (131,345)
		1,447,539	1,808,307
CAPITAL AND RESERVES Called-up share capital Profit and loss account	7	5 1,447,534	5 1,808,302
TOTAL SHAREHOLDERS' FUNDS - EQUITY INTERESTS		1,447,539	1,808,307

Tom Diepenhorst,

Director

Fergal O'Dwyer,

Director

The notes on pages 8 to 10 form part of these financial statements.

Auditors' Report - page 5

## NOTES TO THE FINANCIAL STATEMENTS - PERIOD ENDED 31 MARCH 1997

#### 1. ACCOUNTING POLICIES

(a) Accounting Convention

The financial statements have been prepared under the historical cost convention.

(b) Financial Fixed Assets

Financial fixed assets are stated at cost less provision for any permanent diminution in value.

(c) Deferred Taxation

Provision is made for deferred taxation on timing differences to the extent that a liability will crystallise in the foreseeable future.

2.	PROFIT BEFORE TAXATION	<u>1997</u> NLG	<u>1996</u> NLG
	Profit before taxation is stated after crediting/(charging)		
	Dividends receivable Directors' fees Auditors' remuneration	3,441,058 (11,925) (2,000)	2,409,297 (5,000)
3.	TAXATION	<u>1997</u> NLG	<u>1996</u> NLG
	Capital duty  Tax credits on dividends	80,111 753,918	47,935 550,061
		834,029	597,996
4.	FINANCIAL FIXED ASSETS		At Cost NLG
	At 1 April 1996 Additons		100,138,383
	At 31 March 1997		100,148,950
5.	DEBTORS	<u>1997</u> NLG	<u>1996</u> NLG
	Amounts falling due within one year:- Debtors, prepayments and accrued income	1,698,660	1,367,064

#### NOTES TO THE FINANCIAL STATEMENTS 31 MARCH 1996 - continued

6.	CREDITORS - amounts falling due within one year	<u>1997</u> NLG	<u>1996</u> NLG
	Accruals Amount owed to parent company Taxation	18,512 141,912 127,615	9,160 - 47,561
		288,039	56,721
7.	CALLED-UP SHARE CAPITAL	<u>1997</u> NLG	<u>1996</u> NLG
	Authorised - Ordinary shares of IR£1 each	260,130	260,130
	Issued - Ordinary shares of IR£1 each	5	5
8.	RECONCILIATION OF MOVEMENT IN SHAREHOLDERS' FUNDS	<u>1997</u> NLG	<u>1996</u> NLG
	Loss/profit in the financial year Share capital issued Opening shareholders' funds	(360,768) - 1,808,307	1,808,302 5
	Closing shareholders' funds	1,447,539	1,808,307

#### EXEMPTION FROM PREPARING GROUP ACCOUNTS

In accordance with regulation 8 (1) of the Group Account Regulations the Company is exempt from the preparation of group financial statements as the Company is a whollyowned subsidiary of a company which prepares group financial statements.

#### 10. EXEMPTION FROM PREPARING CASH FLOW STATEMENT

No cash flow statement has been prepared as the exemption provision under FRS1 has been availed of.

#### 11. ULTIMATE PARENT COMPANY

The Company regards DCC plc, a company incorporated in the Republic of Ireland, as the ultimate parent company. The largest and smallest group in which the results of the company are consolidated is that headed by DCC plc. Copies of the group financial statements of DCC plc are available from its registered office: DCC House, Stillorgan, Blackrock, Co. Dublin.

#### 12. REPORTING CURRENCY

The currency used in these financial statements is the Dutch Guilder which is denoted by the symbol "NLG".

## NOTES TO THE FINANCIAL STATEMENTS 31 MARCH 1997 - continued

#### 13. CONTINGENT LIABILITIES

The company, its parent undertaking and certain subsidiaries have given guarantees in respect of borrowings by the parent undertaking itself and other group companies. The company's liability under these guarantees is limited to its net assets.

## 14. APPROVAL OF THE FINANCIAL STATEMENTS

The financial statements were approved by the Board of Directors on 22 April 1997.

Auditors' Report - page 5

## APPENDIX

## DETAILED PROFIT AND LOSS ACCOUNT

## FOR THE PERIOD ENDED 31 MARCH 1997

	<u>1997</u>	<u>1996</u>
<u>Income</u>	NLG	NLG
Income from financial fixed assets (Listed)	3,441,058	2,409,297
Administration expenses	3,441,058	2,409,297
Professional fees Directors' fees Fx gains on IR£ deposits Sundry expenses	39,896 11,925 (3,261) 8,212	2,049 5,000 (3,633) 12,153
	56,772	15,569
Operating profit before interest and taxation	3,384,286	2,393,728
Interest receivable - net	78,975	12,570
Profit on ordinary activities before taxation	3,463,261	2,406,298

# REPORT AND FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 1998

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### DIRECTORS AND OTHER INFORMATION

Directors:-

G.A.L.R. Diepenhorst

Gerard Jansen Venneboer

Fergal O'Dwyer Henri Roskam Dapline Tease

Secretary:-

ING Trust (Nederland) BV

Solicitors:-

Ekelmans Den Hollander,

Frediksplein 42,

1017 XN Amsterdam.

Auditors:-

Coopers & Lybrand,

Chartered Accountants and

Registered Auditors, George's Quay,

Dublin 2.

Registered Office:-

Fitzwilton House,

Wilton Place,

Dublin 2.

Head Office:-

Keizersgracht 534,

1017 EK Amsterdam.

#### REPORT OF THE DIRECTORS

The Directors have pleasure in presenting their Report and the Audited Financial Statements for the year ended 31 March 1998.

#### Activity and Review of the Business

The Company is an investment holding company. The Directors do not foresee any change in the activities of the Company.

#### Results and Review of Activities

The profit before taxation for the year amounted to NLG 3,032,408. The Directors do not propose the payment of a dividend.

#### **Directors and Secretary**

The Directors and Secretary at the date of the Report of the Directors are listed on page 2. Dr. George Young resigned as an "A" Managing Director on 9 June 1997 and Mrs. Daphne Tease was appointed as an "A" Managing Director in his place on that same date.

#### Directors' and Other Interests

The interests of the Directors and the Company Secretary in the share capital of DCC plc (the ultimate holding company) at 31 March 1998 and 31 March 1997 or at date of appointment are set out below:-

	31 March 1998 No of IR20p shares	31 March 1997 No of IR20p shares	at date of appointment
G.A.L.R. Diepenhorst			-
Gerard Jansen Venneboer	-		
Fergal O'Dwyer	172,500	152,500	-
Henri Roskam	, ,	-	-
Daphne Tease	22,500	-	23,700
ING (Nederland) Trust (Secretary)	-	-	-

None of the Directors or the Secretary had any interests in the Company or in any group company at 31 March 1998 except for those noted above.

#### REPORT OF THE DIRECTORS - continued

#### Ultimate Holding Company

The Company is a wholly-owned subsidiary of DCC International Holdings B.V. The ultimate holding company is DCC plc.

#### Directors' Responsibility for the Financial Statements

Company law requires the directors to prepare financial statements for each financial year which give a true and fair view of the state of affairs of the company and of the profit or loss of the company for that period. In preparing those financial statements the directors are required to

- select suitable accounting policies and then apply them consistently;
- make judgements and estimates that are reasonable and prudent;
- state whether applicable accounting standards have been followed, subject to any material departures disclosed and explained in the financial statements;
- prepare the financial statements on the going concern basis unless it is inappropriate to presume that the company will continue in business.

The directors are responsible for keeping proper accounting records which disclose with reasonable accuracy at any time the financial position of the company and to enable them to ensure that the financial statements comply with the Companies Acts. They are responsible for safeguarding the assets of the company and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities.

#### Year 2000 Compliance

Many computer and digital storage systems express dates using only the last two digits for the year and will thus require modification or replacement to accommodate the Year 2000 and beyond in order to avoid malfunctions and commercial disruption.

A risk analysis has been performed by the Company to determine the impact of the issue on its activities. An action plan has been developed which is designed to address the key risks in advance of critical dates and without disruption to the Company's business.

No material incremental costs are expected to be incurred by the Company in ensuring its systems are Year 2000 compliant.

#### <u>Auditors</u>

The auditors, Coopers & Lybrand, will continue in office in accordance with the provisions of Section 160 of the Companies Act, 1963.

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On Behalf of the Board:

G.A.L.R. Diepenhorst,

Director (

Fergal O'Dwyer,

Director

Registered Office:-Fitzwilton House, Wilton Place, Dublin 2. Date: 17 April 1998

#### REPORT OF THE AUDITORS

#### TO THE MEMBERS OF

#### LOTUS GREEN LIMITED

We have audited the financial statements on pages 6 to 10.

#### Respective responsibilities of directors and auditors

As described on page 4 the company's directors are responsible for the preparation of financial statements. It is our responsibility to form an independent opinion, based on our audit on those statements and to report our opinion to you.

#### Basis of opinion

We conducted our audit in accordance with Auditing Standards issued by the Auditing Practices Board. An audit includes examination, on a test basis, of evidence relevant to the amounts and disclosures in the financial statements. It also includes an assessment of the significant estimates and judgements made by the directors in the preparation of the financial statements, and of whether the accounting policies are appropriate to the company's circumstances, consistently applied and adequately disclosed.

We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or other irregularity or error. In forming our opinion we also evaluated the overall adequacy of the presentation of information in the financial statements.

#### Opinion

In our opinion, the financial statements give a true and fair view of the state of the company's affairs at 31 March 1998 and of its profit for the year then ended and have been properly prepared in accordance with the Companies Acts 1963 to 1990, applicable to small-sized companies.

We have obtained all the information and explanations we considered necessary for the purposes of our audit. In our opinion, proper books of account have been kept by the company. The financial statements are in agreement with the books of account.

In our opinion, the information given in the directors' report on pages 3 and 4 is consistent with the financial statements.

The net assets of the company as stated in the balance sheet on page 7 are more than half the amount of its called up share capital and, in our opinion, on that basis there did not exist at 31 March 1998 a financial situation which, under section 40(1) of the Companies (Amendment) Act, 1983, would require the convening of an extraordinary general meeting of the company.

Chartered Accountants and Registered Auditors

Dublin

Date: 1 May 1998

#### PROFIT AND LOSS ACCOUNT

#### FOR THE YEAR ENDED 31 MARCH 1998

	Notes	Year ended 31-Mar-98 NLG	Year ended <u>31-Mar-97</u> NLG
Operating profit before interest and taxation		3,867,224	3,384,286
Interest receivable		83,939	78,975
Profit on ordinary activities before taxation	2	3,951,163	3,463,261
Taxation charge	3	(918,755)	(834,029)
Profit on ordinary activities after taxation		3,032,408	2,629,232
Dividend paid		<del>-</del>	(2,990,000)
Profit retained/(loss) absorbed for year		3,032,408	(360,768)
Profit retained at 1 April		1,447,534	1,808,302
Profit retained at 31 March		4,479,942	1,447,534

In arriving at the result for the period, all amounts dealt with above relate to continuing operations.

The Company has no recognised gains and losses other than those included in the profit and loss account above, and therefore no separate statement of total recognised gains and losses has been presented.

There is no difference between the profit on ordinary activities before tax and the profit retained for the period stated above, and their historical cost equivalents.

G.A.L.R. Diepenhorst,

Director

Fergal O'Dwyer,

Director

The notes on pages 8 to 10 form part of these financial statements.

Auditors' Report - page 5

## BALANCE SHEET - 31 MARCH 1998

	Notes	<u>1998</u> NLG	<u>1997</u> NLG
FIXED ASSETS		NLG	INLO
Financial Assets	4	100,148,950	100,148,950
CURRENT ASSETS Debtors Bank	5 .	1,973,988 141,773	1,698,660 26,351
		2,115,761	1,725,011
CREDITORS - amounts falling due within one year	6 .	(329,792)	(288,039)
NET CURRENT ASSETS		1,785,969	1,436,972
CREDITORS - amounts falling due after more than one year Amount due to group company		(97,414,974)	(100,138,383)
•	,	4,519,945	1,447,539
CAPITAL AND RESERVES Called-up share capital Profit and loss account	7	40,003 4,479,942	5 1,447,534
TOTAL SHAREHOLDERS' FUNDS - EQUITY INTERESTS	:	4,519,945	1,447,539

G.A.L.R. Diepenhorst,

Director

Fergal O'Dwyer,

Director

The notes on pages 8 to 10 form part of these financial statements.

Auditors' Report - page 5

#### NOTES TO THE FINANCIAL STATEMENTS - YEAR ENDED 31 MARCH 1998

#### 1. ACCOUNTING POLICIES

#### (a) Accounting Convention

The financial statements have been prepared under the historical cost convention.

#### (b) Financial Fixed Assets

Financial fixed assets are stated at cost less provision for any permanent diminution in value.

#### (c) Exemption from preparing Group Accounts

Group financial statements have not been prepared as the Company is a wholly owned subsidiary of a company incorporated in Ireland which prepares group financial statements.

#### (d) Cash Flow Statement

The Directors have availed of the exemptions in FRS 1 "Cash Flow Statements" which permit qualifying subsidiaries of a parent undertaking, which itself produces a cash flow statement which includes the subsidiary, not to produce a cash flow statement.

2.	PROFIT BEFORE TAXATION  Profit before taxation is stated after crediting/(charging)	<u>1998</u> NLG	<u>1997</u> NLG
	Dividends receivable (listed) Directors' fees Auditors' remuneration	3,995,875 (20,000) (1,000)	3,441,058 (11,925) (2,000)
3.	TAXATION	<u>1998</u> NLG	<u>1997</u> NLG
-	Capital duty Tax credits on dividends	79,621 839,134 918,755	80,111 753,918 834,029
4.	FINANCIAL FIXED ASSETS		At Cost NLG
	At 1 April 1997 and 1998		100,148,950
5.	<u>DEBTORS</u>	<u>1998</u> NLG	<u>1997</u> NLG
	Amounts falling due within one year:- Debtors, prepayments and accrued income	1,973,988	1,698,660

#### NOTES TO THE FINANCIAL STATEMENTS - YEAR ENDED 31 MARCH 1998 - continued

6.	CREDITORS - amounts falling due within one year	<u>1998</u> NLG	<u>1997</u> NLG
	Accruals  Amount owed to parent company  Taxation	20,463 150,028 159,301	18,512 141,912 127,615
7.	CALLED-UP SHARE CAPITAL	329,792 1998 NLG	288,039 1997 NLG
	Authorised - Ordinary shares of IR£1 each	260,130	260,130
	Issued and fully paid - Ordinary shares of IR£1 each	40,003	5
	During the financial year the company issued 14,170 s	hares at a nominal val	ue of IR£1 each.
8.	RECONCILIATION OF MOVEMENT IN EQUITY SHAREHOLDERS' FUNDS	<u>1998</u> NLG	<u>1997</u> NLG
	Profit/loss for the financial year Share capital issued Opening shareholders' funds	3,032,408 39,998 1,447,539	(360,768) - 1,808,307

#### 9. <u>ULTIMATE PARENT COMPANY</u>

Closing shareholders' funds

The Company is a subsidiary of DCC International Holdings BV, a company incorporated in the Netherlands.

4,519,945

1,447,539

The Company regards DCC plc, a company incorporated in the Republic of Ireland, as the ultimate parent company. The largest and smallest group in which the results of the company are consolidated is that headed by DCC plc. Copies of the group financial statements of DCC plc are available from its registered office: DCC House, Stillorgan, Blackrock, Co. Dublin.

#### 10. REPORTING CURRENCY

The currency used in these financial statements is the Dutch Guilder which is denoted by the symbol "NLG".

#### NOTES TO THE FINANCIAL STATEMENTS - YEAR ENDED 31 MARCH 1998 - continued

#### 11. RELATED PARTY TRANSACTIONS

The Company has availed of the exemption in FRS 8 "Related Party Disclosures" in respect of subsidiary undertakings 90% or more of whose voting rights are controlled within a group. Consequently, these financial statements do not contain disclosure of transactions with such entities in the DCC pic group.

#### 12. CONTINGENT LIABILITIES

The company, its parent undertaking and certain subsidiaries have given guarantees in respect of borrowings by the parent undertaking itself and other group companies. The company's liability under these guarantees is limited to its net assets.

#### 13. APPROVAL OF THE FINANCIAL STATEMENTS

The financial statements were approved by the Board of Directors on 17 April 1998.

## APPENDIX

## DETAILED PROFIT AND LOSS ACCOUNT - UNAUDITED

## FOR THE YEAR ENDED 31 MARCH 1998

	1998	<u>1997</u>
Income	NLG	NLG
Income from financial fixed assets (Listed)	3,995,875	3,441,058
Administration expenses		
Professional fees	18,366	39,896
Directors' fees	20,000	11,925
Fx losses/(gains)	82,819	(3,261)
Sundry expenses	7,466	8,212
	128,651	56,772
Operating profit before interest and taxation	3,867,224	 3,384,286
Interest receivable	83,939	78,975
Profit on ordinary activities before taxation	3,951,163	3,463,261

# REPORT AND FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 1999

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## **DIRECTORS AND OTHER INFORMATION**

Directors:-

G.A.L.R. Diepenhorst

Gerard Jansen Venneboer

Fergal O'Dwyer Henri Roskam

Secretary:-

ING Trust (Nederland) BV

Solicitors:-

Ekelmans Den Hollander,

Frediksplein 42,

1017 XN Amsterdam.

Auditors:-

PricewaterhouseCoopers,

Chartered Accountants and

Registered Auditors,

Wilton Place, Dublin 2.

Registered Office:-

Fitzwilton House,

Wilton Place,

Dublin 2.

Head Office:-

Keizersgracht 534,

1017 EK Amsterdam.

#### REPORT OF THE DIRECTORS

The Directors have pleasure in presenting their Report and the Audited Financial Statements for the year ended 31 March 1999.

#### Activity and Review of the Business

The Company is an investment holding company. The Directors do not foresee any change in the activities of the Company.

#### Results and Dividend

The profit before taxation for the year amounted to NLG 1,476,083, compared to NLG3,951,163 for the previous year. The main reason for the decrease in profits is due to the company receiving an interest bearing loan from its parent company. The Directors do not propose the payment of a dividend.

#### **Directors and Secretary**

The Directors and Secretary at the date of the Report of the Directors are listed on page 2. Mrs. Daphne Tease resigned as an "A" Managing Director on 5 May 1998.

#### **Directors' and Other Interests**

The interests of the Directors and the Company Secretary in the share capital of DCC plc (the ultimate holding company) at 31 March 1999 and 31 March 1998 or at date of appointment are set out below:

·	31 March 1999 No of IR20p shares	31 March 1998 No of IR20p shares
G.A.L.R. Diepenhorst	-	
Gerard Jansen Venneboer		
Fergal O'Dwyer	113,765	172,500
Henri Roskam	-	-
ING (Nederland) Trust (Secretary)	-	-

None of the Directors or the Secretary had any interests in the share capital of the Company or of any subsidiary of DCC plc at 31 March 1999 except for those noted above.

#### REPORT OF THE DIRECTORS - continued

#### **Ultimate Holding Company**

The Company is a wholly-owned subsidiary of DCC International Holdings B.V. The ultimate holding company is DCC plc.

#### Directors' Responsibility for the Financial Statements

Company law requires the directors to prepare financial statements for each financial year which give a true and fair view of the state of affairs of the company and of the profit or loss of the company for that period. In preparing those financial statements the directors are required to

- select suitable accounting policies and then apply them consistently;
- make judgements and estimates that are reasonable and prudent;
- state whether applicable accounting standards have been followed, subject to any material departures disclosed and explained in the financial statements;
- prepare the financial statements on the going concern basis unless it is inappropriate to presume that the company will continue in business.

The directors are responsible for keeping proper accounting records which disclose with reasonable accuracy at any time the financial position of the company and to enable them to ensure that the financial statements comply with the Companies Acts. They are responsible for safeguarding the assets of the company and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities.

#### Year 2000 Compliance

Many computer and digital storage systems express dates using only the last two digits for the year and will thus require modification or replacement to accommodate the Year 2000 and beyond in order to avoid malfunctions and commercial disruption.

A risk analysis has been performed by the Company to determine the impact of the issue on its activities. An action plan has been developed which is designed to address the key risks in advance of critical dates and without disruption to the Company's business.

No material incremental costs are expected to be incurred by the Company in ensuring its systems are Year 2000 compliant.

#### **Auditors**

The auditors, Coopers & Lybrand, who now practise in the name of PricewaterhouseCoopers, will continue in office in accordance with the provisions of Section 160 of the Companies Act, 1963.

On Behalf of the Board:

G.A.L.R. Diepenhorst,

Director

Directo

Fergal O'Dwyer,

Director

Director

Registered Office:-Fitzwilton House,

Wilton Place, Dublin 2.

Date: 15 April 1999

¢en Venneboer.

#### REPORT OF THE AUDITORS

#### TO THE MEMBERS OF

#### LOTUS GREEN LIMITED

We have audited the financial statements on pages 6 to 10 which have been prepared under the historical cost convention and the accounting policies on page 8.

## Respective responsibilities of directors and auditors

As described on page 4 the company's directors are responsible for the preparation of financial statements. It is our responsibility to form an independent opinion, based on our audit on those statements and to report our opinion to you.

#### Basis of opinion

We conducted our audit in accordance with Auditing Standards issued by the Auditing Practices Board. An audit includes examination, on a test basis, of evidence relevant to the amounts and disclosures in the financial statements. It also includes an assessment of the significant estimates and judgements made by the directors in the preparation of the financial statements, and of whether the accounting policies are appropriate to the company's circumstances, consistently applied and adequately disclosed.

We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or other irregularity or error. In forming our opinion we also evaluated the overall adequacy of the presentation of information in the financial statements.

#### Opinion

In our opinion, the financial statements give a true and fair view of the state of the company's affairs at 31 March 1999 and of its profit for the year then ended and have been properly prepared in accordance with the Companies Acts 1963 to 1990, applicable to small-sized companies.

We have obtained all the information and explanations we considered necessary for the purposes of our audit. In our opinion, proper books of account have been kept by the company. The financial statements are in agreement with the books of account.

In our opinion, the information given in the directors' report on pages 3 and 4 is consistent with the financial statements.

The net assets of the company as stated in the balance sheet on page 7 are more than half the amount of its called up share capital and, in our opinion, on that basis there did not exist at 31 March 1999 a financial situation which, under section 40(1) of the Companies (Amendment) Act, 1983, would require the convening of an extraordinary general meeting of the company.

Pricual focus Coopers
Chartered Accountants
and Registered Auditors

Dublin

Date: 30 April 1999

## PROFIT AND LOSS ACCOUNT

## FOR THE YEAR ENDED 31 MARCH 1999

	Notes	Year ended <u>31-Mar-99</u> NLG	Year ended 31-Mar-98 NLG
Operating profit before interest and taxation		4,663,070	3,867,224
Interest (payable)/receivable	2	(3,186,987)	83,939
Profit on ordinary activities before taxation	3	1,476,083	3,951,163
Taxation charge	4	(124,294)	(918,755)
Profit retained for year		1,351,789	3,032,408
Profit retained at 1 April		4,479,942	1,447,534
Profit retained at 31 March		5,831,731	4,479,942

In arriving at the result for the period, all amounts dealt with above relate to continuing operations.

The Company has no recognised gains and losses other than those included in the profit and loss account above, and therefore no separate statement of total recognised gains and losses has been presented.

There is no difference between the profit on ordinary activities before tax and the profit retained for the period stated above, and their historical cost equivalents.

G.A.L.R. Diepenhorst,

Director

Zerard Jansen Venneboer,

Director

Fergal O'Dwyer,

Director

Director ــ

The notes on pages 8 to 10 form part of these financial statements.

Auditors' Report - page 5

## **BALANCE SHEET - 31 MARCH 1999**

	Notes	<u>1999</u> NLG	<u>19</u> NI
FIXED ASSETS			171
Financial Assets	5	101,637,599	100,148,9
CURRENT ASSETS			
Debtors	6	2,350,069	1,973,9
Bank		23,748	141,7
		2,373,817	2,115,7
CREDITORS - amounts falling due within one year	7	(3,412,534)	(329,79
NET CURRENT (LIABILITIES)/ASSETS		(1,038,717)	1,785,9
CREDITORS - amounts falling due after more than one year			
Amounts due to group companies		(94,727,148)	(97,414,97
		5,871,734	4,519,9
CAPITAL AND RESERVES			
Called-up share capital	8	40,003	40,0
Profit and loss account	,	5,831,731	4,479,9
TOTAL SHAREHOLDERS' FUNDS - EQUITY INTERESTS	9	5,871,734	4,519,9

G.A.L.R. Diepenhorst, Director

TOP TO

Gerard Jansen Venneboer,

Director

Director

The notes on pages 8 to 10 form part of these financial statements.

Auditors' Report - page 5

## NOTES TO THE FINANCIAL STATEMENTS - YEAR ENDED 31 MARCH 1999

#### ACCOUNTING POLICIES

#### (a) Accounting Convention

The financial statements have been prepared under the historical cost convention.

#### (b) Financial Fixed Assets

Financial fixed assets are stated at cost less provision for any permanent diminution in value.

#### (c) Exemption from preparing Group Accounts

Group financial statements have not been prepared as the Company is a wholly owned subsidiary of a company incorporated in Ireland which prepares group financial statements.

#### (d) Cash Flow Statement

The Directors have availed of the exemptions in FRS 1 "Cash Flow Statements" which permit qualifying subsidiaries of a parent undertaking, which itself produces a cash flow statement which includes the subsidiary, not to produce a cash flow statement.

2.	INTEREST (PAYABLE)/RECEIVABLE	<u>1999</u> NLG	<u>1998</u> NLG
	Interest on amounts due to parent company Interest receivable	(3,228,769) 41,782	83,939
	·	(3,186,987)	83,939
3.	PROFIT ON ORDINARY ACTIVITIES BEFORE TAXATION  Profit before taxation is stated after crediting/(charging)	<u>1999</u> NLG	<u>1998</u> NLG
	Dividends receivable (listed) Directors' fees Auditors' remuneration	3,648,845 (20,000)	3,995,875 (20,000) (1,000)
4.	TAXATION	<u>1999</u> NLG	<u>1998</u> NLG
	Capital duty Tax credits on dividends	23,161 101,133 124,294	79,621 839,134
		124,234	918,755

# NOTES TO THE FINANCIAL STATEMENTS - YEAR ENDED 31 MARCH 1999 - continued

5.	FINANCIAL FIXED ASSETS		At Cost NLG
	At 1 April 1998 Additions		100,148,950 1,488,649
	At 31 March 1999 (Listed)  The additional investment relates to a receipt in scrip form	of a dividend	101,637,599
6.	DEBTORS	NLG 1999	<u>1998</u> NLG
	Amounts falling due within one year:- Debtors, prepayments and accrued income	2.350,069	1,973,988
7.	CREDITORS - amounts falling due within one year	<u>1999</u> NLG	<u>1998</u> NLG
	Accruals Amount owed to group company Amount owed to parent company Taxation	25,135 148,936 3,215,702 22,761	20,463 150,028 
8.	CALLED-UP SHARE CAPITAL	3,412,534 1999 NLG	329,792 1998 NLG
	Authorised - Ordinary shares of IR£1 each	260,130	260,130
	Issued and fully paid - Ordinary shares of IR£1 each	40,003	40,003
9.	RECONCILIATION OF MOVEMENT IN EQUITY SHAREHOLDERS' FUNDS	1999 NLG	1998 NLG
	Profit for the financial year Share capital issued Opening shareholders' funds	1,351,789 - 4,519,945	3,032,408 39,998 1,447,539
	Closing shareholders' funds	5,871,734	4,519,945

# NOTES TO THE FINANCIAL STATEMENTS - YEAR ENDED 31 MARCH 1999 - continued

### 10. <u>ULTIMATE PARENT COMPANY</u>

The Company is a subsidiary of DCC International Holdings BV, a company incorporated in the Netherlands.

The Company regards DCC plc, a company incorporated in the Republic of Ireland, as the ultimate parent company. The largest and smallest group in which the results of the company are consolidated is that headed by DCC plc. Copies of the group financial statements of DCC plc are available from its registered office: DCC House, Stillorgan, Blackrock, Co. Dublin.

#### 11. REPORTING CURRENCY

The currency used in these financial statements is the Dutch Guilder which is denoted by the symbol "NLG".

## 12. RELATED PARTY TRANSACTIONS

The Company has availed of the exemption in FRS 8 "Related Party Disclosures" in respect of subsidiary undertakings 90% or more of whose voting rights are controlled within a group. Consequently, these financial statements do not contain disclosure of transactions with such entities in the DCC plc group.

#### 13. <u>CONTINGENT LIABILITIES</u>

The company, its parent undertaking and certain other group companies have given guarantees in respect of borrowings by the parent undertaking itself and other group companies. The company's liability under these guarantees is limited to its net assets.

## 14. APPROVAL OF THE FINANCIAL STATEMENTS.

The financial statements were approved by the Board of Directors on 15 April 1999.

## APPENDIX

# DETAILED PROFIT AND LOSS ACCOUNT - UNAUDITED

# FOR THE YEAR ENDED 31 MARCH 1999

<u>Income</u>	<u>1999</u> NLG	<u>1998</u> NLG
Income from financial fixed assets (Listed)	3,648,846	3,995,875
Administration expenses		
Professional fees Directors' fees Fx (gains)/losses Sundry expenses	27,389 20,000 (1,069,369) 7,756	18,366 20,000 82,819 7,466
	(1,014,224)	128,651
Operating profit before interest and taxation	4,663,070	3,867,224
Interest (payable)/receivable	(3,186,987)	83,939
Profit on ordinary activities before taxation	1,476,083	3,951,163



## REPORT AND FINANCIAL STATEMENTS

FOR THE YEAR ENDED

31 MARCH 2000

Registered Number: 229218

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#### DIRECTORS AND OTHER INFORMATION

Directors:-

G,A,L.R. Diepenhorst

Gerard Jansen Venneboer

Fergal O'Dwyer Henri Roskam

Secretary:-

ING Trust (Nederland) BV

Solicitors:-

Ekelmans Den Hollander,

Frediksplein 42, 1017 XN Amsterdam.

Auditors:-

PricewaterhouseCoopers,

Chartered Accountants and

Registered Auditors,

Wilton Place,

Dublin 2.

Registered Office:-

Fitzwilton House,

Wilton Place.

Dublin 2.

Head Office:-

Keizersgracht 534.

1017 EK Amsterdam,

The Netherlands.

#### REPORT OF THE DIRECTORS

The Directors have pleasure in presenting their Report and the Audited Financial Statements for the year ended 31 March 2000.

#### Activity and Review of the Business

The Company is an investment holding company. During the year the Company disposed of its ordinary shares in Fyffes plc and realised a profit of £67,430,618.

#### Results and Dividend

The profit before taxation for the year amounted to 668,108.460, compared to 6669,817 for the previous year. The increase is mainly due to the profit on disposal of the ordinary shares in Fyffes plc. The Directors do not propose the payment of a dividend.

#### Directors and Secretary

The Directors and Secretary at the date of the Report of the Directors are listed on page 2.

#### Directors' and Other Interests

The interests of the Directors and the Company Secretary in the share capital of DCC plc (the ultimate holding company) at 31 March 2000 and 31 March 1999 are set out below:-

	31 March 2000 No of €0.25 shares	31 March 1999 No of 60.25 shares	
G.A.L.R. Diepenhorst	-	-	
Gerard Jansen Venneboer	-   _	-	
Fergal O'Dwyer	113,765	113.765	
Henri Roskam	_	-	
ING (Nederland) Trust (Secretary)	-	-	

None of the Directors or the Secretary had any interests in the share capital of the Company or of any subsidiary of DCC plc at 31 March 2000 except for those noted above.

#### REPORT OF THE DIRECTORS - continued

#### Ultimate Holding Company

The Company is a wholly-owned subsidiary of DCC International Holdings B.V. The ultimate holding company is DCC plc.

#### Directors' Responsibility for the Financial Statements

Irish company law requires the directors to prepare financial statements for each financial year that give a true and fair view of the state of affairs of the company and of the profit or loss of the company for that period. In preparing the financial statements, the directors are required to

- select suitable accounting policies and then apply them consistently;
- make judgements and estimates that are reasonable and prudent:
- prepare the financial statements on the going concern basis unless it is inappropriate to presume that
  the company will continue in business.

The directors are responsible for keeping proper book of accounts which disclose with reasonable accuracy at any time the financial position of the company and enable them to ensure that the financial statements are prepared in accordance with accounting standards generally accepted in Ireland and comply with the Irish Companies Acts, 1963 to 1999. They are also responsible for safeguarding the assets of the company and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities.

#### Year 2000 Compliance

The company's programme to deal with issues relating to Year 2000 compliance resulted in a successful transition with no material issues to date. The directors will continue to monitor the Year 2000 issue during the coming year. The company has not incurred any material costs in relation to the Year 2000 issue.

#### Auditors

The auditors, PricewaterhouseCoopers, will continue in office in accordance with the provisions of Section 160 of the Companies Act. 1963.

On behalf of the Board:

G.A.L.R. Diegenhorst,

Director

Gerard Masen Venneboer.

Director

Fergal O'Dwyer.

Director

Henri Roskam,

Director

Registered Office:-Fitzwilton House, Wilton Place, Dublin 2.

Date: 26 April 2000

#### REPORT OF THE AUDITORS

#### TO THE MEMBER OF

#### LOTUS GREEN LIMITED

We have audited the financial statements on pages 7 to 11.

#### Respective responsibilities of directors and auditors

The directors are responsible for preparing the Directors' Report and, as described on page 4, for preparing the financial statements in accordance with Accounting Standards generally accepted in Ireland. Our responsibilities, as independent auditors, are established in Ireland by statute, the Auditing Practices Board and our profession's ethical guidance.

We report to you our opinion as to whether the financial statements give a true and fair view and are properly prepared in accordance with Irish statute comprising the Companies Acts, 1963 to 1999. We state whether we have obtained all the information and explanations we consider necessary for the purposes of our audit and whether the financial statements are in agreement with the books of account. We also report to you our opinion as to:

- whether the company has kept proper books of account;
- whether the directors report is consistent with the financial statements;
- whether at the balance sheet date there existed a financial situation which may require the company
  to convene an extraordinary general meeting; such a financial situation may exist if the net assets of
  the company, as stated in the company balance sheet, are not more than half of its called-up share
  capital.

We also report to you if, in our opinion, information specified by law regarding directors remuneration and transactions is not disclosed.

#### Basis of audit opinion

We conducted our audit in accordance with Auditing Standards issued by the Auditing Practices Board. An audit includes examination, on a test basis, of evidence relevant to the amounts and disclosures in the financial statements. It also includes an assessment of the significant estimates and judgements made by the directors in the preparation of the financial statements, and of whether the accounting policies are appropriate to the company's circumstances, consistently applied and adequately disclosed.

We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or other irregularity or error. In forming our opinion we also evaluated the overall adequacy of the presentation of information in the financial statements.

#### Opinion

In our opinion, the financial statements give a true and fair view of the state of the company's affairs at 31 March 2000 and of its profit for the year then ended and have been properly prepared in accordance with the Companies Acts 1963 to 1999.

We have obtained all the information and explanations we considered necessary for the purposes of our audit. In our opinion, proper books of account have been kept by the company. The financial statements are in agreement with the books of account.

In our opinion, the information given in the directors' report on pages 3 and 4 is consistent with the financial statements.

#### REPORT OF THE AUDITORS - continued

The net assets of the company, as stated in the balance sheet on page 8 are more than half of the amount of its called up share capital and, in our opinion, on that basis there did not exist at 31 March 2000 a financial situation which, under section 40(1) of the Companies (Amendment) Act 1983, would require the convening of an extraordinary general meeting of the company.

Chartered Accountants
and Registered Auditors

Dublin

Date: 2 May 2000

#### PROFIT AND LOSS ACCOUNT

#### FOR THE YEAR ENDED 31 MARCH 2000

•	Notes	<u>2000</u> €	<u>1999</u> €
Operating profit before interest and taxation		1,809,225	2,116,009
Interest payable (net)	2	(1,131,383)	(1,446,192)
Profit on disposal of investment		67.430.618	<u>-</u> _
Profit on ordinary activities before taxation	3	68,108,460	669,817
Taxation charge	4	(159.459)	(56,402)
Profit retained for year		67,949,001	613,415
Profit retained at 1 April		2,646,324	2,032,909
Profit retained at 31 March		70.595.325	2,646,324

In arriving at the result for the year, all amounts dealt with above relate to continuing operations.

The Company has no recognised gains and losses other than those included in the profit and loss account above, and therefore no separate statement of total recognised gains and losses has been presented.

There is no difference between the profit on ordinary activities before tax and the profit retained for the year stated above, and their historical cost equivalents. A

G.A.L.R. Diepenhorer,

Director

Gerard Jansen Wenneboer,

i. Jirector

Eard O'Durgar

Director

Henri Roskam,

Director

## BALANCE SHEET - 31 MARCH 2000

	Notes	<u>2000</u>	<u>1999</u>
FIXED ASSETS		. €	$\epsilon$
Financial Assets	.5	7.262,940	46.121.132
CURRENT ASSETS Debtors Bank	6	1,219,062 106.820,613	1,066,415 10.776
		108.039,675	1,077,191
CREDITORS - amounts falling due within one year	7	(974,763)	(1.548.540)
NET CURRENT ASSETS/(LIABILITIES)		107,064,912	(471.349)
CREDITORS - amounts falling due after more than one year Amounts due to group companies		(43.714,374)	(42.985.306)
	:	70.613,478	2.664,477
CAPITAL AND RESERVES Called-up share capital Profit and loss account	S .	18,153 70,595,325	. 18.153 2.646.324
TOTAL SHAREHOLDER'S FUNDS - EQUITY INTERESTS	9 .	70.613.478	2.564.477

G.A.L.R. Diepenhorst.

Director

Gerard Janken Venneboer.

Director

Fergal O'Dwyen

Director

Henri Roskam,

Бігестог

#### NOTES TO THE FINANCIAL STATEMENTS - YEAR ENDED 31 MARCH 2000

#### ACCOUNTING POLICIES

The significant accounting policies adopted by the company are as follows:

#### (a) Accounting Convention

The financial statements have been prepared under the historical cost convention.

#### (b) Basis of Preparation

The financial statements have been prepared in accordance with accounting standards generally accepted in Ireland and Irish statute comprising the Companies Acts 1963 to 1999. Accounting standards generally accepted in Ireland in preparing financial statements giving a true and fair view are those published by the Institute of Chartered Accountants in Ireland and issued by the Accounting Standards Board.

#### (c) Financial Fixed Assets

Financial fixed assets are stated at cost less provision for any permanent diminution in value.

#### (d) Exemption from preparing Group Accounts

Group financial statements have not been prepared as the Company is a wholly owned subsidiary of a company incorporated in Ireland which prepares group financial statements.

#### (e) Cash Flow Statement

The Directors have availed of the exemptions in FRS 1 "Cash Flow Statements" which permit qualifying subsidiaries of a parent undertaking, which itself produces a cash flow statement which includes the subsidiary, not to produce a cash flow statement.

2.	INTEREST (PAYABLEVRECEIVABLE .	<u>2000</u> €	<u>1999</u> €
	Interest on amounts due to parent company Interest receivable	(1.593,097) 461.714	(1,465,152) 18,960
		(1.131.383)	(1,446,192)
3.	PROFIT ON ORDINARY ACTIVITIES BEFORE TAXATION  Profit before taxation is stated after crediting/(charging)	<u>2000</u> €	<u>1999</u> €
	Dividends receivable (listed) Directors' fees	1,824,416 (9,076)	1,655,774 (9,076)
4.	TAXATION	<u>2000</u> €	<u>1999</u> €
	Corporation tax Capital duty Tax credits on dividends	159,459	10.510 45,892
		159,459	56,402

## NOTES TO THE FINANCIAL STATEMENTS - YEAR ENDED 31 MARCH 2000 - continued

ź.	FINANCIAL FIXED ASSETS		<u>At Cost</u> €
	At I April 1999 Disposal		46,121,132 (38,858,192)
	At 31 March 2000  During the year the Company disposed of its ordinary share	res in Fyffes plc.	7,262,940
6.	<u>DEBTORS</u>	<u>2000</u> €	<u>1999</u> €
	Amounts falling due within one year:- Debtors, prepayments and accrued income	1.219.062	1.966.415
7.	CREDITORS - amounts falling due within one year	<u>2000</u> €	<u>1</u> 099
	Accruais Amount owed to group company Amount owed to parent company Taxation	78.267 67,584 669,453 159,459	11,406 67,584 1,459,222 10,328
8.	CALLED-UP SHARE CAPITAL	974,763 2000 €	1.548,540 1999 €
	Authorised - Ordinary shares of IR£1 each	118,042	118,042
	Issued and fully paid - Ordinary shares of IR£1 each	18,153	18,153
9.	RECONCILIATION OF MOVEMENT IN EQUITY SHAREHOLDER'S FUNDS	<u>2000</u> €	<u>1999</u> €
	Profit for the financial year Opening shareholder's funds	67,949,001 2,664,477	613,415 2.051,062
	Closing shareholder's funds	70.613.478	2.664,477

## NOTES TO THE FINANCIAL STATEMENTS - YEAR ENDED 31 MARCH 2000 - continued

#### ULTIMATE PARENT COMPANY

The Company is a subsidiary of DCC International Holdings BV, a company incorporated in the Netherlands.

The Company regards DCC plc, a company incorporated in the Republic of Ireland, as the ultimate parent company. The largest and smallest group in which the results of the company are consolidated is that headed by DCC plc. Copies of the group financial statements of DCC plc are available from its registered office: DCC House, Stillorgan, Blackrock, Co. Dublin.

#### 11. REPORTING CURRENCY

The currency used in these financial statements is the Euro which is denoted by the symbol " $\epsilon$ ". The comparative amounts have been retranslated from NLG to  $\epsilon$  at a fixed conversion rate of  $\epsilon$ 1 = NLG2.20371.

#### 12. RELATED PARTY TRANSACTIONS

The Company has availed of the exemption in FRS 8 "Related Party Disclosures" in respect of subsidiary undertakings 90% or more of whose voting rights are controlled within a group. Consequently, these financial statements do not contain disclosure of transactions with such entities in the DCC plc group.

#### 13. CONTINGENT LIABILITIES

The company, its parent undertaking and certain other group companies have given guarantees in respect of borrowings by the parent undertaking itself and other group companies. The company's liability under these guarantees is limited to its net assets.

#### 14. APPROVAL OF THE FINANCIAL STATEMENTS

The financial statements were approved by the Board of Directors on 26 April 2000.

## <u>APPENDIX</u>

# DETAILED PROFIT AND LOSS ACCOUNT - UNAUDITED

# FOR THE YEAR ENDED 31 MARCH 2000

	<u>2000</u> €	<u>1999</u>
Income	E	€
Income from financial fixed assets (Listed)	1,824,416	1,655,774
Administration expenses		
Professional fees Directors' fees Fx (gains)/losses Sundry expenses	6,411 9,076 - (296)	12,429 9,076 (485,259) 3,519
	15,191	_ (460,235)
Operating profit before interest and taxation	1,809,225	2,116,009
Interest (payable)/receivable	(1,131,383)	(1,446,192)
Profit on disposal of investment	67,430,618	<u>-</u>
Profit on ordinary activities before taxation	68,108,460	669,817



# REPORT AND FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2001

Registered Number: 229218

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## DIRECTORS AND OTHER INFORMATION

Directors:-

G.A.L.R. Diepenhorst

Gerard Jansen Venneboer

Fergal O'Dwyer Henri Roskam Gerard Whyte

Secretary:-

ING Trust (Nederland) BV

Solicitors:-

Ekelmans Den Hollander,

Frediksplein 42, 1017 XN Amsterdam.

Auditors:-

PricewaterhouseCoopers,

Chartered Accountants and

Registered Auditors, George's Quay,

Dublin 2.

Registered Office:-

Fitzwilton House,

Wilton Place, Dublin 2.

Head Office:-

Keizersgracht 534,

1017 EK Amsterdam,

The Netherlands.

#### REPORT OF THE DIRECTORS

The Directors have pleasure in presenting their Report and the Audited Financial Statements for the year ended 31 March 2001.

#### Activity and Review of the Business

The Company is an investment holding company. During the year the Company invested in Taturk Limited and disposed of its remaining shareholding in Fyffes plc.

#### Results and Dividend

The loss before taxation for the year amounted to £3,941,881, compared to a profit of £68,108,460 for the previous year. This reduction is mainly due to the profit on disposal of ordinary shares in Fyffes plc (£67,430,618) in the year ended 31 March 2000. The Directors do not propose the payment of a dividend.

#### Directors and Secretary

The Directors and Secretary at the date of the Report of the Directors are listed on page 2.

On 17 August 2000, Mr Michael Scholefield was appointed an 'A' Director of the Company. On 8 December 2000, Mr Michael Scholefield resigned as 'A' Director and Mr Gerard Whyte was appointed an 'A' Director in his stead.

## **Directors' and Other Interests**

The interests of the Directors and the Company Secretary in the share capital of DCC plc (the ultimate holding company) at 31 March 2001 and 31 March 2000 are set out below:

	31 March 2001 No of 60.25 shares	31 March 2000* No of €0.25 shares
G.A.L.R. Diepenhorst	_	_
Gerard Jansen Venneboer	-	-
Fergal O'Dwyer	212,506	113,765
Henri Roskam		-
Gerard Whyte	124,667	124,667
ING Trust (Nederland) B.V. (Secretary)	-	

<sup>\*</sup> or date of appointment, if later.

None of the Directors or the Secretary had any interests in the share capital of the Company or of any subsidiary of DCC plc at 31 March 2001 except for those noted above.

## REPORT OF THE DIRECTORS - continued

## Directors' Responsibility for the Financial Statements

Irish company law requires the directors to prepare financial statements for each financial year that give a true and fair view of the state of affairs of the company and of the profit or loss of the company for that period. In preparing the financial statements, the directors are required to

- select suitable accounting policies and then apply them consistently;
- · make judgements and estimates that are reasonable and prudent;
- prepare the financial statements on the going concern basis unless it is inappropriate to presume that
  the company will continue in business.

The Directors are responsible for keeping proper book of accounts which disclose with reasonable accuracy at any time the financial position of the company and enable them to ensure that the financial statements are prepared in accordance with accounting standards generally accepted in Ireland and comply with the Irish Companies Acts, 1963 to 1999. They are also responsible for safeguarding the assets of the company and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities.

#### Euro

The Company's preparation for euro changeover is proceeding satisfactorily. Costs of preparation for the euro are not expected to have a significant impact on the Company's financial position or its activities. The current year financial statements have been prepared in euro.

#### **Auditors**

The auditors, PricewaterhouseCoopers, will continue in office in accordance with the provisions of Section 160 of the Companies Act, 1963.

On behalf of the Board:

G.A.L.R. Diepenhorst,

Director

Gerard Jansen Venneboer,

Director

-t/x----/

Director

Henri Rosk

Director

Gerard Whyte,

Director

Registered Office:-Fitzwilton House, Wilton Place, Dublin 2.

Date: 26 April 2001

#### REPORT OF THE AUDITORS

#### TO THE MEMBER OF

#### LOTUS GREEN LIMITED

We have audited the financial statements on pages 7 to 11.

#### Respective responsibilities of Directors and Auditors

The Directors are responsible for preparing the Directors' Report and, as described on page 4, for preparing the financial statements in accordance with Accounting Standards generally accepted in Ireland. Our responsibilities, as independent auditors, are established in Ireland by statute, the Auditing Practices Board and our profession's ethical guidance.

We report to you our opinion as to whether the financial statements give a true and fair view and are properly prepared in accordance with Irish statute comprising the Companies Acts, 1963 to 1999. We state whether we have obtained all the information and explanations we consider necessary for the purposes of our audit and whether the financial statements are in agreement with the books of account. We also report to you our opinion as to:

- · whether the company has kept proper books of account;
- · whether the Directors' Report is consistent with the financial statements;
- whether at the balance sheet date there existed a financial situation which may require the company
  to convene an extraordinary general meeting; such a financial situation may exist if the net assets of
  the company, as stated in the company balance sheet, are not more than half of its called-up share
  capital.

We also report to you if, in our opinion, information specified by law regarding Directors' remuneration and transactions is not disclosed.

#### Basis of audit opinion

We conducted our audit in accordance with Auditing Standards issued by the Auditing Practices Board. An audit includes examination, on a test basis, of evidence relevant to the amounts and disclosures in the financial statements. It also includes an assessment of the significant estimates and judgements made by the Directors in the preparation of the financial statements, and of whether the accounting policies are appropriate to the company's circumstances, consistently applied and adequately disclosed.

We planned and performed our audit so as to obtain all the information and explanations which we consider necessary in order to provide us with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or other irregularity or error. In forming our opinion we also evaluated the overall adequacy of the presentation of information in the financial statements.

#### Opinion

In our opinion, the financial statements give a true and fair view of the state of the company's affairs at 31 March 2001 and of its loss for the year then ended and have been properly prepared in accordance with the Companies Acts 1963 to 1999.

We have obtained all the information and explanations we consider necessary for the purposes of our audit. In our opinion, proper books of account have been kept by the company. The financial statements are in agreement with the books of account.

In our opinion, the information given in the directors' report on pages 3 and 4 is consistent with the financial statements.

#### REPORT OF THE AUDITORS

#### TO THE MEMBER OF

#### LOTUS GREEN LIMITED

We have audited the financial statements on pages 7 to 11.

#### Respective responsibilities of Directors and Auditors

The Directors are responsible for preparing the Directors' Report and, as described on page 4, for preparing the financial statements in accordance with Accounting Standards generally accepted in Ireland. Our responsibilities, as independent auditors, are established in Ireland by statute, the Auditing Practices Board and our profession's ethical guidance.

We report to you our opinion as to whether the financial statements give a true and fair view and are properly prepared in accordance with Irish statute comprising the Companies Acts, 1963 to 1999. We state whether we have obtained all the information and explanations we consider necessary for the purposes of our audit and whether the financial statements are in agreement with the books of account. We also report to you our opinion as to:

- whether the company has kept proper books of account;
- · whether the Directors' Report is consistent with the financial statements;
- whether at the balance sheet date there existed a financial situation which may require the company
  to convene an extraordinary general meeting; such a financial situation may exist if the net assets of
  the company, as stated in the company balance sheet, are not more than half of its called-up share
  capital.

We also report to you if, in our opinion, information specified by law regarding Directors' remuneration and transactions is not disclosed.

#### Basis of audit opinion

We conducted our audit in accordance with Auditing Standards issued by the Auditing Practices Board. An audit includes examination, on a test basis, of evidence relevant to the amounts and disclosures in the financial statements. It also includes an assessment of the significant estimates and judgements made by the Directors in the preparation of the financial statements, and of whether the accounting policies are appropriate to the company's circumstances, consistently applied and adequately disclosed.

We planned and performed our audit so as to obtain all the information and explanations which we consider necessary in order to provide us with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or other irregularity or error. In forming our opinion we also evaluated the overall adequacy of the presentation of information in the financial statements.

#### Opinion

In our opinion, the financial statements give a true and fair view of the state of the company's affairs at 31 March 2001 and of its loss for the year then ended and have been properly prepared in accordance with the Companies Acts 1963 to 1999.

We have obtained all the information and explanations we consider necessary for the purposes of our audit. In our opinion, proper books of account have been kept by the company. The financial statements are in agreement with the books of account.

In our opinion, the information given in the directors' report on pages 3 and 4 is consistent with the financial statements.

## REPORT OF THE AUDITORS - continued

The net assets of the company, as stated in the balance sheet on page 8 are more than half of the amount of its called up share capital and, in our opinion, on that basis there did not exist at 31 March 2001 a financial situation which, under section 40(1) of the Companies (Amendment) Act 1983, would require the convening of an extraordinary general meeting of the company.

Chartered Accountants
and Registered Auditors

Dublin

Date: 26 April 2001

#### <u>PROFIT</u> AND LOSS ACCOUNT

#### FOR THE YEAR ENDED 31 MARCH 2001

	Notes .	<u>2001</u> €	$\frac{2000}{\epsilon}$
Operating profit before interest and taxation		460,157	1,809,225
Interest payable (net)	2	(920,594)	(1,131,383)
(Loss)/profit on disposal of investment .	·	(3,481,444)	67,430,618
(Loss)/profit on ordinary activities before taxation	3	(3,941,881)	68,108,460
Taxation	4	147,612	(159,459)
(Loss absorbed)/profit retained for year		(3,794,269)	67,949,001
Profit retained at 1 April		70,595,325	2,646,324
Profit retained at 31 March		66,801,056	70,595,325

In arriving at the result for the year, all amounts dealt with above relate to continuing operations.

The Company has no recognised gains and losses other than those included in the profit and loss account above, and therefore no separate statement of total recognised gains and losses has been presented.

There is no difference between the (loss)/profit on ordinary activities before taxation and the (loss absorbed)/profit retained for the year on an historical cost basis and the amounts shown above.

G.A.L.R. Diepathorst,

Director

Gerard Jansen Venneboer,

Director

Feran O'Daver

Director

Henri Roskam,

Director

Director

#### **BALANCE SHEET - 31 MARCH 2001**

	Notes	<u>2001</u> €	<u>2000</u> €
FIXED ASSETS		J	
Financial Assets	5	108,128,326	7,262,940
CURRENT ASSETS Debtors Bank	6	348,765 40,569	1,219,062 106,820,613
		389,334	108,039,675
CREDITORS - amounts falling due within one year	7	(331,522)	(974,763)
NET CURRENT ASSETS		57,812	107,064,912
CREDITORS - amounts falling due after more than one year			
Amounts due to group companies .		(41,366,929)	(43,714,374)
		66,819,209	70,613,478
CAPITAL AND RESERVES			
Called-up share capital	8	18,153	18,153
Profit and loss account		66,801,056	70,595,325
TOTAL SHAREHOLDER'S FUNDS - EQUITY INTERES'TS	9	66,819,209	70,613,478

G.A.L.R. Diegenhorst.

Director

Gerard Jansen Venneboer,

Director

Henri Roskam,

Director

rd Wlyter Director

#### NOTES TO THE FINANCIAL STATEMENTS - YEAR ENDED 31 MARCH 2001

#### I. ACCOUNTING POLICIES

The significant accounting policies adopted by the company are as follows:

#### (a) Accounting Convention

The financial statements have been prepared under the historical cost convention.

#### (b) Basis of Preparation

The financial statements have been prepared in accordance with accounting standards generally accepted in Ireland and Irish statute comprising the Companies Acts 1963 to 1999. Accounting standards generally accepted in Ireland in preparing financial statements giving a true and fair view are those published by the Institute of Chartered Accountants in Ireland and issued by the Accounting Standards Board.

#### (c) Financial Fixed Assets

Financial fixed assets are stated at cost less provision for any permanent diminution in value.

#### (d) Exemption from preparing Group Accounts

Group financial statements have not been prepared as the Company is a wholly owned subsidiary of a company incorporated in Ireland which prepares group financial statements.

#### (e) Foreign Currency

The 2001 financial statements and the 2000 comparative amounts are presented in euro. The euro amounts have been arrived at by converting the underlying Irish Pound figures at the fixed conversion rate of  $\mathfrak{E}1 = IR\mathfrak{L}0.787564$ .

Assets and liabilities denominated in foreign currencies are translated into euro at the exchange rates ruling at the balance sheet date or at contracted rates, where appropriate.

Profits and losses arising on transactions in foreign currencies during the year are included in the profit and loss account at the exchange rates ruling on the date of the transactions.

#### (f) Cash Flow Statement

The Directors have availed of the exemptions in FRS 1, "Cash Flow Statements", which permit qualifying subsidiaries of a parent undertaking, which itself produces a cash flow statement which includes the subsidiary, not to produce a cash flow statement.

2.	INTEREST (PAYABLE)/RECEIVABLE	<u>2001</u> €	<u>2000</u> €
	Interest on amounts due to parent company Interest receivable	(1,970,359) 1,049,765	(1,593,097) 461,714
		(920,594)	(1,131,383)
3.	(LOSS)/PROFIT ON ORDINARY ACTIVITIES BEFORE TAXATION	<u>2001</u> €	2000 €
	(Loss)/profit before taxation is stated after crediting/(charging)		
	Dividends receivable (listed) Directors' fees	484,154 (9,076)	1,824,416 (9,076)

# NOTES TO THE FINANCIAL STATEMENTS - YEAR ENDED 31 MARCH 2001 - continued

4.	TAXATION	<u>2001</u> €	<u>2001</u>
	Corporation tax at 35% (2000: 35%)	(147,612)	€ 159,459_
5.	FINANCIAL FIXED ASSETS	<u>At Cost</u> 2001 €	<u>At Cast</u> 2000 €
	At I April Disposal Additions	7,262,940 (7,262,940) 108,128,326	46,121,132 (38,858,192)
	At 31 March	108,128,326	7,262,940
	During the year the Company disposed of its sharehold Convertible Cumulative Preference Shares of £1.27 each in Fyffes of Taturk Limited, an investment company whose registered offic Stillorgan, Blackrock, Co. Dublin, Republic of Ireland.	plc. The Company is	nvested in 100%
6.	DEBTORS	<u>2001</u> €	<u>2000</u> €
	Amounts falling due within one year:- Accrued dividends & prepayments Corporation Tax Recoverable	200,958 147,807	1,219,062
		348,765	1,219,062
7.	CREDITORS - amounts falling due within one year	. 2001 €	<u>2000</u> €
	Accruals Amount owed to group company Amount owed to parent company Taxation	45,573 95,518 190,431	78,267 67,584 669,453 159,459
		331,522	974,763
8.	CALLED-UP SHARE CAPITAL	<u>2001</u> €	<u>2000</u> €
	Authorised - Ordinary shares of IR£1 each	126,974	126,974
	Issued and fully paid - Ordinary shares of IR£1 each	18,153	18,153

## NOTES TO THE FINANCIAL STATEMENTS - YEAR ENDED 31 MARCH 2001 - continued

9.	RECONCILIATION OF MOVEMENT IN EQUITY SHAREHOLDER'S FUNDS	<u>2001</u> €	<u>2000</u> €
	(Loss)/profit for the financial year Opening shareholder's funds	(3,794,269) 	67,949,001 2,664,477
	Closing shareholder's funds	66,819,209	70,613,478

#### 10. ULTIMATE PARENT COMPANY

The Company is a subsidiary of DCC International Holdings BV, a company incorporated in the Netherlands.

The Company regards DCC plc, a company incorporated in the Republic of Ireland, as the ultimate parent company. The largest and smallest group in which the results of the company are consolidated is that headed by DCC plc. Copies of the group financial statements of DCC plc are available from its registered office: DCC House, Stillorgan, Blackrock, Co. Dublin.

## 11. RELATED PARTY TRANSACTIONS

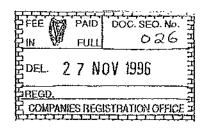
The Company has availed of the exemption in FRS 8, "Related Party Disclosures", in respect of subsidiary undertakings, 90% or more of whose voting rights are controlled within a group. Consequently, these financial statements do not contain disclosure of transactions with such entities in the DCC pic group.

## 12. <u>CONTINGENT LIABILITIES</u>

The Company, its parent undertaking and certain other group companies have given guarantees in respect of borrowings by the parent undertaking itself and other group companies. The Company's liability under these guarantees is limited to its net assets.

## 13. APPROVAL OF THE FINANCIAL STATEMENTS

The financial statements were approved by the Board of Directors on 26 April 2001.



Annual Return

Companies Acts, 1963 to 1990

Company Number

2 2 9

Сотрапу пате

Lotus Green

Return made up to

6 day of August,

Limited 19 96

Financial year

from22 February, 1995

to 31 March, 1996

Address of registered office

Fitzwilton House Wilton Place

Dublin 2

Other addresses

Places where the register of members, register of debenture holders and directors' service contracts/memoranda are kept, if other than the registered office

Address

DCC House Brewery Road

Stillorgan Co Dublin

Description of address

Secretary

ING Trust (Nederland) B.V.

Surname

Former Surname(s)

Former forename

Home address

Prinses Trenestraat 61

Amsterdam

The Netherlands

Indebtedness

Total amount of indebtedness of the company in respect of all mortgages which are required to be registered with the Registrar of Companies under the Companies Acts or which would have been required to be registered if created after 1st July 1908.

£ N11

Presenter's Name

Address

ING Trust (Nedefland) B.V.

PO Box 2838 1000 CV Amsterdam The Netherlands

Capital - Nominal		Nomina) Share Cap	ital £ · £	100,000
Class		Number		Value Per Share £
		100.000		£1.00
Ordinary		100,000		£
				£
		•		£
				£
Capital - Issued		Issued Amounts		
Total Issued Capital	2.00	Paid up on shares is Considered paid on	ssued for cash other shares	£2.00
		Total calls unpaid		£
•				
Shares Issued				
Consideration - all cash		Amount called up	Amount paid per	Total amount
Class	Number	per share	share	•
Ordinary	2	£ 1.00	21.00	£2.00
<u> </u>		£	£	£ .
		£	3	£ ·
		Σ	£	£
		£	£	£
		. £	£	
		Ę '	£	£
		£	£	£
Totals:	.2 (4	<b>)</b>		£2.00
Consideration - not all cash		Amount called up	Amount consid-	· * Total amount
	Number	per share	ered paid per share	considered paid
Class	, ,	ε	٤	£
	-	ũ	£	£
		£	£	£
		E E	£	£
	•		£	£
•	•	£	£	£
Totals	- (	т. (В)		£
Total number of shares issued (A) plus (B)	2 .	This total must agree members as staled in section of the return	with the lotat numbers the "List of Past and	er of shares held by existing I Present Members"

Details of shares forfeited, shares/debentures issued at a discount, or on which a commission was paid including share class, number of shares and amounts in each case

None

Other Share/Debenture Details List of persons holding shares on the 14th day after the annual general meeting for 1996 , (insert year) and of persons who have held shares therein at any time since the date of the last return, or in the case of the first return, the date of the incorporation of the company

	:	Share Class	Numbers Held		Particulars of Transferee
Name Address	Carmel Molloy C/O Law Society	Ordinary	nil	•	Frymount Limited
Angless.	Dublin			11 May, 1995	
Folio No. Name	Susan Murray	Ordinary	nil	I To:	Lower Mount
Address	C/O Law Society Dublin			11 May, 1995	Nominees Limited
Folio No.		0 - 11	nil	1 To:	Marjove
Name	Frymount Limited	Ordinary	HTT	1 20.	Limited
	Fitzwilton House Wilton Place, Dublin 2			26 May, 1995	
Folio No.	Lower Mount Nominees Lt	d Ordinary	nil	l To:	DCC Nominees
Name Address		u Oldinary	****	-	Limited
Addiess	Wilton Place, Dublin 2			26 May, 1995	
Folio No.	•				D/2/2
Name	Marjove Limited	Ordinary	nil	1 To:	DCC International
Address	Fitzwilton House			10 August, 1995	Holdings
C-8- N-	Wilton Place, Dublin 2	·		10 August, 1775	B.V.
Folio No. Name	DCC Nominees Limited	Ordinary	n11	1 To:	DCC Nominees
Address		•			Limited
	Stillorgan, Co Dublin	•		10 August, 1995	
Folio No.		20 11	,	· 10 August, 1995	From: Marjove
Name	DCC International Holdi Prinses Irenestraat 61	ngs B.V.	1	10 WoRner, 1992	Limited
Address	Amsterdam	Ordinary			
Folio No.	The Netherlands	•			
Name	DCC Nominees Limited	Ordinary	1	10 August, 1995 I	From: DCC
Address	DCC House, Brewery Road Stillorgan, Co Dublin				Nominees Limited
Folio No.			•	,	
Name		-			
Address					
Folio No.		•	_		-
Name	•		•		
Address			•		
Felio No		-	•		
Name	•			·	
Address			•	•	
Folio No	L.			•	

Total number held

The total number of shares held must agree with the total number of issued shares given in the "Shares Issued" section of the return

#### Earlier full listing

Date and made on to

When full particulars of past and present members have been given in a return for any of the 5 years preceding this return, only particulars relating to new members, persons who have ceased to be members and shares transferred since that date need to be furnished. If full particulars are not now given, specify the date the relevant annual return was made up to.

2

		Surname Former surnames	O'Dwyer	Forename Former forename	Ferga		
•		Business occupation	Chartered Accountan	That of Dith	23 <sub>Day</sub> 04	Month 1960	Year
		Home address 6 Me	ount Prospect Lawn	Nationality	Irish	MOI AIT 2 3 0 0	) ear
			lin 3				
		Other directorships See	attached schedule	Registered at	Company n	umber	-
- ·							
÷	:	Surname	Young	Forename	Georg	e	
		Former surnames Business occupation Home address	Company Director Moyne	Former forename Date of Birth Nationality	18 <sub>Day</sub> 07 Irish	Month 1953	Year
			Il Woodlands Park Blackrock Co Dublin				
·		Other directorships	See attached schedu	Registered at 1e	Company r	umber	
	٠.	:	* -		-		
		Surname Former surnames	Roskam	Forename Former forename	Henri		
		Business occupation Home address	Company Director Heidelaantje 2 1272 PE Huizen The Netherlands	Date of Birth Nationality	08 Day 04 Dutch	Month1929	Year
	· od	Other directorships	See attached schedu	Registered at > 1e	Сотраву г	number ·	
Documents Annex note eleven	eu			÷			
Jalance Sheet S.128, Companies	_	Sumame	Venneboer	Forename :	Gerar	d Jansen	
Act, 1963 [CA-'63]; S.7 and S.18,	<u>[X]</u>	Former surnames Business occupation	- Company Director	Former forename Date of Birth	26 Day 06	Month 1941	Year
Companiés (Amendment) Act, 1986 [CAA-'86]	X	Home address	Stukkenlaan 2 1272 NX Huizen The Netherlands	Nationality .	Dutch		
Profit and Loss A/C S.7 and S.18, CAA- '86	X	Other directorships	a.,	Registered at	Company r	 number	
Directors Report 9.128, CA-'69; S.7 and S.18, CAA-'86	X		See attached schedu	<b>le</b>			
Auditors Report S.128, GA-'63; S.7 and S.18, CAA-'86		We hereby certily the return is made a	at this form contains the partic and that note eleven	ulars in respect o	of the company as	at the date to w	hich
Guarantee S.17, CAA-'86		The Company is not a	private company.				LJ
Declaration S.17, CAA-*88		The company is a pri- of incorporation if this or debentures in the c	vate company and has not since is the first return) issued any invi ompany.	the date of the la: lation to the public	st annual return (o) to subscribe for al	r the date ny shares	
Notification to shareholders of Guarantee S.17, CAA-/86		members over \$0 co	rivate company with more than notating wholly of persons who, cluded in reckching the number o	under section 33(	e excess of the n (1)(b) of the Comp (1) that (Neder	umber of finles Act	
Note stating company has availed of		Signed		J. HANG	UN" C	U13	

Particulars of Directors (including shadow directors)
Surname 0 Dwyer Forenam

Fergal

## Bl continuation sheet - Lotus Green Limited - No: 229218

Particulars of Directors (including shadow directors)

		Surname	Diepenhorst	Forename G	Godfried Ar	thur Leona	ırd
		Former surnames	-	Former forename	-		
		Business occupation Home address	Company Director Dammerweg 10 1383 HT Weesp The Netherlands	man or or and	)4 <sub>Day</sub> 03 )utch	Month 1944	Year
		Other directorships	See attached sche	Registered at dule	Company n	umber	•
>- 		Surname Former surnames Business occupation Home address Other directorships	,	Forename Former forename Date of Birth Nationality Registered at	Day Company n	Month , umber	Year
		Surname Former surnames Business occupation Home address		Forename Former forename Date of Birth Nationality	Day	Month	Year
		Other directorships		Registered at	Company n	umber	
ocuments Annex ote eleven	ed						
		•				•	
Liance Sheet 128, Companies ct. 1963 [CA-'63]; 7 and S.18, companies Amendment) Act, 986 [CAA-'86]		Surname Former surnames Business occupation Home address		Forename Former forename Date of Birth Nationality	Pr. 0	Modelh ô	Year
rofit and Loss A/C 1.7 and S.18, CAA- 16 Prectors Report 1.128, CA-63; S.7 nd S.18, CAA-86		Other directorships		Registered at	Company	штбөг	•
uditors Report 1128, CA-'63; S.7 nd S.18, CAA-'86		We hereby cartify the	at this form contains the par nd that note eleven	ticulars in respect of t	the company as	at the date to w	hìch
luarantee S.17, :AA- 86		The Company is not a	private company.				
eclaration 17, GAA-'86		, , ,	vate company and has not sin is the first return) issued any i ompany.		•	•	
lotification to hareholders of Suarantee S.17. SAA-'96		members over 50 cor	rivate company with more the nsisting wholly of persons who cluded in reckoning the numbe	a, under section 33(1)			
lote stating company as availed of	$\Box$	Signed /	$\sim$ $\sim$ $\sim$ $\sim$	ING ?	Mark Neder	ON (ONN)	_

Full first name(s) and surname

Fergal O'Dwyer

Any former first name(s) or surname

None

Residential address

6 Mount Prospect Lawn Clontarf

Clontarf Dublin 3 C. P. O. 19 SEP 1996

Nationality

Irish

Date of birth

23/04/60

Business occupation

Chartered Accountant

COMPANY NAME	COUNTRY OF INCORPORATIO N	DATE APPOINTED	DATE RESIGNED	registered Number
DCC Corporate Finance Ltd	Ireland	12/12/91		107435
DCC Corporate Partners Ltd	Ireland	03/08/94		93297
S&L Investments Ltd	Ireland	01/09/94		28688
SALT Ltd	Ireland	01/09/94		28700
Development Capital Corporation Ltd	Ireland	01/09/94		24732
Vencap Investors Ltd	Ireland	01/09/94		31378
Vencap Investment Holdings Ltd	Ireland	01/09/94		87941
DCC Nominees Ltd	Ireland	01/09/94		83321
Chittenden Ltd	Ireland	01/09/94		58400
Mullet Investment Co	Ireland	01/09/94		`44019
DCC International Holdings BV	Netherlands	14/02/95	$\cap$ .	469954
DCC Ltd	UK.	12/01/95	<b>₩</b> . \	2015491
DCC Corporate Finance Ltd	UK \	12/01/95	1998	1961402
DCC Corporate Partners Ltd	UK '	d residence of the second	12,	1908249
Development Capital Corporation Ltd	UK	\12/01/95		2560754
DCC Holdings (UK) Ltd	UK	\$2/01/95 ,		2836380
Flogas Limited	Ireland	· 13,06.96		60035
Alvabay Limited	Ireland	11.07.96		248296
Malbay Hall Ltd	freland	15/08/95	30.08.95	229357
			members's	
			vol,liq.	
Lotus Green Ltd	Ireland	24/08/95		229218
Wadia Limited	Ireland	30/04/96		207574
Days Medical Holdings Ltd.	UK	10/11/95	23.07.96	2567974
Days Medical Aids Ltd	UK	10/11/95	23.07.96	1120623
Powerimpact plc	UK	02/04/96		2823534
DCC Healthcare Ltd (formerly DCC	Ireland	01/09/94	26/04/96 ,	84772
Properties Limited)		04 10 10 4	04104104	
DCC Energy Ltd (formerly DCC	Ireland	01/9/94	26/04/96	79313
Investments Limited)	T1	15/09/05	13/09/95	229260
Lushayen Lid	Ireland Ireland	35/08/95		192271
Oare plc	H	11/12/92	16/02/94	22225
Wardell Roberts Ltd Robert Roberts Ltd	Ireland Ireland	09/02/93 18/02/93	23/09/94 23/09/94	LELL3
Kelkin Nature Products Ltd	herand Ireland	18/02/93	19/11/93	
Allied Foods Ltd	lreland	26/02/93	01/12/94	133365
Flogas plc	Ireland	22/01/92	28/08/92	60035
riogas pie Xtravision ple	Ireland	LLIVITA	/01/91	74594
Capital Leasing Group plc	Ireland		11/02/91	96157
capital reasing atout two	TIPERITA		A 11 VAN 7 4	70101

Full first name(s) and surname

George Patrick Young

Any former first name(s) or surname

None

Residential address

"Moyne"

11 Woodlands Park

Blackrock Co Dublin

Nationality

Irish

Date of birth

18/07/53

Business occupation

Director

COMPANY NAME	COUNTRY OF INCORPORATION	DATE APPOINTED	DATE RESIGNED	REGISTERED . NUMBER
Runsole Limited	UK	11.06.96		2379449
DCC Corporate Finance Ltd	Ireland	06/02/90		107435
DCC Corporate Partners Ltd	Ireland	17/02/86		93297
DCC Corporate Finance Ltd	USA	03/04/89		04-3045769
DCC Corporate Partners Inc	USA ·	03/04/89		04-3045768
HealthDrive Corporation	USA	11/05/92		
Ochil Ltd	Ireland	22/03/93		192272
Printech Intl Ltd	[reland	11/10/93		64641
The Irish Venture			•	•
Capital Association	Ireland	07/03/94		103672
Sharptext Group Ltd	Ireland	28/02/95		75557
Lotus Green Ltd	Ireland	24/08/95		229218
DCC International Holdings B.V.	Netherlands	25.08.95	•	Trade Register
	•			252.142
European Venture				
Capital ASBL	Belgium	08/06/95	13.06.96	
Lotus Green Ltd	Ireland	26/05/95	04/08/95	229218
Marjove Ltd	<b>!reland</b>	26/05/95	02/08/95	229527
Malbay Hall Ltd (members'				
voluntary liquidation 30/08/95	lreland	09/08/95	15/08/95	229357
Lushaven Ltd	Ireland	09/08/95	15/08/95	229260
DCC Ltd	Ireland	17/02/86	25/03/92	54858
DCC Corporate Finance Ltd	Ireland	17/02/86	14/03/89	107435
Chittenden Ltd	lreland	17/02/86	02/04/92	58400
DCC Properties Ltd	Ireland	17/02/86	02/04/92	84772
DCC Investments Ltd	Ireland	17/02/86	02/04/92	79313
DCC Nominees Ltd	Ireland	17/02/86	02/04/92	83321
SALT Ltd	Ireland	17/02/86	02/04/92	28700
S&L Investments	Ireland	17/02/86	02/04/92	28688
Development Capital				
Corporation Ltd	Ireland	17/02/86	02/04/92	24732
<ul> <li>Mullet Investment Company</li> </ul>	Ireland	30/01/91	02/04/92	44019
Vencap Investment				
Holdings Ltd	Ireland	30/09/87	02/04/92	87941
Vencap Investors Ltd	lreland	30/09/87	02/04/92	31378
DCC Corporate Finance Ltd	England	06/02/90	02/04/92	1961402
DCC Corporate Partners Ltd	England	06/05/87	02/04/92	1908249
Ashling Microsystmes Ltd	Ireland	28/02/84	08/11/91	91731

COMPANY NAME	COUNTRY OF INCORPORATION	DATE APPOINTED	DATE RESIGNED	REGISTERED NUMBER
Textmate Ltd	Ireland	31/03/88	/11/91	99546
Intepro Systems Ltd	Ircland	08/03/83	/03/91	73913
Kindle Group Ltd	Ireland	05/10/84	/07/91	58285
Integro Systems Ltd	England	20/03/85	/03/91	
Applied Softward Technology				
Ltd	England	21/08/87	/11/88	
European Venture Capital ASBL	Belgium	04/06/92	10/06/93	
Direct Marketng Technologies	Ireland	31.05.96		120073
Limited				-
Direct Marketng Technologies	Ireland	31.05.96		131667
Group I imited	•			

Full first name(s) and surname

Henri Roskam

Any former first name(s) or surname

None

Residential address

Heidelaantje 2 1272 PE Huizen . The Netherlands

Nationality

Dutch

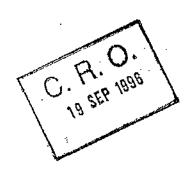
Date of birth

08.04.29

Business occupation

Director

COMPANY NAME	COUNTRY OF INCORPORATION	DATE APPOINTED	DATE RESIGNED	registered Number
Lotus Green Limited DCC International Holdings B.V.	Ireland The Netherlands	25.08.95		229218 252.142
Diversey Holdings	Montreal, Canada	1990		
Molson Companies	Toronto, Canada	1990		



Full first name(s) and surname

Gerard Jansen Venneboer

Any former first name(s) or surname

None

Residential address

Stukkenlaan 2 1272 NX Huizen The Netherlands

Nationality

Dutch

Date of birth

26.06.41

Business occupation

Director

COMPANY NAME	COUNTRY OF INCORPORATION	DATE APPOINTED	DATE RESIGNED	REGISTERED NUMBER
DCC International Holdings B.V.	The Netherlands	07.08,95		252.142
Lotus Green Limited	Ireland	25.08.95		229218
Vicomte BV	The Netherlands			
Peek & Cloppenburg Shareholders Fund	The Netherlands			
KLENE Holdings B.V.	The Netherlands			
KLEGO B.V.	The Netherlands			
Aluma Systems Holdings B.V.	The Netherlands			
Horizonte Slovenia Fund	The Netherlands	•		•
Gomes Noord Holland				
(Mercedes Benz)	The Netherlands			
CETECO Group	The Netherlands	1984 -	1987	
VAN OMMEREN Group	The Netherlands	1987	1988	

Full first names and surname

Godfried Arthur Leonard Rupert Diepenhorst

Any former first name(s) or surname

None

Residential address

Dammerweg 10 1383 HT Weesp The Netherlands

Nationality

Dutch

Date and place of birth

Zeist, the Netherlands on 4 March 1944

Business occupation

Director

COMPANY NAME	COUNTRY OF	DATE	DATE	Registered
	INCORPORATION	APPOINTED	RESIGNED	NUMBER
*		6 = 6 D : 0 =		
Lotus Green Limited	Ireland	25.08.95		229218
ING Trust (Nederland)B.V.	The Netherlands	01.07.87		
3i International B.V.	The Netherlands	18.08.87		•
3i Netherlands Holdings B.V.	The Netherlands	02.03.92		
Bostik Acquisition Netherlands B.V.	The Netherlands	09.01.90		
CIN Consentor Invest Nederland B.V.	The Netherlands	01.09.90		-
CIN Consentor Real Estate NL B.V.	The Netherlands	12.09.90		
Deslindo B.V.	The Netherlands	31.03.94		
Eachairn Investments B.V.	The Netherlands	11.06.91		
Burodis Film Productions B.V.	The Netherlands	30.11.94		
Bastlease Limited	England	26.11.94		
EG Invest Building B.V.	The Netherlands	29.06.93		
Endel Holding B.V.	The Netherlands	01.01.92		
FEC Strategic Investment B.V.	The Netherlands	20.12.93		
Ficosa International Holdings N.V.	The Netherlands	06,06.95		
Genfico Holding B.V.	The Netherlands	24.05.95		
H van Duinen Beheer B.V.	The Netherlands	01.12.92	-	
Harten-Emmelot Stichting	The Netherlands	1995		
I.P.F. Nederland B.V.	The Netherlands	05.03.93		
I.P.F. Vastgoed B.V.	The Netherlands	05.03.93		
Jachin S.A.R.L.	France	11.95		
KB Ifima B.V.	The Netherlands	01.06.93		
Koping Invest Amsterdam B.V.	The Netherlands	04.12.90		_
Mallingerbrug B.V.	The Netherlands	29.08.96		
McKechnie Investments B.V.	The Netherlands	11.06.91		
Medos Western (Med. Products) B.V.	The Netherlands	28.03.91	30,06.94	
Mustang B.V.	The Netherlands	01.12.92		
Muteka B.V.	The Netherlands	13.09.91		

Norwich Union Assets Limited	England	26.11.94
Norwich Union Equipments Finance Ltd	England	26.11.94
Norwich Union Leasing Finance Ltd.	England	26.11.94
Norwich Union Leasing Industrial Ltd	England	26.11.94
Norwich Union Leasing Limited	England	26.11.94
Norwich Union Overseas Holdings B.V.	The Netherlands	28.05.93
PSM Fasteners International B.V.	The Netherlands	09.07.90
Protea Investments B.V.	The Netherlands	16.04.91
RBSG Investments B.V.	The Netherlands	29.08.90
Repsol International Finance B.V.	The Netherlands	15.12.92
Royscot International Finance B.V.	The Netherlands	29.02.88
Societe Privee Services B.V.	The Netherlands	30.11.94
Tembec International B.V.	The Netherlands	19.04.95
Tornet Europe B.V.	The Netherlands	21.04.93
Tortosa B.V.	The Netherlands	29.02.96
Trust Maatschappij ING Bank N.V.	The Netherlands	21.04.93
Williams & Glyns Nederland B.V.	The Netherlands	29.02.88
William Grant & Sons Netherlands B.V.	The Netherlands	21.04.93

## REPORT AND FINANCIAL STATEMENTS

FOR THE YEAR ENDED

31 MARCH, 1996

Certified a true copy of the Balance Sheet, including every document required by law to be attached thereto, and of the report of the auditors on and of the report of the directors accompanying it laid before the Annual General Meeting on 23 July, 1996.

DIRECTOR

VA ATTAGOGS

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## <u>Index</u>

- 1. Council Directive 88/627/EEC of 12 December 1988 on the information to be published when a major holding in a listed company is acquired or disposed of.
- 2. High Court Judgment by Mr. Justice Barr delivered on 8 February 1996 H.M.I.L. Limited (Formerly Hibernia Meats International Limited), the Plaintiff; and The Minister for Agriculture and Food, the Defendant.
- 3. High Court Judgment by Mr. Justice Murphy delivered on 21 June 1994 Bhosphorous Hava Yollari Turizm Ve Ticaret Anonim Sirketi, the Applicant; and The Minister for Transport, Energy and Communications, Ireland and the Attorney General and Team Aer Lingus Limited, the Respondents.
- 4. High Court Judgment by Mr. Justice Keane delivered on 4 November 1994 John Michael Mulcahy, the Applicant; and The Minister for the Marine, the Respondent; and Comhlacht Iascaireacht Fanad Teoranta, the Notice Party.
- 5. High Court Judgment by Justice Murphy delivered on 2 October 1987 Patrick Lawlor, the Plaintiff; and The Minister for Agriculture, Noel Duffy and Mary Duffy, the Defendants.

WF-1293677-v1

#### COUNCIL DIRECTIVE 88/627/EEC

#### of 12 December 1988

on the information to be published when a major holding in a listed company is acquired or disposed of

THE COUNCIL OF THE EUROPEAN COMMUNITIES.

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 thereof,

Having regard to the proposal from the Commission(1),

In cooperation with the European Parliament<sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>(3)</sup>,

Whereas a policy of adequate information of investors in the field of transferable securities is likely to improve investor protection, to increase investors' confidence in securities markets and thus to ensure that securities markets function correctly;

Whereas, by making such protection more equivalent, coordination of that policy at Community level is likely to make for greater inter-penetration of the Member States' transferable securities markets and therefore help to establish a true European capital market;

Whereas to that end investors should be informed of major holdings and of changes in those holdings in Community companies the shares of which are officially listed on stock exchanges situated or operating within the Community;

Whereas coordinated rules should be laid down concerning the detailed content and the procedure for applying that requirement;

Whereas companies, the shares of which are officially listed on a Community stock

exchange, can inform the public of changes in major holdings only if they have been informed of such changes by the holders of those holdings;

Whereas most Member States do not subject holders to such a requirement and where such a requirement exists there are appreciable differences in the procedures for applying it; whereas coordinated rules should therefore be adopted at Community level in this field.

HAS ADOPTED THIS DIRECTIVE:

#### Article 1

- 1. Member States shall make subject to this Directive natural persons and legal entities in public or private law who acquire or dispose of, directly or through intermediaries, holdings meeting the criteria laid down in Article 4 (1) which involve changes in the holdings of voting rights in companies incorporated under their law the shares of which are officially listed on a stock exchange or exchanges situated or operating within one or more Member States.
- 2. Where the acquisition or disposal of a major holding such as referred to in paragraph 1 is effected by means of certificates representing shares, this Directive shall apply to the bearers of those certificates, and not to the issuer.
- 3. This Directive shall not apply to the acquisition or disposal of major holdings in collective investment undertakings.
- 4. Paragraph 5 (c) of Schedule C of the Annex to Council Directive 79/279/EEC of 5 March 1979 coordinating the conditions for the admission of securities to official stock exchange listing<sup>(1)</sup>, as last amended by

OJ No C 351, 31, 12, 1985, p. 35, and OJ No C 255, 25, 9, 1987, p. 6.

OJ No C 125, 11, 5, 1987, p. 144, and OJ No C 309, 5, 12, 1988.

<sup>&</sup>lt;sup>(3)</sup> OJ No C 263, 20, 10, 1986, p. 1.

<sup>49</sup> OJ No L 66, 16. 3. 1979, p. 21.

Directive 82/148/EEC<sup>5</sup>, is hereby replaced by the following:

'(c) The company must inform the public of any changes in the structure (shareholders and breakdowns of holdings) of the major holdings in its capital as compared with information previously published on that subject as soon as such changes come to its notice.

In particular, a company which is not subject to Council Directive 88/627/EEC of 12 December 1988 on the information to be published when a major holding in a listed company is acquired or disposed of must inform the public within nine calender days whenever it comes to its notice that a person or entity has acquired or disposed of a number of shares such that his or its holding exceeds or falls below one of the thresholds laid down in Article 4 of that Directive.

## Article 2

For the purposes of Directive, 'acquiring a holding' shall mean not only purchasing a holding, but also acquisition by any other means whatsoever, including acquisition in one of the situations referred to in Article 7.

### Article 3

Member States may subject the natural persons, legal entities and companies referred to in Article 1 (1) to requirements stricter than those provided for in this Directive or to additional requirements, provided that such requirements apply generally to all those acquiring or disposing of holdings and all companies or to all those falling within a particular category acquiring or disposing of holdings or of companies.

#### Article 4

1. Where a natural person or legal entity referred to in Article 1 (1) acquires or disposes of a holding in a company referred to in Article 1 (1) and where, following that acquisition or disposal, the proportion of voting rights held by that person or legal entity reaches, exceeds or falls below one of the thresholds of 10%, 20%, 1 / 3, 50% and 2

the thresholds of 20% and 1 / 3 where they apply a single threshold of 25%,
the threshold of 2 / 3 where they apply the threshold of 75%.

The period of seven calendar days shall start from the time when the owner of the major holding learns of the acquisition or disposal, or from the time when, in view of the circumstances, he should have learnt of it.

Member States may further provide that a company must also be informed in respect of the proportion of capital held by a natural person or legal entity.

2. Member States shall, if necessary, establish in their national law, and determine in accordance with it, the manner in which the voting rights to be taken into account for the purposes of applying paragraph 1 are to be brought to the notice of the natural persons and legal entities referred to in Article 1 (1).

# Article 5

Member States shall provide that at the first annual general meeting of a company referred to in Article 1 (1) to take place more than three months after this Directive has been transposed into national law, any natural person or legal entity as referred to in Article 1 (1) must notify the company concerned and at the same time the competent authority or authorities where he holds 10% or more of its voting rights, specifying the proportion of voting rights actually held unless that person or entity has already made a declaration in accordance with Article 4.

Within one month of that general meeting, the public shall be informed of all holdings of 10% or more in accordance with Article 10.

<sup>/ 3,</sup> he shall notify the company and at the same time the competent authority or authorities referred to in Article 13 within seven calendar days of the proportion of voting rights he holds following that acquisition or disposal. Member States need not apply:

Ø OJ No L 62, 5, 3, 1982, p. 22.

<sup>69</sup> OJ No L 348, 17. 12. 1988, p. 62.

## Article 6

If the person or entity acquiring or disposing of a major holding as defined in Article 4 is a member of a group of undertakings required under Directive 83/349/EEC<sup>(1)</sup> to draw up consolidated accounts, that person or entity shall be exempt from the obligation to make the declaration provided for in Article 4 (1) and in Article 5 if it is made by the parent undertaking or, where the parent undertaking is itself a subsidiary undertaking, by its own parent undertaking.

## Article 7

For the purposes of determining whether a natural person or legal entity as referred to in Article 1 (1) is required to make a declaration as provided for in Article 4 (1) and in Article 5, the following shall be regarded as voting rights held by that person or entity:

- voting rights held by other persons or entities in their own names but on behalf of that person or entity,
- voting rights held by an undertaking controlled by that person or entity;
- voting rights held by a third party with whom that person or entity has concluded a written agreement which obliges them to adopt, by concerted exercise of the voting rights they hold, a lasting common policy towards the management of the company in question.
- voting rights held by a third party under a written agreement concluded with that person or entity or with an undertaking controlled by that person or entity providing for the temporary transfer for consideration of the voting rights in question,
- voting rights attaching to shares owned by that person or entity which are lodged as security, except where the person or entity holding the security controls the voting rights and declares his intention of exercising them, in which case they shall be regarded as the latter's voting rights,
- voting rights attaching to shares of which that person or entity has the life interest,

- voting rights which that person or entity or one of the other persons or entities mentioned in the above indents is entitled to acquire, on his own initiative alone, under a formal agreement; in such cases, the notification prescribed in Article 4 (1) shall be effected on the date of the agreement,
- voting rights attaching to shares deposited with that person or entity which that person or entity can exercise at its discretion in the absence of specific instructions from the holders.

By way of derogation from Article 4 (1), where a person or entity may exercise voting rights referred to in the last indent of the preceding subparagraph in a company and where the totality of these voting rights together with the other voting rights held by that person or entity in that company reaches or exceeds one of the thresholds provided for in Article 4 (1), Member States may lay down that the said person or entity is only obliged to inform the company concerned 21 calendar days before the general meeting of that company.

# Article 8

- For the purposes of this Directive, 'controlled undertaking' shall mean any undertaking in which a natural person or legal entity:
- (a) has a majority of the sahreholders' or members' voting rights; or
- (b) has the right to appoint or remove a majority of the members of the administrative, management or supervisory body and is at the same time a shareholder in, or member of, the undertaking in question; or
- (c) is a shareholder or member and alone controls a majority of the shareholders' or members' voting rights pursuant to an agreement entered into with other shareholders or members of the undertaking.
- 2. For the purposes of paragraph 1, a parent undertaking's rights as regards voting, appointment and removal shall include the rights of any other controlled undertaking and those of any person or entity acting in his own name but on behalf of the parent undertaking or of any other controlled undertaking.

σ OJ No L 193, 18, 7, 1983, p. 1.

### Article 9

- 1. The competent authorities may exempt from the declaration provided for in Article 4 (1) the acquisition or disposal of a major holding, as defined in Article 4, by a professional dealer in securities, in so far as that acquisition or disposal is effected in his capacity as a professional dealer in securities and in so far as the acquisition is not used by the dealer to intervene in the management of the company concerned.
- 2. The competent authorities shall require the professional dealers in securities referred to in paragraph 1 to be members of a stock exchange situated or operating within a Member State or to be approved or supervised by a competent authority such as referred to in Article 12.

### Article 10

- 1. A company which has received a declaration referred to in the first subparagraph of Article 4 (1) must in turn disclose it to the public in each of the Member States in which its shares are officially listed on a stock exchange as soon as possible but not more than nine calender days after the receipt of that declaration.
- A Member State may provide for the disclosure to the public, referred to in the first subparagraph, to be made not by the company concerned but by the competent authority, possibly in cooperation with that company.
- 2. The disclosure referred to in paragraph 1 must be made by publication in one or more newspapers distributed throughout or widely in the Member State or States concerned or be made available to the public either in writing in places indicated by announcements to be published in one or more newspapers distributed throughout or widely in the Member State or States concerned or by other equivalent means approved by the competent authorities.

The said disclosure must be made by publication in the official language or languages, or in one of the official languages or in another language, provided that in the Member State in question the official language or languages or such other language

is or are customary in the sphere of finance and accepted by the competent authorities.

## Article 11

The competent authorities may, exceptionally, exempt the companies referred to in Article 1 (1) from the obligation to notify the public set out in Article 10 where those authorities consider that the disclosure of such information would be contrary to the public interest or seriously detrimental to the companies concerned, provides that, in the latter case, such omission would not be likely to mislead the public with regard to the facts and circumstances knowledge of which is essential for the assessment of the transferable securities in question.

## Article 12

- 1. Member States shall designate the competent authority or authorities for the purposes of this Directive and shall inform the Commission accordingly, specifying, where appropriate, and division of duties between those authorities.
- Member States shall ensure that the competent authorities have such powers as may be necessary for the performance of their duties.
- 3. The competent authorities in the Member States shall cooperate wherever necessary for the purpose of performing their duties and shall exchange any information useful for that purpose.

#### Article 13

For the purpose of this Directive, the competent authorities shall be those of the Member State the law of which governs the companies referred to in Article 1 (1). Article 14

#### Article 14

1. Member States shall provide that every person who carries on or has carried on an activity in the employment of a competent authority whall be bound by professional secrecy. This means that no confidential information received in the course of their duties may be divulged to any person or

authority except by virtue of provisions laid down by law.

- 2. Paragraph 1 shall not, however, preclude the competent authorities of the various Member States from exchanging information as provided for in this Directive. Information thus exchanged shall be covered by the obligation of professional secrecy to which persons employed or previously employed by the competent authorities receiving the information are subject.
- 3. A competent authority which receives confidential information pursuant to paragraph 2 may use it solely for the performance of its duties.

### Article 15

Member States shall provide for appropriate sanctions in cases where the natural persons or legal entities and the companies referred to in Article 1 (1) do not comply with the provisions of this Directive.

## Article 16

- 1. The Contact Committee set up by Article 20 of Directive 79/279/EEC shall also have as its function:
- (a) to permit regular consultations on any practical problems which arise from the application of this Directive and on which exchanges of view are deemed useful;
- (b) to facilitate consultations between the Member States on the stricter or additional requirements which they may lay down in accordance with Article 3, so that the requirements imposed in all the Member States may be brought into line, in accordance with Article 54 (3) (g) of the Treaty;
- (c) to advise the Commission, if necessary, on any additions or amendments to be made to this Directive. Article 17

#### Article 17

1. Member States shall take the measures necessary for them to comply with this Directive before 1 January 1991. They shall forthwith inform the Commission thereof.

2. Member States shall communicate to the Commission the provisions of national law which they adopt in the field governed by this Directive.

### Article 18

This Directive is addressed to the Member States.

Done at Brussels, 12 December 1988. For the Council The President P. ROUMELIOTIS

#### THE HIGH COURT

8681P/1991

08/02/1996

BETWEEN

H.M.L. LIMITED (FORMERLY HIBERNIA MEATS INTERNATIONAL LIMITED)

PLAINTIFF

AND

THE MINISTER FOR AGRICULTURE AND FOOD

DEFENDANT

Words & Phrases: CEF Subject Headings: CONTRACT: formation DAMAGES: penalty EUROPEAN COMMUNITIES: commission NATURAL, JUSTICE: fair procedures

Citations: EEC REG 805/63

EEC REG 2675/88 EEC REG 565/80 EEC REG 3663/87

EEC REG 2220/85 ART 29 EEC REG 1208/81 ART 2(2)

EEC REG 2675/88 ART 4(1) EEC REG 2675/88 ART 4(4)

BUCHANAN & CO V BABCO LTD 1977 OB 208

NESTOR V MURPHY 1979 IR 326

LAWLOR V MIN FOR AGRICULTURE 1990 1 1R 356 BOSPHORUS AIRLINES V MIN FOR TRANSPORT 1994 2 ILRM 551, 1994 3 CMLR 464

BENNION ON STATUTORY INTERPRETATION 2ED 583

CASHER V HOLMES 1831 2 B & AD 592

AG V PRINCE ERNEST AUGUSTUS OF HANOVER 1957 AC 436 BOURNE V NORWICH CREMATORIUM LTD 1967 I WLR 691

KING V AG 1981 IR 233 AG V CUNNINGHAM 1932 IR 28

AG, PEOPLE V EDGE 1943 IR 115 VAUGHAN THE LAW OF THE EUROPEAN COMMUNITIES PARA 2.312

KONECKE V BALM 1984 ECR 3291

MAAS V BUNDESANSTALT FUER LANDWIRTSCHAFTLICHE MARKTORDNUNG 1986 ECR 3537

ATALANTA V PRODUKTSCHAP VOOR VEE EN VLEES 1979 ECR 2137

EEC REG 1964/82 ART 1

EEC REG 1964/82 ART 2(1)

**EEC REG 1964/82 ART 2** 

EEC REG 1964/82 ART 6

SCHERMERS & WAELBROECK JUDICIAL PROTECTION IN THE EUROPEAN COMMUNITIES 5ED (1992) PARA 29

VAUGHAN LAW OF THE EUROPEAN COMMUNITY 1ED VI PARA 2,311

Synopsis:

CONTRACT

Terms - Certainty - Requirement - Breach - Sanction - Absence - Penalties claimed for breach of contract - Penalty system created and invoked by Minister of State after date of contract - System approved by officials of Commission - Penatties unauthorised and irrecoverable - (1991/8681 P - Barr J. - 8/2/96)

HMLL Ltd. v. Minister for Agriculture and Food

DAMAGES

Imposition - Authority - Absence - Minister of State - Intervention agent - Community regulation - Alleged breach by meat exporter - Absence of sanction under domestic law or under Community law - Minister's concoction of penalty system after date of trader's contract with Minister - System approved by officials of the Commission - Penalties unauthorised and irrecoverable - (1991/8681 P - Barr J. - 8/2/96)

H.M.LL. Ltd. v. Minister for Agriculture and Food

EUROPEAN COMMUNITIES

Regulations - Implementation - Interpretation - Principles - Teleological approach - Beef trade - Boneless male beef cuts of meat - Private storage assistance and export rebates - Conditions imposed by Community regulations - Alleged breach of conditions by trader - Minister of State being intervention agent for Community Penalties imposed by Minister at instigation of Commission - Penalties not authorised by Community or national law - Penalty system created after date of relevant contract - Lack of proportionality in effect of penalties - Natural justice - Fair procedures - Trader's claim to damages upheld - Commission Regulation 1964/82, articles 1, 2 - Commission Regulation 2675/88, article 4 - (1991/8681 P - Bart J. - 8/2/96)

H.M.L. Ltd. v. Minister for Agriculture and Food

Fair procedures

Contract - Breach - Sanction - Absence - Penalty system created by Minister of State after date of contract - System unauthorised under domestic and Community law - Penalties unauthorised and irrecoverable - (1991/8681 P - Bart J. - 8/2/96)

H.M.I.L. Ltd. v. Minister for Agriculture and Food

## INTRODUCTORY FACIS

The plaintiff (hereinafter called "Hibernia") is a limited liability company having its registered office at Hibernia House, Sallins, County Kildare. At all umes material to this action it was engaged in the international beef trading business including the export of meat to destinations outside the European Union. The defendant is the Minister for Agriculture and Food (hereinafter called "the Minister"). At all material times, through his servants and agents, he acted as the European Community's Intervention Agent in Ireland. In that capacity the Minister operated the Aids for Private Storage (APS) Scheme and the Export Refund scheme pursuant to European Community ("EEC") Regulations applicable thereto.

Under the 1988 APS scheme, Hibernia, between the months of September and December, entered into a total of 138 individual contracts ("the APS contracts") with the Minister

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# HMIL LTD (FORM, HIBERNIA MEA'TS INT, LTD) v. MIN AGRICULTURE

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relating to de-boned male beef sides produced in accordance with EEC Regulations 2675/88 (being the specific regulations relating to the 1988 APS scheme). In respect of each of the APS contracts, Hibernia made an offer to the Minister to store beef for private aid purposes under Regulation 2675/88 and each offer was accepted by the Minister. The terms and conditions of each offer were as follows:-

"We the offerer, hereby offer to store for private storage purposes in accordance with Sections 3, 4, 5 and 6 [in Regulation 2675/88] above and we undertake, if our offer is taken up, to:

- (a) place in store for the purposes of obtaining private storage aid only meat from livestock which have been staughtered for not more than ten
- (b) place the products in store in bone-in or boneless form at our own risk and expense within twenty-eight days of the date of acceptance of our
- (c) keep the products in store in the same condition for at least four months in accordance with Section 5 above and not to after the stored products in any way or to exchange them for other products or to transfer them from one store to another during the storage period;
- (d) be responsible for ensuring that correctly completed documents in relation to this contract are forwarded to the Department as soon as possible but not later than six months after the contracted storage date;

[1996] WJSC-HC HMIL LTD (FORM, HIBERNIA MEATS INT, LTD) v. MIN AGRICULTURE

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- (e) store the products in easily identifiable lots in which the weight and date of entry into store are clearly marked;
- (f) permit the Department at all times to check that all the obligations laid down in the Contract are being observed;
- (g) conform with all respects and accept conditions along with the relevant Community legislation."

As security for the offer, Hibernia was obliged to provide two separate bank securities in respect of each of the APS contracts. The first security was concerned with the due performance by Hibernia of the contract and it was provided that the security is forfeit if production is not completed in accordance with the contract. The second security is required to be put in place by a producer who wishes to obtain advance payment of APS aid.

The securities were in the following standard form:-

(a) "The Minister for Agriculture and Food, Agriculture House, Kildare Street, Dublin 2.

Date:

We (name and address of bank)

hereby engage ourselves to be principal debtors to you jointly and severally with Hibernia Meats International Limited, Hibernia House, Sallins, County Kildare (hereinafter called the Applicants) in respect

[1996]

# HMIL LTD (FORM. HIBERNIA MEATS INT. LTD) v. MIN AGRICULTURE

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of every sum which the Applicant shall become liable to pay to you pursuant to security in respect of contracts made by him/them for the private storage of beel pursuant to Regulation (EEC) No. 805/63 as amended on or after the date of this guarantee and any such regulations as may be made from time to time.

Our liability under this guarantee shall not exceed the sum of IR£

but within the limit is the guarantee for the whole of each and every sum in which the Applicant shall become liable to you as aforesaid. This guarantee is valid until all obligations arising thereunder have been discharged to the satisfaction of the Minister for Agriculture and Food,

Signature

Witnessed by:

For and on behalf of (name and address of bank)

(b) "The Minister for Agriculture and Food, Agriculture House, Kildare Street, Dublin 2.

Date:

We, (name and address of bank)

hereby engage ourselves to be principal debtors to you

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jointly and severally with Hibernia Meats Limited, Hibernia House, Sallins, County Kildare. (Hereinafter called the Applicants), in respect of every sum which the Applicant shall become liable to pay to you in respect of advance payments of aid for private storage under contracts made by the Applicants for the private storage of beef pursuant to present and future regulations of the European Community (including Regulations No. 805/68 and 2675/88 as amended or to be amended).

And, in consideration of all such advances made and to be made by you to the Applicants pursuant to the said regulations or any of them (as amended or to be amended) for the time being in force concerning advances by you of sums of money in respect of aid for private storage, we hereby guarantee repayment to you by the Applicants of the amounts of all such aid for private storage as shall have been advanced by you to the Applicants which become repayable by the Applicants to you pursuant to the said regulations of the European Communities or any of them, increased by such percentage or percentages as may be provided for by such regulations. This guarantee is for a maximum amount of IR£ (amount in words).

Signature:

For and on behalf of (name and address of bank)

Date:

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All of Hibernia's APS contracts related to de-boned meat and in respect of each it received from the Minister an acceptance of its offer. Hibernia also put in place both types of securities in respect of each such contract.

Clause 5 of the Minister's acceptance of the said offers was in the following terms:-

"Please notify Veterinary Officer in charge three days in advance of commencement of slaughter, cutting, de-boning and storage operation."

The purpose of this requirement was to enable the Minister as intervention Agent to engage in examination, inspection and supervision of each of Hibernia's production units for the purposes of ascertaining whether or not there had been compliance with the relevant EEC regulations and for the purposes of certifying such compliance.

Hibernia, at all material times, sub-contracted most of the slaughtering, de-boning, trimming and packaging of beef, the subject matter of this action, and this fact was known to the Minister, his servants and agents, at all material times. Between the months of September and December, 1988, Hibernia, by itself and through its sub-contractors, duly slaughtered, de-boned, trimmed and packed 13,365,00 (bone-in) tonnes of beef which was then placed in storage under the terms and provisions of the APS contracts pursuant to the 1988 APS scheme. In respect of all such beef produced under the APS scheme, Hibernia also applied for the payment of export refunds under a scheme governed primarily by EC Regulations, 1964/82. Export Refunds are payable to an exporter of beef to certain

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specified territories outside the European Community. For the purpose of obtaining advance payment of the export refunds, the plaintiff submitted 363 Advance Payment forms (the "AP forms") to the Minister. Each AP form was in respect of a particular quantity of beef and was accompanied by a de-boning certificate. Hibernia was further obliged to provide a bank security for an amount equivalent to the export refund payable plus 20% in respect of the quantity specified on each AP form. The security in that regard was in the following terms:-

"To the Minister for Agriculture and Food, Dublin 2. We [the bank] bereby engage ourselves to be principal debtor to you jointly and severally with Hibernia Meats International Limited, Hibernia House, Sallins, County Kildare (hereinafter called the Applicants) in respect of every sum which the Applicants shall become liable to pay to you pursuant to advance payment of Export Refunds together with surcharges made on or after the date of this guarantee and in respect of every sum which the Applicants shall become liable to pay to you pursuant to advance payment of Export Refunds already made together with surcharges, where any obligations pertaining to such advance payments are not fulfilled under the relevant regulations of the European Economic Community for the time being in force pursuant to the Common Agricultural Policy of the EEC including Regulations (EEC) 565/80 and 3663/87, as amended or to be amended.

Our liability under this guarantee shall not exceed

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the sun of IRE but within that limit is a guarantee for the whole of each and every sum in which the Applicants shall become liable to you as aforesaid. We undertake jointly and severally with the Applicants to pay, within thirty days of demand by the Minister for Agriculture and Food, any sum within the limit of this guarantee, due once the security is declared forfeit. This guarantee is valid until all obligations arising thereunder have been discharged to the satisfaction of the Minister for Agriculture and Food. It is understood that we may by seven days written notice to you discharge ourselves from the liability under this guarantee in respect of any advance payments made to the Applicants after the date on which the notice expires. We agree that whether or not such notice is sent through the post it shall not be deemed to have been delivered unless actually received in your office."

During the period of the 1988 contract season the servants and agents of the Minister, having inspected the various aspects of the work in relation to the total production of beef under the APS contracts comprised therein, duly executed and signed certificates (Form 88/4) and duly certified on each day that such a certificate was signed and executed, that

2 "(1) the meat described in this schedule comes from adult male cattle only, and each piece has been appropriately "M" stamped,

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- (2) all beef has been classified in accordance with the Community Scale for carcass classification.
- (3) the details given above are in all respects correct
  - (a) weigh-in of beef took place [specify the date]
  - (b) the weights shown overleaf (on the document) were recorded when the meat was in a chilled state, and

(c) the following is a summary of the weights obtained at the time of the weighing-in [details as set out in the document]".

By a further form (Form 88/5) the servants and agents of the Minister certified that details given in respect of "Type of cut, number of boxes and net weight" as set out in the form were correct in all respects and that all other details as specified were also correct. The Minister, his servants and agents, duly issued the certificates pursuant to the APS scheme and in consequence appropriate advance payments were made to Hibernia. The Minister, his servants or agents, also provided to Hibernia a further certificate known as a de-boning certificate pursuant to the Regulations 1964/82 for the purposes of obtaining payment of export refunds. This certificate, inter alta, confirmed that the quantity of beef referred to in the certificate was:

"Meat of bovine animals, fresh or chilled, other than boned, each piece individually wrapped from the hind quarters of the male adult bovine animal with a maximum of nine ribs or part of ribs."

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Following the production of beef pursuant to the APS contracts, Hibernia applied for and obtained from the Minister £5,344,605.11 in APS. It is submitted on Hibernia's behalf that it fully complied with all of its obligations under the APS contracts and the relevant EC Regulations. It is also submitted that Hibernia complied with all of its obligations under the AP Forms, the Export Refund scheme and EC Regulations. It applied for and obtained from the Minister £16,270,139.96 in export refunds.

It is not in dispute that between September, 1988 and April, 1989, Hibernia sold almost all of the 1988 season beef processed by it and through its sub-contractors to third parties in territories outside the European Union and thereby ceased to have any proprietary interest in such beef and/or to have possession thereof. The sales in question occurred subsequent to certification and payments under the APS and Export Refunds schemes and the Minister at all material times knew that Hibernia would be engaged in the sale of such beef to third parties as permitted by the relevant regulations.

Between the months of April and September, 1989, the Minister, through his servants and agents, carried out a major sampling exercise relating to Hibernia's products then in store and in its possession in respect of which payments had been made pursuant to the APS and the Export Refunds schemes for the 1988 season. The Minister was entitled to carry out such an examination pursuant to the relevant regulations. Consequent upon that examination Ms. Mary Harvey, Principal FEOGA Division in the Department of Agriculture and Food wrote to Hibernia on behalf of the Minister by letter dated 17th May, 1991 as follows:-

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"Dear Sirs,

I refer to the beef sampling operation conducted during 1989 by this Department and the Customs authorities on boncless beef produced under the 1988 APS Scheme and declared for export with the benefit of Export Refunds.

Insofar as the production of your company is concerned the sampling operation yielded the following results. All of the product selected for sampling was found to be physically present and available for inspection in its designated store or at the point of inspection. All of the meat examined was found to comply with the relevant Community and National hygiene and quality requirements. The weights recorded on examination corresponded to those declared by your company. No infringements were observed in respect of cuts other than plate and flank and midrib.

A number of cartons of plate and flank and midrib were found to contain scraps and trimmings ineligible either for APS aid or for the export refunds claimed. In the case of four of the production units examined, namely, Athy, Sallins, Tumory and Ballymahon, the level of scraps and trimmings uncovered was extremely high both in terms of the volume of cartons found to contain such trimmings and in terms of the level of trimmings found in each carton. The Department takes an extremely serious view of the scale of infractions found in respect of these production units.

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A number of cartons of plate and flank and midrib examined were found to contain non-individually-wrapped pieces of meat which are ineligible for the export refunds claimed. The incidents of such inclusions was significant in respect of the four production units mentioned in the preceding paragraph.

Some cartons were found to contain both trimmings and non-individually wrapped pieces of meat. In addition, there was evidence that cod fat had not been properly trimmed from the beef in certain cartons.

The results of the sampling operation have been considered by the Department and its findings and correction methodology has been discussed with the EC Commission. Having regard to the seriousness of the infringements and the Regulations concerned the Minister considers it appropriate to disallow APS and export refunds according to the following criteria.

- All cartons found to contain trimmings and cod fat are excluded from A.P.S. and export refunds and the 20% advance payment premium is also deemed to be recoverable.
- - All cartons found to contain non-individually wrapped pieces of meat are excluded from export refunds and the 20% advance payment premium is also deemed to be recoverable.

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- - The sampling results are extrapolated across the total plate and flank and midrib at the production units concerned, with separate calculations for each production unit. In this connection your representations concerning separate treatment for the plate and flank and midrib cuts are noted. However, from its examination of the production record of the plants concern the Department is satisfied that distinction is not warranted between these cuts for the purpose of application of financial corrections.
- - The extrapolation method for A.P.S. is based on the exclusion from A.P.S. aid plus regulatory premium of the percentage by weight of trimmings found relative to the weight of the cartons sampled.
- The extrapolation method for export refunds is based on the exclusion from export refunds plus regulatory premium of the percentage by weight
  of trimmings and non-individually wrapped pieces found relative to the weight of the cartons sampled.
- Where the weight of trimmings in any carton is greater than or equal to 3 kgs the weight of the entire carton is included in the extrapolation calculation. The basis for application of the 3

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kgs limit is the view that a trimming level per carton of greater than or equal to 3 kgs cannot be justified on the grounds of poor de-boning alone.

- · Where cod fat has been uncovered the weight of the entire carton is included in the extrapolation exercise for A.P.S. and export refunds.
- An average weight per carton has been established for each production unit and the exclusion of cartons and extrapolation procedure has been based on the average weights.

The financial consequences of the above are the disallowance of a total of £241,021.03 in A.P.S. aid and £1,135,967.93 is export refunds, including the 20% advance payment premium. Details of the calculations are set out in the accompanying schedules. Since the amounts disallowed are composed of advance payments already made plus regulatory 20% premium, the securities covering the advance payments concerned have been declared forfeit.

In addition to the above it is considered that the regulatory breaches in respect of the plate and flank and midrib production of the Sallins, Athy, Tunney and Ballymahon plants are such as to warrant forfeiture of A.P.S. contract securities in respect of the bone-in

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equivalent of this production at these production units. In consequence a sum of £148,759.97 in APS contract securities has been declared forfeit in respect of this production. Details of the calculation of the forfeitures are given in the accompanying schedules.

You are requested to make payment of the above amounts, totalling £1,525,748.93 to the Department within 30 days of the date of issue of this letter, i.e. not later than 17th June, 1991. If payment is not received application for the amounts in question will be made to your guarantors in accordance with Art 29 of the Regulation 2220/85.

I would also inform you that the papers relevant to this case are being forwarded to the Office of the Director of Public Prosecutions to consider whether further proceedings are warranted.

Yours faithfully,

MARY HARVEY

Principal

FEOGA Division",

Hibernia did not meet the foregoing demand made on behalf of the Minister for reasons set out infra. On 3rd November, 1992 the Minister purported to call in the securities provided by Hibernia's banks pursuant to the APS contracts and the AP forms.

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Hibernia's case may be summarized as follows:-

- (1) That the Minister has misconstrued the regulations in question, that there has been no breach thereof by Hiberoia and in the premises the disallowance of aid under the respective schemes and the purported forfeiture of securities is null and void and of no effect in law.
- (2) In the alternative, the Minister is in breach of the relevant E.C. Regulations and/or has applied a methodology which is unfair, unreasonable and capricious and in respect of which there is a lack of proportionality as between the alleged level of infractions of the regulations applicable to the respective schemes and the proposed forfeitures and/or he is acting in breach of the rules of natural justice in purporting to impose a forfeiture by way of disallowance in respect of boef which was not inspected and which could not be inspected by Hibernia for the purposes of verification of the allegations made by the Minister and he was acting in breach of natural and/or constitutional justice in so doing and in seeking to impose a system of purported financial connections which was unauthorised in law, unfair and disproportionate.

The Minister, his servants and agents, was aware at all material time that Hibernia procured various sub-contractors to carry out all stages of production as to the aughtering, de-boning, trimming and packaging of beef

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produced for the purposes of the 1988 APS and Export Refund schemes which were monitored by the Minister (as the Irish Intervention Agency) by way of the continuous presence of his officials on the premises of each of Hibernia's production units at all times during the 1988 season. The supervision was carried out on the Minister's behalf by agricultural and vetinary officers. Spot checks of product were made on a daily basis by the Minister's officials and certificates of due compliance with the regulations relating to the schemes were issued by the officials concerned. Arising out of the supervisory regime carried out on behalf of the Minister, it was submitted on behalf of Hibernia that he, his servants or agents, were under a duty of care to exercise reasonable diligence in and about the inspection, supervision and certification of the beef as processed and produced in accordance with the respective schemes. It was further submitted that at all material times the Minister, his servants or agents, well knew that Hibernia would rely upon such certification in and about the making of payments to its sub-contractors and the submission of valid claims for advanced payments under the APS and Export Refund schemes. It was further contended that to the extent which Hibernia might have any liability to the Minister, such liability arises as a result of the negligence and breach of duty on the part of the Minister in failing to exercise any, or any reasonable, diligence in and about the inspection and certification of the beef as processed and procured for the purposes of the 1988 APS and Export Refund schemes, and by reason thereof tibernia contends that the Minister is estopped from claiming any monies from it as sought in the

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letter of 17th May, 1991 or at all and is estopped from forfeiting any of the securities.

Hibernia further contends that at all material times it had a legitimate expectation, based on the foregoing procedure for certification, examination and inspection of its beef, that where a certificate had been signed and issued by the Minister, his servants or agents, and where advance payments had been made to Hibernia that it would be treated for all purposes as having regularly and properly compiled with the relevant regulations and schemes. In the premises Hibernia contends that the Minister is not entitled to disallow the sums referred to in the letter of 17th May, 1991 and/or to forfeit the securities referred to therein and/or to make any demand in respect thereof and/or is estopped from disallowing such sums and/or forfeiting such securities or making any demand in respect thereof.

It was also alleged on behalf of Hibernia that, without prejudice to the generality of the foregoing, the Minister had acted ultra vires and/or in excess of and without jurisduction or power in disallowing the sums referred in the letter of 17th May, 1991 and in calculating to forfeit the securities in question in that in purporting to calculate the extent of the disallowance he has used a methodology that is incorrect, unjust, unfair and/or is in breach of and inconsistent with European Community Regulations and/or national law.

Hibernia further contends that the Minister has taken into account in his consideration, assessment and calculation of disallowances, factors which he is not entitled as a

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matter of law, to take into account and/or has acted in breach of natural justice in failing to bring such additional factors to the attention of Hibernia in and about the calculation of the disallowance which he has made and, by reason of the foregoing, the purported disallowance and forfeiture of securities is null and void and of no legal effect. And in the premises the Minister has acted unlawfully and without and in excess of jurisdiction. It is submitted that, in particular, the defendant has acted ultra vires and unlawfully in purporting to insert clause 7 (g) into the standard offer document and he is precluded from placing reliance upon it.

Hibernia also contends that notwithstanding many requests made by it to the Minister, he has failed to release the securities issued by banks at the request of Hibernia from time to time for the purposes of the 1988 APS and Export Refund schemes in respect of Hibernia's obligations pursuant to such schemes to the Minister totalling approximately £19,000,000 pounds notwithstanding that the total sum purportedly forfeited by the Minister amounts to £1,525,748.93. (In fact in course of the brial securities over and above the amount claimed were released by the Minister.) Hibernia contends that it was an express or alternatively an implied term of the granting of such securities that they would be released as soon as was reasonably practical after application for release was made by Hibernia and that the Minister was in breach of the foregoing term in failing to release the uncontested securities promptly when requested to do so. In consequence

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of which, it is contended, Hibernia has suffered loss and damage being the costs of financing the securities.

The claims made by Hibernia against the Minister are as follows:-

- (1) A declaration that the decision by the Minister to disallow the sum of £1,525,748,93 in respect of APS aid and export refunds paid to Hibernia in respect of beef produced by it under a series of contracts entered into with the Minister under the 1988 APS and Export Refund schemes is invalid and of no effect.
- (2) A declaration that in or about the performance of its contracts with the Minister in relation to the 1988 A.P.S. and Export Refund schemes for the year 1988, Hibernia acted in compliance with the E.C. Regulations governing the said schemes.
- (3) A declaration that the Minister is obliged to release the guarantees given to him in respect of Hibernia's contracts under the 1988 APS and Export Refund schemes.
- (4) Damages for negligence and breach of duty.
- (5) An injunction restraining the Minister, his servants or agents, from making any application for payment to any guarantor of Hibernia's obligations under its contracts with the Minister in respect of the APS and Export Refund schemes for the year 1988.

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- (6) Damages for breach of contract.
- (7) Further and other relief.
- (8) Interest
- (9) Costs.

In his Defence, or in course of the trial, the Minister accepted that his relationship with Hibernia in connection with the APS and export refund scheme in 1988 was naccord with the facts pleaded by Hibernia in its statement of claim except in three respects. First, he alleged that there were minor discrepancies in certain quantities aleged by Hibernia, but these are of little consequence and are irrelevant to the issues raised in this action. Secondly, Hibernia is liable for the due performance by the sub-contractors of its obligations on foot of the respective schemes. This point was not disputed by Hibernia. Thirdly, the Minister accepted that the checking system as to APS and export refund contracts adopted by him as E.C. intervention agent for Ireland was based on the permanent presence of his officials in the production units and the certification by them of products at various stages in the process of production. However, he denied that his officials had any supervisory function in the production of beef by Hibernia or its sub-contractors. He conceded that spot checks were carried out by his officials in course of production but he contended that the certificates signed by his officials were based upon the veracity of information given to them by

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persons on behalf of Hibernia and the relevant sub-contractors and in particular, representations made by such persons that the production referred to in each document complied in all respects with the conditions of the APS or Export Refund schemes as appropriate.

In essence, the Minister's defence is as follows:-

- (1) Hibernia was in breach of the regulations governing the 1988 APS and Export Refund schemes. A sampling of products revealed that four of its six production units had wrongly included in boxes of product cod fat, scraps and unwrapped trimmings.
- (2) That the permanent presence of the Minister's officials during production at the units in question and certificates issued by them in course of production did not render the Minister liable as alleged or at all for the failure of Hibernia and its sub-contractors to comply with relevant regulations governing the respective schemes.
- (3) That a system of financial corrections (arising out of Hiberma's breach of contracts relating to the 1988 APS and Export Refund schemes) devised and imposed by the Minister in consultation with and having the approval of the EC Commission, though not covered by specific regulations, accorded with European and national law; did not include penalties (except as to securities); was fair and reasonable and did not offend the principles of proportionality or natural justice.

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(4) That the amount of financial corrections assessed by the Minister at £1,525,748.93 was lawfully recoverable from Hibernia or its guarantors.

The Aids to Private Storage and the Export Refund schemes were introduced by the E.E.C. Commission to assist beef producers in member states in meeting financial difficulties arising out of over-production of beef.

APS is described in a booklet entitled "A Guide to Aids for Private Storage in the Beef Sector, Autumn 1987 Scheme" published by the Department of Agriculture and Food as being

"an aid paid to operators to remove products from the market temporarily and to store them for a certain period... The objective of APS is to even out the pattern of supply. It differs from intervention in that the products remain the property of the operator. The onus for disposing of them is on the operator... Once a scheme has been introduced by the E.E.C. Commission, one can make a contract with the Intervention Agency (the Department of Agriculture in this case) to store a certain quantity of beef for a pre-determined period. The contractor is paid aid, based on the length of storage. The beef to be stored must be fresh/chilled beef of recent production. The contractor may store the beef either in bone-in or boneless form. After a minimum storage period..., he may remove the beef from storage, provided be exports it to a country outside the E.E.C. .... A.P.S. beef which is exported qualifies for a fexport! refund in

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the same way as commercial beef, provided all the usual conditions on export refunds are met. A contractor can simultaneously place beef in A.P.S. and under Customs Warehousing Control and thereby qualify for the (higher) fresh/chilled rate of export refund and, where appropriate, the special rate of refund on make beef."

The Export Refund scheme is a mechanism for making up the difference between the market prices of beef sold within the EU Community in a given year and the lower market prices obtainable in designated areas outside the Community. It is paid while meat is in storage and is dependent on the stored meat being sold by the producer to a purchaser in a designated area. There are rates of aid payable in respect of sales to each such export territory. In essence, both schemes are based upon the nature and weight of production in store

Hibernia entered into APS and export refund contracts with the Minister in respect of approximately 13,000 tonnes of de-boned beef in the 1988 season. In ....dition to its own production unit at Sallins, it also employed five sub-contractors that year to process meat and place it in storage on Hibernia's behalf pursuant to its contracts with the Minister.

There are two EC regulations relating to the 1988 beef export season, the interpretation of which is crucial to this action. There is also a regulation (Article 2(2) of EEC 1208/81) which provides that carcasses shall be presented without cod fat (i.e., fat from the scrotal area of male

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animals). It is not in dispute that cod fat should not be included in products brought into storage on foot of the APS and/or Export Refund schemes. Other types of fat not attached to meat are also excluded. Hibernia does not dispute these prohibitions but contends that a small quantity of fat allegedly discovered only on the first day of the sampling operation carried out on behalf of the Minister (over a five month period in 1989) was not in fact cod fat.

The crucial regulations to which I have referred are as follows:-

1. EEC Regulation No. 2675/88 relates to APS storage, but also contains, inter alia, a recital to the effect that for a limited period in view of exceptional circumstances in the beef market, products under an APS contract may be stored also under the Export Refund scheme enacted by EEC Regulation No. 565/80. For the 1988 season all Hibernia's products were stored under both schemes and, therefore, were required to comply with the regulations governing each of them.

Article 4(1) stipulates that all meat from the preparation of product for storage must be placed in store.

Article 4(4) provides that-

"The large tendons, cartillages, pieces of fat and other scraps left over from cutting for boning may not be stored."

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The word underlined is probably a typographical error and should be "or" as in other language versions of the provision. The word "scraps" is not defined in this or any other EU regulation.

2. EC Regulation No. 1964/82 lays down conditions regarding the special Export Refund scheme. Article 1 is in the following terms:-

"Individually wrapped boneless cuts from fresh or chilled hindquarters of adult male cattle shall, when the terms of this Regulation are complied with, qualify for special export refunds,"

Article 2(1) provides:-

"The operator shall submit to the competent authorities indicated by the member states a declaration stating his intention to bone hindquarters as defined in Article 1 under the terms of this Regulation and to export the entire quantity of boned pieces obtained, each piece being individually wrapped."

It will be noted that as to the requirement of individual wrapping of meat, Article 1 refers to "cuts" and Article 2 to "pieces". It is evident that both terms are intended to have the same meaning and are interchangeable - see, for example, Article 8 and the specimen certificate in Annex 4 to the Regulation.

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Article 6 provides that the grant of export refunds "shall be conditional, except in circumstances of force majeure, on exportation of the total quantity of meat produced by boning....."

"The operator may, however, sell within the Community, bones, large tendons, cartilages, pieces of fat and other scraps left over from boning".

The effect of the latter provision is the same as in Article 4(4) of EEC Regulation No. 2675/88 except that bones are included in the list of by-products which may be sold within the Community. The inclusion of bones in the latter list does not arise as the product for storage is de-boned meat.

The controversy between the parties which is fundamental to this action, relates to the proper interpretation of

- (a) the term "scraps" and
- (b) the phrase "individually wrapped boncless cuts" specified in the foregoing regulations.

#### THE LAW

It is a primary rule of European law that a court should adopt a telecological or schematic approach to the interpretation and construction of EU legislation. These, at first sight somewhat frightening concepts in a common law jurisdiction, are succinctly explained in the following passage from the current edition of Schermers and Waelbroeck Judicial Protection in the European Communities, 5th edition

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(1992), paragraph 29 as follows:-

"Although at first the Court [The European Court of Justice] was more strict, after gradually establishing its position it increasingly used interpretations based on the purposes of the Community treaty. It does not rely merely on the wording, the background or even the context of the provisions concerned, but chooses the interpretation which best serves the purpose for which the provision was made. For this type of interpretation the expression "effect utile", "purposive", "function" and "teleological" interpretation are used. It is employed either for the interpretation of Community treatics or for that of secondary Community law. In the former case the expression "constitutional interpretation" may be used in order to stress the treatics, the constitution of the Communities, are the basis for this interpretation. A legal order is developing out of the constitution, and in its constitutional interpretation the Court interprets the legal order as it has evolved and in such a way that it may fulfill its function more efficiently. The spirit and the purpose of the constitution form the core of this interpretation. As a similar kind of interpretation is used for secondary Community law, the expression "teleogolical interpretation" seems more appropriate as a general denomination."

..... Teleogolical interpretation is used for three purposes:

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- (1) to promote the objective for which the rule of law was made;
- (2) to prevent unacceptable consequences to which a literal interpretation might lead, and
- (3) to fill gaps which may otherwise exist in the legal order."

A trenchant explanation, perhaps more appealing to a simple mind, is given by Denning L.J. in <u>Buchanan and Co-v-Babco Limited [1977] QB 208</u> at p. 213 as follows:-

"They adopt a method which they call in English strange words — at any rate they were strange to me — the "schematic and teleological" method of interpretation. It is not really so alarming as it sounds. All it means is that the judges do not go by the literal meaning of the words or by the grammatical structure of the sentence. They go by the design or purpose which lies behind it. When they come upon a situation which is to their minds within the spirit — but not the letter — of the legislation, they solve the problem by tooking at the design and purpose of the legislature — at the effect which it was sought to achieve. They then interpret the legislation so as to produce the desired effect. This means that they fill in gaps, quite unasharredly, without hesitation. They ask simply: what is the sensible way of dealing with this situation so as to give effect to the presumed purpose of the legislation?"

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[It is proper to add that the House of Lords on appeal [1978] AC 141 were less enthusiastic and were not prepared to adopt that particular approach to statutory interpretation into English law].

The teleological approach was adopted by the Supreme Court in Nestor -v- Murphy [1979] IR 326 and more recently by Murphy J. in Lawlor -v- Minister for Agriculture [1990] IR 356 and Bosphorus Airlines -v- Minister for Transport and Others [1994] 2 ILRM 551 and [1994] 3 CNLR 464.

Adopting the teleological approach in the present case, there can be no doubt that "the design or purpose" which lies behind the relevant regulations under review are respectively

- (a) that "scraps", being product unfit for human consumption, shall not be included in product for which APS or export refunds are claimed ("scraps" does not include large or small trimmings all of which is meat fit for human consumption) and
- (b) it is not necessary under the export refund scheme and is in fact illogical to separately wrap individual trimmings of whatever size. "Scraps" and "individual wrapping" should be interpreted on that basis. This matter is further amplified hereunder.

There are two other principles of statutory interpretation well known in the common law which have relevance to this case i.e. noscitur a sociis (recognition by associated words) and the ejusdem generis (of the same genus) rule. The former is described as follows in Benion on

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Statutory Interpretation, 2nd Edition, (1992) at pp. 583 et seq:-

"A statutory term is recognised by its associated words. The Latin maxim noscitur a sociis states this contextual principle, whereby a word or phrase is not to be construed as if it stood alone but in the light of its surroundings. While of general application and validity, the maxim has given rise to particular precepts such as the ejusdem generis principle and the rank principle."

A good illustration of the noscitur a sociis principle in action is provided by <u>Casher v. Holmes.</u> (1831) 2B and Ad 592. In the phrase "copper, brass, pewter, and tin, and all other metals" in a local Act of 1825 the residuary words were held not to include precious metals such as gold and silver.

It is well settled that a word or phrase in a statute should be construed in the context of the surrounding words. See judgment of Viscount Simonds in A.G. v. Prince

Ernest Augustus of Hanover [1957] A.C. 436 at 461 where he stated "Words, and particularly general words, cannot be read in isolation; their colour and their content are derived from their content." And also the judgment of Stamp J. in Bourne v. Norwich Crematorium Limited [1967] 1 W.J. R. 691 at 696. "English words derive colour from those which surround them. Sentences are not more collections of words to

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be taken out of the sentence, defined separately by reference to the dictionary or decided cases, and then put back into the sentence with the meaning which you have assigned to them as separate words."

In the light of the foregoing it is evident that the Court should recognise the common denominator between "scraps" and "large tendons, cartilages, pieces of fat" i.e. that all are unfit for human consumption.

The ejustem generis rule is defined by Benion as "a principle of construction whereby wide words associated in the text with more limited words are taken to be restricted by implication to matters of the same limited character. The principle may apply whatever the form of the association, but the most usual form is a list or string of genus-describing terms followed by wider residuary or sweeping-up words. The ejustem generis principle arises from the linguistic implication by which words having literally a wide meaning (when taken in isolation) are treated as reduced in scope by the verbal context...... as Cross put it: "The draftman must be taken to have inserted the general words in case something which ought to have been included among the specifically enumerated items has been omitted...." Or, as Odgers says, it is assumed "that the general words were only intended to guard against some accidental omission in the objects of the kind mentioned and were not intended to extend to objects of a wholly different kind". It follows that the principle is presumed to apply unless there is some contrary indication".

The phrase "and other scraps left over from cutting or boning" is, in my view, an apposite illustration of the

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ejusdem generis principle in operation. The other words in the relevant regulations i.e. bones, large tendons, cartilages and pieces of fat all have specific, narrow meanings. However, "other scraps" has a meaning sufficiently wide to include all unspecified items which are not fit for human consumption and it should be interpreted accordingly. It seems to be beyond controversy that the principles of noscitur a sociis and ejusdem generis in common law lead to the same interpretive conclusion regarding the meaning of "scraps" in the relevant EU regulations as the schematic or teleological interpretation and construction as postulated in European law to which have already referred.

SCRAPS"

For several years prior to and including the 1988 beef export season, the Minister circulated to meat exporters, including Hibernia, Notices to Traders which purported to explain the requirements of the APS regulations in force for the relevant years. The explanatory document relating to the 1988 season was issued with a notice dated 16th September, 1988 signed by Ms. Brid Ni Mhurchu, HEO. It contained, inter alia, the following information:-

"It is the primary function of the contractor to ensure that the cold storage facilities nominated by him are suitable and that full access is available at all times to the Department's officers to inspect the beef. To facilitate on-going inspections which will be taking place, all the meat produced in fulfilment

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of a given contract must be stored in the same cold store, in easily identifiable lots, with the weight, date of entry into store and the number of cartons (or quarters) clearly marked on each lot. Each pallet should contain meat from one contract only. A suitable passage should be left between each two contracts to facilitate the inspection officer. If our officials cannot fully inspect beef in storage on any visit the relevant aid may be disaflowed."

As will emerge infra, the foregoing provision is of significance. It indicates the Minister's concern that, when stored, the product of individual APS contracts should be easily identifiable as such by his inspecting officers. His mind at that time appears to have been that for the purposes of inspection and, if necessary, extrapolation, the contract is the crucial unit. This accords with the reality that each APS contract had its own banker's security as to due performance of the contractor's obligations. The Minister's 1988 guidelines contains the following passage at page 7, all of which was underlined.

"All meat which is de-boned for private storage purposes must be placed in store,

The large tendons, cartilages, pieces of fat, lean trimmings and other scraps left over from de-boning may not be put into store...."

It will be noted that the Minister added "lean trimmings" to the list of materials which should not be stored as set out

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in Regulation 2675/88, Article 4(4). It is argued by the Minister that although "lean trimmings" are not referred to in the English language version of the relevant regulations, the word "scraps" is specified as "trimmings" in the corresponding languages of some other member states, i.e., in the French and German versions.

The Minister concedes that "lean trimmings" are edible meat of the type of cut from which it comes. Most trimmings are derived from the cut "plate and flank" which is the largest but lowest grade of five categories of cut from male hindquarter beef. After de-boning, plate and flank includes slivers of a combination of edible meat and flat cut from between the ribs in that area. Due to the speed of the de-boning process, such trimmings frequently become detached from the plate and flank cut or piece itself. It is also not in dispute that the cut, "plate and flank", unlike other superior cuts, has no significance as a cut or piece of meat per se. Before supply to the ultimate consumer, it will be chopped up and minced for sale as beefburgers, minced meat, sausages, salamis and other such products. Accordingly, when packaging plate and flank the inclusion of trimmings, large or small, is irrelevant in practical terms. They comprise edible meat of the same or higher quality as the cut "plate and flank" and the entire of the package or parcel, including the primary piece of meat, will be chopped up and minced in due course prior to ultimate sale.

"Lean trimmings" may be significant pieces of meat far in excess of 100 grams in weight. Notwithstanding what is stated in the 1988 Notice to Traders at page 7, the Minister has not sought to justify in this action the exclusion of all trimmings for APS storage, but in course of the sampling

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operation of products stored by Hibernia and other neat contractors under the 1988 APS and Export Refund schemes from April to September 1989, he sought to introduce a new definition not contained in any regulation either in the English language or other versions, i.e., that "scraps" included trimmings of 100 grams weight (aprox 4 oz.) or less. In this regard the Minister found himself in a dilemma because under the regulations governing both schemes, all meat from male hindquarters must be brought into storage. Clearly, this included trimmings, but by introduction of the 100 gram rule he sought to segregate small trimmings and to regard them as scraps which ought not to be included in stored products.

The problem of interpreting the term "scraps" in Regulations 2675/88. Article 4(4) and 1964/92, Article 6 is to some degree compounded by the attitude adopted by Hilbernia to the Notice to Traders relating to the 1988 APS scheme and, in particular, the specific inclusion of "lean trimmings" in the list of items which may not be put into store. Having regard to the evidence of Mr. Quina, the managing director of Hibernia, and other officials of that company, it is clear that Hibernia did not accept that small trimmings could be regarded as "scraps" within the meaning of the relevant regulations. A policy was devised and put into operation that trimmings of all trimmings could be regarded as "scraps" within the meaning of the relevant regulations. A policy was devised and put into operation that trimmings of all sizes from "plate and flank" and also "midrib" were to be included with "plate and flank" before such pieces were rolled for wrapping and boxing. The intended result within the meaning of the relevant regulations are relevant. was that within the usually three separately wrapped parcels of "plate and flank" per box would be included some trimmings from "plate and flank" and occasionally from "midrib". The instructions given by four

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of the six sub-contractors employed by Hibernia to their de-boners, with Mr. Quinn's approval, was that they should include such trimmings, but if in the course of inspection by the Minister's officials during production, objection was taken to the practice, it was to be discontinued and confrontation with the Minister's officials was to be avoided. Mr. Quinn's interpretation of the regulations differed from that of the Minister. He regarded "scraps" as being small pieces of meathfat which fell to the ground during the de-boning process and which were no longer fit for human consumption. He did not believe that it included trimmings, large or small. He had no knowledge of the alleged 100 gram rule until after the sampling process in 1989. Although he felt confident of his interpretation of the regulations, Mr. Quinn did not believe that it was in the best interest of Hibernia to challenge the Minister's interpretation as contained in his Notice to Traders for 1988. He thought that the better course would be to await developments and then ultimately challenge the Minister's interpretation if and when it became necessary to do so. The element of subterfuge introduced by Hibernia included the furnishing of daily written weight schedules which purported to be in accordance with the Minister's stated requirement that lean trimmings must not be included. This deception led the Minister into a state of false security as to the purported exclusion by Hiberma of trimmings, large and small, However, in the end the ultimate question is the interpretation of the term "scraps" and a decision on whether it includes small trimmings as the Minister contends or whether the term does not include trimmings of any sort or weight as Mr. Quinn believes.

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The first problem regarding the interpretation of Regulations 1964/81, Article 6 and 2675/88, Article 4(4) relates to the difference in translation of the word "scraps" which are referred to in the French and German language versions as "trimmings". All of the language versions of EEC regulations are of equal status. It seems to me that my function is to interpret the English language version of the relevant regulations and to determine whether or not Hibernia is in breach of them. The Minister and the Irish meat export contractors collaborated in the 1988 APS and Export Refund schemes in accordance with EEC regulations published in the English language. Neither the Minister or Hibernia was under any obligation to construe the latter in the context of versions thereof in any other Community language. If there is any ambiguity between various Community language versions of particular regulations, that is not a matter for the Irish courts. In my view the function of this court is to interpret the relevant EEC regulations in the English language version, being the language in which both parties conducted business regarding the 1988 APS and Export Refund schemes. [In any event the teleological interpretation of the relevant provisions in whatever language would lead to the same result].

As already stated, Regulation 2675/88, Article 4(4) and 1964/82, Article 6 have essentially the same wording save that "bones" are not included in the former. However, the context in which the list is introduced differs as between the respective regulations. Article 4(4) of the APS regulation provides that none of the items comprised in the list shall be included in products for storage. 1964/82, Article 6 of the Export Refund regulations provides that the

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items listed, including bones, may be sold within the Community. It does not seem to me that the distinction in purpose as between the respective regulations has any significance in the interpretation of the term "scraps" in either of them. I am satisfied that the word has the same meaning in both

I have no doubt that the interpreter should not seek to define the word "scraps" in isolation but should have regard to the context in which it is raised and should also consider whether there is any basic characteristic common to the other words in the list which may relate also to the word "scraps". All of the common items comprised in the respective lists, i.e., "large tendons, cartilages, pieces of fat and other scraps" share the same characteristic that they are inedible in terms of human consumption. Having regard to the noscitur sociis, ejusdem generis and teleological rules as to statutory interpretation, this indicates that the framers of the APS regulation intended to set forth a list of inedible items which ought not to be included in product for storage. The term "scraps" in that context means leavings from the de-honing process which are writt for human consumption but which may have a minimal value e.g. for tinning as animal food. Accordingly, per 1964/82, Article 6, like bones and other items listed therein, they may be sold within the EU "Scraps" interpreted in that way accords with both regulations. It also meets the principles of statutory interpretation to which I have referred. I am satisfied that the Minister has failed to establish that the term "scraps" in the relevant regulations includes trimmings, large or small. There is also no legislative or other lawful basis for the purported 100 gram rule.

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"Individually wrapped boneless cuts" in EEC No. 1964/82, Article 1

As already observed, the term "cuts" used in this Regulation appears to be freely interchangeable with the terms "pieces" or "piece" — see Article 2(1) and Article 8. In fact it is a common practice in the meat industry which was acceptable to the Minister and Customs in connection with APS and Export Refund schemes for the cuts "midrib" and "plate and flank" to be divided into two or three large pieces, each of which was individually wrapped in polyethene, labelled and placed for storage in a sealed, labelled box. As already indicated, it was discovered by the Minister's checkers in 1989 during the sampling of Hibernia's APS and Export Refund product still in storage from the 1988 beef export season that inside rolled large pieces of plate and flank were some substantial and also small trimmings of "plate and flank", "midrib" and other superior cuts such as chains of fillet or striploin. As noted already in reference to EEC No. 2675/88, Art. 4(4), the Minister regarded small trimmings of 100 grams weight or less as being scraps within the meaning of that provision. He regarded trimmings of greater weight than 100 grams as being pieces of meat which required to be individually wrapped in order to comply with EEC No. 1964/82, Art. 1 and thus to be cligible for export refunds. Hibernia interpreted Article I as requiring that entire cuts, or large pieces of meat (where the original cut is subdivided into two or three pieces) must be individually wrapped, but that triminings did not require individual wrapping and could be included in parcels of "plate and flank" in the centre of the rolls. The evidence establishes

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that the practice adopted by Hibernia and at least four of its sub-contractors was to include small and substantial trimmings (from "plate and flank" and/or "midrib", where de-boning of ribs is also a feature, and/or from other superior cuts) in rolls of "plate and flank" pieces before wrapping in polyethene. The unchallenged expert evidence of Dr. Hood and Mr. Robinson was to the effect that the practice as to trimmings adopted by Hibernia accorded with long standing established practice in the Irish meat trade. There was also evidence from Mr. Makoud, an Egyptian meat importer, that the same procedure was followed in Argentina, France and Italy. That general practice ought to have been well known to the Minister and his officials. It was explained in evidence by the experts called on Hibernia's behalf and it was not disputed that trimmings from superior cuts such as fillet or striptoin chains or intercostal trimmings from "midrib" were all regarded as having the same value as "plate and flank" and, therefore, were included with the latter. They did not support Mr. Quinn's contention that as to "midrib" some large trimmings may have been included which were big enough to blend and fuse with skewered or tied pieces of "midrib" when roasting (i.e., the typical round Sunday joint). It is not entirely clear whether

that approach was taken in fact and it seems to be contrary to Mr. Robinson's evidence.

In my opinion there are four factors which should be taken into account in the interpretation of Article 1. First, EEC No. 1964/82 is stated to be a Regulation which lays down the conditions for granting special export refunds on certain cuts of meat from bovine animals. Before interpreting any particular provision in the Regulation, the

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entire should be read as a whole to ascertain its purpose and also whether a pattern emerges from a consideration of the Regulation in the round.

Secondly, Art. 6 makes clear that a primary requirement as to the grant of export refund is the "exportation of the total quantity of meat produced" by the contractor from the de-boning process. As stated supra, it is common case that trimmings are meat and I have held in interpreting Art. 4(4) of 2675/88 that trimmings do not lose their status as meat merely by weight. Accordingly, it follows that all trimmings must be included in the product brought into Export Refind storage.

Thirdly, it is relevant to have regard to the purpose for the requirement that boneless cuts or pieces of meat brought into Export Refund storage shall be individually wrapped. It seems to me that the object which the framers of the Regulation sought to achieve is that each substantial piece of meat (being a cut or large piece thereof if divided into two or three sections) shall be stored in a readily identifiable packet, the label of which contains information as to the nature and weight of the contents thereof. Such a practice is in the interest of the foreign purchaser of the product and also of the overseeing national intervention agency as facilitating spot checking of product

Fourthly, regard should be had to established acceptable general practices in the meat trade, such as those regarding trimmings which were referred to by Dr. Hood, Mr. Robinson and Mr. Makoud in their evidence and which have not only national but international status in that industry.

It has been argued on behalf of the Minister that the court ought not to take into account in enterpreting the

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regulation the commercial realities of the meat trade. I do not accept that submission which flies in the face of the rule as to the televlogical or schematic approach to the interpretation of EU legislation. Where, as in this case, a widely accepted trade practice, which has international application and is patently based on sound common sense, is affected by a particular regulation, the latter should be enterpreted in accordance with such practice, if it is possible to do so. Furthermore, the existence of an internationally recognised practice in the meet trade is relevant to an assessment of the gravity of this infringement alleged by the Minister.

The rigid, literal interpretation of Art. I contended for by the Minister fails to achieve the apparent purpose of the Regulation and leads to useless work and an exercise in bizarre bureaucracy of ultimate absurdity. The unchallenged evidence of Mr. Makoud and other experts established that "plate and flank" is a cut well-known in the beef trade which, unlike other cuts such as "midrib", has no significance as a piece per se. It is the lowest grade of cut in terms of value and quality comprising a mixture of meat and fat. It is sold to the ultimate consumer as mixed meat, beefburgers, sausages, salami and other such low quality meat products. The Minister and his officials know or ought to have known that "plate and flank" will be chopped up and minced before it reaches its ultimate consumer. A requirement that trimmings included with "plate and flank" should be individually wrapped would create needless work for the exporter, would be bothersome for the purchaser, would add significantly to the risk of spoilage and food poisoning (see Dr. Hood's evidence at page 93, Day 15) and in return it

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would achieve nothing. Furthermore, the inclusion of trimmings from "midrib" and/or from other superior cuts with "plate and flank" and sold at the latter price is no disadvantage to the purchaser and would enable the exporter to comply with the requirements of Article 6.

It seems to me that Article 1 does not preclude the practical reality that trimmings (for which there is a specific obligation to export under Article 6) should be included with rolls of "plate and flank" and that the obligation is limited to the individual wrapping of cuts or large pieces of meat. It seems to me that if the latter included with rolls of "plate and flank" and that the obligation is limited to the individual wrapping of cuts or large pieces of meat. It seems to me that if the latter included with rolls of "plate and flank" without infringing the Regulation. Such an interpretation has the great requirement is fulfilled, unwrapped trimmings may be included in rolls of "plate and flank" without infringing the Regulation. advantage of being in accord with the general practice in the international meat trade, which would seem to be patently sensible, as to storage and marketing of trimmings. I am not satisfied that there was an infringement of Article 1 by Hiberma.

COD FAT

The third issue which emerged out of the sampling exercise carried out by the Minister's officials from April to September, 1989 on Hibernia's product in storage is that on the first day of sampling only it is alleged that some cod fat was found wrapped in "plate and flank" at two production units, i.e. Sallins and Ballymahon. No details of the weights of such infringements were recorded.

Cod fat is a species of fat which is adjacent to the sexual organs of the male animal. It is not in dispute that the regulations provide that it should be removed in the

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slaughterhouse and the hindquarters should be presented, free of cod fat, on entry to the boning-hall. Two inspections of the hindquarters are carried out by the Minister's officials to ensure that that is so, including one at the weigh-in of hindquarters on arrival at the boning-hall. Officials for or on behalf of Hiberma are also concerned that no cod fat shall enter the boning-hall because the prices payable by Hibernia for the meat it processes are based on the nett weights of the hindquarters or carcasses delivered from the slaughterhouse. If cod fat were included at the weigh-in, Hibernia would be paying for some useless product which is ineligible for inclusion with meat for export,

On instructions from Hibernia the hindquarters delivered from the abattoirs were lightly trimmed, i.e. a substantial amount of fat was not removed from the meat as this suited the foreign markets for which the product was intended. (See evidence of Mr. Quinn). The Minister had no objection to that practice. Adjacent to cod fat is rose fat which is acceptable for export when attached to meat. I have considered the evidence of Mr. Quinn, Mr. English, Mr. Robinson and Dr. Hood for Hibernia and Mr. Gregan and Mr. Bird for the Minister. It emerges that although cod fat is readily identifiable at or about the time of slaughter, it is not easily distinguishable from rose fat many months later after freezing in a cold store (see evidence of Mr. English and Dr. Hood). Mr. Gregan, the Minister's veterinary officer who was alleged to have found cod fat, conceded in evidence that there was no reason to identify it as such because all loose fat unattached to meat should have been excluded. He explained that, strictly speaking, there was no need to make the fine distinction between cod fat and other fat as the

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latter would be excluded also if not attached to meat

In the light of the foregoing evidence, I am satisfied that some pieces of independent fat were discovered in April, 1989 at Sallins and Ballymahon on the first day

of sampling, but I do not accept that the Minister has discharged the onus of proving on the balance of probabilities that the fat in question was cod fat. Bearing in mind that the specific expert inspections on behalf of the Minister of all hindquarters after slaughter, allied to Hibernia's own concern not to pay for useless material which ought to have been removed in the abatioir before weigh-in at the boning-half, it is more likely that the fat in question was rose fat from the lightly trimmed hindquarters. There was an incentive to categorize the fot as cod fat because the latter is specifically excluded under the regulations and the Minister had decided to treat its alleged inclusion as a major offence carrying with it a special extrapolation penalty. Furthermore, the failure to record weights of the offending material casts significant doubt on the cod fat issue and on the precise nature of the alleged fat found at Sallins and Ballymahon on the first day. Whatever infringement there was in that regard may have been minor in nature and it is not possible to measure it in terms of weight for financial correction as there are no records on which such an exercise might be based.

#### CONCLUSIONS

In the light of my findings on the foregoing issues, I am not satisfied that the sampling exercise carried out on behalf of the Minister revealed any measurable fault which would require financial correction as to APS and/or export

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refunds received by Hibernia. In the premises it is strictly unnecessary to consider the legality or otherwise of the system for financial corrections devised and imposed by the Minister on Hibernia arising out of the 1989 sampling exercise. However, in the event that the Supreme Court and/or the European Court of Justice might differ from my interpretation of the relevant EEC Regulations relating to the meaning of "scraps" and the requirement to individually wrap all pieces of meat found to weigh more than 100 grants, and also bearing in mind that 20 days of the trial was devoted to the issue of financial corrections and related matters, it is proper that I should furnish my observations in that regard.

#### THE SCHEME FOR FINANCIAL CORRECTIONS

This part of the judgment is based on the premise (contrary to my findings) that the Minister's interpretation of "scraps" the requirement to separately wrap each individual piece of meat, and his finding that cod fat was discovered at two production units on the first day of the sampling operation are correct.

There are no EC regulations or any authority in Irish law dealing with financial corrections arising out of the discovery of cod fat, scraps and unwrapped individual pieces of meat in course of the sampling exercise carried out on behalf of the Minister and Customs in 1989 relating to the 1988 APS and Export Refund season. It was argued on behalf of Hibernia that in the absence of any regulation or provision in Irish law authorising extrapolation of the sample result across the appropriate unit of production, the Minister had no power to extrapolate in any form and was

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entitled to recover APS and export refunds paid to Hibermia only on the basis of the weight of unlawful product actually found. I do not accept this submission. It is not in dispute that the Minister, as the national authority designated by the regulations to supervise the schemes, was empowered to carry out a major sampling exercise such as that in 1989 on Hibermia's stored product—the purpose being to check on whether there had been due compliance by the contractor with the relevant requirements under the APS and Export Refund schemes. A system of financial corrections based only on the weight of unauthorised product actually found in such an exercise would fall far short of an equilable assessment of actual infringements overall and would not constitute a mechanism for calculating a refund of benefit wrongfully obtained by the contractor under the respective schemes. The Minister's position as the national authority having the duty of supervising the APS and Export Refund schemes necessarily implies a right to recover benefits improperly obtained by a contractor under the schemes. In my opinion, be was impliedly empowered by the regulations to devise and operate a system of financial corrections which was fair and reasonable based on the actual weight of unlawful product found and including a system of extrapolation across the appropriate unit of production Corrections made on that basis would have yielded at most refunds of less than £250,000. The Minister originally intended to implement a scheme broadly on the foregoing basis but also with certain penal sanctions as to securities. Subsequently the Commission insisted upon substantial penal provisions which transformed the system of financial corrections and led to an assessment in excess of £1,500,000

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due by Hibernia. The purported justification for the imposition of what amounted to Draconian penalties was that a substantial number of infringements were regarded as being of a particularly serious nature (a history of the development of the system for financial corrections ultimately imposed by the Minister on Hibernia and other contractors is contained in a memorandum entitled "Beef Sampling Operation — Conclusions" dated 8th May, 1991 and prepared by Ms. Brid Cannon and Mr. Scamus Mullan of the Department of Agriculture). The misgivings of Mr. Michael Dowling, Secretary of the Department, regarding penal provisions insisted upon by the Commission are set out in two letters dated 20th November, 1990 to Mr. Guy Legras, Director General, Commission of the European Communities. The first is in the following terms:-

"Dear Mr. Legras,

I have your letter of 29th October 1990 in connection with the sampling programme undertaken on beef placed in private storage in Ireland under Regulation 2675/88.

I would confirm that, as set out in the opening paragraphs of your letter that, at the meeting on 24th July last I accepted fully that the correction method should incorporate the disallowance of all boxes found to contain infringements. Moreover, in respect of the remainder of the plate and flank production of those production units in which infringements were found, an extrapolated adjustment would be applied to the APS aid (and export refunds where appropriate) based on

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the weight of trimmings/non-individually wrapped meat found as a percentage of the quantity of plate and flank examined.

I note, however, from your letter of 29th October that you now suggest significant qualifications to the methodology agreed at our meeting in July. These would create very great difficulties in determining appropriate and legally defeasible corrections.

The introduction in the letter of a 3 kg trimmings level above which the weight of the entire carton contents would be used for extrapolation purposes is an element which was not part of the accord reached at our meeting. This element which substantially alters the correction methodology was also not, to my knowledge, part of any discussions held subsequently between officials from both our services.

In the period immediately following our meeting we arranged for officials from both our services to meet, and, arising from this, my Department agreed to calculate in foll the detailed corrections based on the 24 July agreement. These details were furnished to your services at the end of August. The supporting working documents were supplied through the month of September. A summary of the financial consequences was dispatched on 17th October 1990. A copy of this letter is attached. I had hoped that through this forum any matters of concern either to the Department or the Commission could have been discussed and

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charified. I was therefore surprised to receive your letter of 29th October at which time the detailed technical discussion had yet to take place.

At an earlier stage in correspondence on this matter my Department considered the option of introducing thresholds into the correction methodology; the aim being to differentiate in some way between the serious and less serious infringements.

However, after careful consideration and in deference to the sentiments expressed by your services at subsequent meetings, it was recognised that the introduction of a threshold with accompanying differentiation in treatment between results was both arbitrary and discriminatory. In the absence of any legal foundation either at Community or National level and allied to the absence of any legal basis for extrapolation, such a concept would, we felt be legally indefensible.

In contrast to the above there is a method already provided for in the Community Regulations whereby additional account can be taken of more serious infringements. This had already been mentioned in my Department's initial report on the sampling exercise and it concerns forfeiture in whole or in part of the APS contract security. There is an established legal basis for forfeiture of these securities for non-performance of contractual obligations which is readily defensible in law. If your services on

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reflection, feel that there is need to add to the agreement reached in July in order to take account of the more serious extent of the infringements in some cases, then such forfeiture of the APS contract securities would be a sounder and less arbitrary system of increasing the financial consequences. I would urge very strongly that this aspect be reconsidered in order to avoid serious legal complications and the imposition of arbitrary penalties....."

Accompanying that letter was another from Mr. Dowling to Mr. Legras marked "Personal". It is in the following terms:-

"Dear Guy,

Enclosed under separate cover is our official reply to your letter of 29th October about financial corrections arising out of an Irish sampling exercise on the 1988 Beef APS scheme. You will recall that we discussed this last July at a meeting in your room (Milano and Jacquot were also present). At that time we appeared to have reached an understanding that would enable this file to be satisfactorily closed. On our side we were to supply detailed data to your services to allow them to confirm the accuracy of our calculations. This has been done.

The introduction now of the 3 kg rule greatly afters the result, will involve penalties far in excess of

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any possible gain from the infringements and will, in my view, inevitably lead to legal actions which the Commission and ourselves are most likely to

This would be most unfortunate especially when there is a legally more certain way — mentioned in our reply — to meet the Commission's concern on distinguishing between serious and less serious infringements. I believe very strongly that you should reconsider the whole 3 kg limit approach. If at all possible I would like to meet you again on this triatter....."

In the event Mr. Dowling was unsuccessful in persuading the Commission to abandon the 3 kg rule. The foregoing correspondence makes clear that the Department was most unhappy about the legality of the Commission's penal intention, particularly as it brought about an enormous escalation in the size of the claim to be made on Hibernia. These forebodings were well founded.

Even if the alleged seriousness of Hibernia's infringements warranted the imposition of penal provisions (which I do not accept) there was no legislative authority to impose any penalty. The Minister's implied authority to devise and operate a system of financial corrections consequent upon the results of the sampling operation in 1989 does not include the imposition of penalties for which there is no legislative authority in the relevant regulations. The Minister's function is limited to administration and he has no legislative power. Penalties of a quasi criminal nature which the Minister has sought to impose on Hibernia ex post facto the storage of the offending product and for which

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there is no legislative authority must be struck down as unlawful. The judgment of the Supreme Court in <u>King v. Attorney General</u>, <u>1981 IR 233</u> at 263/4 is relevant to this issue. The following passage is from the judgment of Kenny J. at page 263:-

"There is Irish authority for the proposition that a person may be convicted of a criminal offence only if the ingredients of and the acts constituting, the offence are specified with precision and clarity. O'Byrne J. in delivering the judgment of the Court of Criminal Appeal in The Attorney General v. Cunningham [1932] IR 28 said at page 32 of the report - "..... the Court must have regard to the fundamental doctrine recognised in these Courts that the criminal law must be certain and specific, and that no person is to be punished unless and until he has been convicted of an offence recognised by law as a crime and punishable as such". O'Byrne J. quoted those words and approved of them when he was a judge of this Court, see The People (Attorney General) v. Edge at p. 142 [1943] IR 115".

I am satisfied that the penaltics sought to be imposed on Hibernia are of a quasi criminal nature and that the dicta of O'Byrne J, and adopted by Kenny J, is apposite. The penaltics must be based on legislative authority which existed when the alleged wrong doing occurred. Even if the penaltics were not quasi criminal in nature, the requirement of legal certainty demands that such provisions must be firmly based in law at the time of the transgression which gives rise to the penalty. This proposition is dealt with by

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Vaughan in The Law of the European Communities at para, 2,312 as follows under a heading "Legal Certainty":

"The principle of legal certainty requires that the effect of a legal provision must be clear and predictable to persons subject to it. That requirement must be observed all the more strictly in the case of rules liable to entail financial consequences so that the persons concerned may know precisely the extent of the obligations imposed on them. In the same way, a penalty, even one that is not criminal in character, cannot be imposed unless it rests on a clear and unambiguous basis. Legal certainty requires uniform application of legal concepts and classifications, and the provisions laying down a preclusive period be clearly and precisely drafted so that the persons concerned may be made fully aware of the importance of complying with the time limit Legal certainty may also require amending legislation to be given a liberal interpretation, where it fails to provide adequate transitional

provisions, in order to allow traders to adjust themselves to the amending regime".

Were there reasonable grounds for concluding that any of the alleged infringements found in the Hibernian product in course of the 1989 sampling operation were serious in nature and, if so, were they so grave as to justify the imposition of the actual penalties imposed by the Minister, even if he had lawful authority to do so?

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For the reasons I have already specified in the first part of this judgment, I am satisfied that the infringements in question were, at worst, technical in nature. Those relating to "scraps" and non-individually wrapped pieces of meat accorded with widespread practice in the international meat export industry and were to the advantage of the foreign purchasers. The Minister's officials found that all product examined by them was up to contract in terms of quality, quantity and weight, in fact he permitted the entire (except 10 to 20 boxes of alleged small trimmings) to be exported by Hibernia, In the light of the findings as to quality, quantity and weight of product sampled and the general satisfaction of export customers with Hibernia's product, there does not appear to be any reasonable ground for concluding that any alleged transgression by Hibernia was grievous in nature and warranted special penalties. It appears that the Minister and his officials never adverted to the fact that the cut "plate and flank" (whether in one, two or three pieces) was intended for chopping into small pieces or mincing prior to supply to the ultimate consumer as mince meat, beef burgers, satisages, salamis or other forms of low grade processed meat

It also has been submitted on behalf of Hibernia that having regard to the high level of supervision amounting to "permanent presence" carried out by the Minister through his officials at Hibernia's production units and the certification of product by them as being in compliance with the EC regulations, he is estopped from going behind certification of product by his own officials. And as Hibernia depended upon the reliability of the Minister's system of supervision and had a legitimate expectation that

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it was trustworthy and could be relied upon, he cannot lawfully proceed with a sampling exercise which ignores his own certification of product. I am satisfied that these submissions are not well founded. The purpose of supervision exercised by the Minister by way of "permanent presence" of his officials in the relevant production units was to protect EC funds and not to assist Hibernia or its sub-contractors in carrying out their operations in accordance with the regulations. Even if the Ministers" officials were negligent in not spotting that trimmings were wrapped with plate and flank and/or mid-rib cuts or pieces, that would not found a claim in negligence against the Minister. Circumstances where the certification in question is part of a process designed to protect the interest of the EC and where the person alleged to have the expectation derives be nefit from the inspector's failure to discover alleged malpractice, cannot give rise to a "legitimate expectation" in law. Furthermore, legitimate expectation cannot arise in circumstances where Hibernia furnished records to the Minister made up by their own officials which they knew to be incorrect only in which it was stated that all regulations had been duly complied with. Having furnished such records to the Minister, Hibernia is estopped from relying on artification by his officials under either scheme.

#### SYSTEM OF EXTRAPOLATION

The Minister's system of extrapolation is fraught with difficulty and my observations thereon are as follows:-

1. The system adopted by the Minister has no basis in law but was devised by him ad hoc after the 1988 APS and

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Export Refund storage had been completed. It contained penaltics which required legislative authority but had none.

- 2. The mefiod of extrapolation adopted by the Minister did not accord with normal statistical practice, i.e. he did not sample a small section of the total population and apply the result to the entire population. The Minister treated sampled and unsampled product differently. The sampled population was sub-divided into boxes in which fault was found and boxes in which no fault was discovered. Where fault was found the weight of each entire box was excluded, however small the infringement may have been (for example a 200 gram (8 oz) trimming would exclude 26 kilos (70 lbs) of good product). Sampled boxes where no fault was found were treated in the same way as unsampled boxes and the appropriate extrapolator was applied to them. In consequence Hibernia and their guarantors were penalised in respect of product which had been actually examined and found to be entirely blameless.
- 3. The most serious defects in the Minister's system of extrapolation were his arbitrary 100 gram and 3 kg rules, which also had no legislative authority. The 100 gram rule was introduced for the purpose of segregating what the Minister deemed to be scraps (i.e. inedible product) from edible trimmings. Any trimming under 100 gram was deemed to be scraps and over 100 gram were regarded as trimming which under his interpretation of the Export Refunds regulations required to be individually wrapped. The 3 kg rule

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related to the total weight of ineligible product found in any particular sampled box. If more than 3 kg of incligible material was found then the entire weight of the box (usually about 2.6 kg) was not only excluded but was also used for the purpose of extrapolation across the entire population. The Minister contends that he was justified in so doing on the ground that a weight of ineligible product in excess of 3 kgs indicated a deliberate policy of infringement rather than poor de-boning practice and, therefore, he believed that he was entitled to impose an arbitrary penalty by using the entire weight of such boxes for extrapolation. This penalty, unauthorised by legislation, had a profound adverse effect on calculation of the financial correction allegedly due by Hibernia. A system of financial correction based upon a pumative arbitrary rule devised by the Minister without legislative sanction and which also has a corresponding catastrophic effect on contract securities and bonds, is quite simply wrong and is unenforcable at law for the following reasons:-

- (i) As previously stated, there was no legislative authority for departing from a system of sampling and extrapolation based on the weight of offending material and the calculation of financial corrections accordingly.
- (ii) The Minister had no legislative authority for introducing penal terms into his system for

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financial corrections. The 100 gram and 3 kg rules have no authority in EC or Irish law. The 3 kg rule in particular amounted to a Draconian penalty which seriously inflated the Minister's assessment of financial corrections and the total amount of refunds due by Hibernia, It had consequences which were patently disproportionate to the actual infringements alleged.

(iii) The Minister failed to appreciate that, as the sampling process revealed, the quality, quantity and weight of product stored was up to contract and after sampling was duly exported as intended with his knowledge and authority (save for 10/20 boxes of small trimmings). In the light of this there was no reasonable basis for regarding alleged infringements by Hibernia as so serious in nature as to be deserving of the penalties actually imposed by him

(iv) As there was no fault found as to the quality, quantity or weight of product in store by Hibernia and as the inclusion of trimmings, large and small, in rolls of plate and flank is patently sensible and accords with international practice, the Minister ought to have appreciated that the infringements alleged against Hibernia were technical in pattire and his financial corrections ought to have been

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based strictly on the weight of offending product

(v) There is no justification in the regulations for adopting, as the Minister did, the box of product as the unit for measuring financial corrections. In practice, each box stored in the 1988 season usually contained three individual cuts or pieces of meat separately wrapped and labelled. The parcel, therefore, was the basic unit for extrapolation and not the box. This seems to have been what was in the Minister's mind at the commencement of the 1988 season—see Notice to Fraders, dated 16th March, 1988 infra. The parcels, like the boxes, were labelled and contained information as to the nature and weight of the contents. In the sampling operation, it was necessary in dealing with each selected box to open up each of the parcels it contained. Accordingly, there is no difficulty in regarding the parcel rather than the box as being the basic unit for inspection purposes. If the Minister had adopted that course the probabilities are that it would have created a greater degree of fairness in that innocent parcels in particular boxes would not be condemned by association with a "guilty" parcel therein. Furthermore, had the Minister adopted the parcel as the basic unit it would have created a greater degree of fairness in extrapolation.

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(vi) The Minister decided arbitrarily and without legislative authority to adopt production units for the purpose of extrapolation. In so doing he failed to appreciate that securities are a fundamental part of each scheme. Every APS contract has a corresponding banker's guarantee of the due performance by the contractor of its obligations thereunder. Likewise, all product brought into bond from time to time under the Export Refund scheme is duly guaranteed by one of Hibernia's bankers. It follows that having regard to the structure of guarantees required by the respective regulations, the basic units which ought to be adopted for the purpose of measuring financial correction are respectively the individual APS contracts and the individual export refund bonds. The system of financial corrections adopted by the Minister entails penalising guaranters for infringements which may not relate to their particular securities. It purports to impose expost-facto liabilities which were not known to or contemplated by the guarantor, the contractor or even by the Minister when the various securities were negotiated and put in place. The Minister has no retrospective authority to widen the scope of securities actually given by the bankers concerned. He had a duty of fairness vis-a-vis the guarantor and on that account I am of opinion that he was obliged to adopt the individual contract or bond, as the case may

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be, for the purpose of extrapolation. It might be argued that this would not be practical as a method for extrapolation because it would not capture meat relating to the particular season which was already exported from storage. This difficulty would not arise if the Minister conducted any major sampling operation he lad in mind before any substantial amount of product had been released from storage.

- (vii) The system of financial corrections adopted by the Minister failed to take into account the 75% maximum de-boning yield for claiming aid under the schemes. The 2% excess yield achieved by Hibernia was ignored. Some credit should have been allowed in that regard.
- (viii) There was no justification or lawful authority for the Minister's decision to combine "plate and flank" and "mid-rib" for extrapolation purposes. This was an unheralded departure from prior settled practice which had been accepted by the Minister and the meat export industry. It was well recognised by all concerned that "mid-rib" and "plate and flank" are separate and distinct cuts which are significantly different one from the other in appearance, quality and value. In course of the wide-ranging Enquiry into the Irish beef export industry known colloquially as the Beef

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Tribunal, the Minister recognised and accepted that there is an important distinction between these cuts and he treated them separately. Extrapolation ought to have been within the respective cuts and ought not to have been based on a combination of both.

- (ix) Even if cod fat had been found in course of the sampling operation as alleged, the Minister had no legislative authority to exclude the entire weight of each box in which cod fat was found, however small the weight of the offending material may have been. Likewise, there was no legislative basis for utilising the entire weight of such boxes for extrapolation purposes. Nor is there any foundation in law for regarding the inclusion of cod fat in a box, however small the quantity, as being a major transgression which justified a penal sanction.
- (x) In cases where actual weights of offending product were not recorded, the Minister in applying the 3 kg rule made good the deficiency by arbitrarily determining whether that rule should apply or not. This is another illustration of the unsatisfactory way in which the defendant was obliged to administer his system of financial corrections through tack of sufficient basic raw data which ought to have

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formed part of the sampling process. It may well be that the reason for treating the presence of cod fat as a major transgression which justified the exclusion of the entire box where any such material was found and the utilisation of the full weight of product in the box for the purpose of extrapolation, was that it overcame the difficulty of having no weights for the cod fat allegedly found.

#### SECURITIES

In addition to criticisms already made in this judgment regarding that part of the Minister's system for financial corrections which relate to forfeiture of securities, there is also another matter in that regard which requires comment.

The judgment of the European Court of Justice in Konecke-v. Balm, 84 ECR 3291 is authority for the proposition that a penalty must have a clear and mambiguous legal basis. The following passages occur in course of the Decision. In paragraphs 11 and 20 respectively:-

- 11. "... it must be emphasised that a penalty, even of a non-criminal nature, cannot be imposed unless it rests on a clear and unambiguous legal basis."
- 20. "... the Community legislation on the granting of private storage aid for beef and yeal must be regarded as forming a complete system in the sense that it does not empower Member States to rectify any lacuna in the

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system by laying down, under their national law, an obligation on traders which has no basis in the Community legislation."

Ms. Finlay, counsel for the Minister, accepts, as she must, the foregoing propositions of law, but with much skill she has sought to establish by way of a labarinthine journey through various regulations that there is legislative authority for the penal forfeiture of securities which the Minister socks to impose. With some difficulty I have followed her path but it has not led me to the conclusion which she postulates. I cannot find any "clear and unambiguous" regulation which would justify the Minister in imposing his terms as to penal forfeiture of securities. It will be noted that the judgment in Konecke is also authority for the proposition that the Minister has no power to make good any lacuna which he may perceive in EC regulations.

#### DELAY

The Minister had an obligation under Regulation 2220/85 Article 29 to act without delay in the matter of claims on relevant securities and the release of those against which no claim was being made. He did not act "without delay" in consequence of which loss has been sustained by Hibermia in servicing socurities. It is conceded on behalf of the Minister that there was delay on his part which it is contended was unavoidable having regard to the size of the sampling exercise which involved other major contractors as well as Hibermia and the work generated by that operation which overlapped a huge volume of work

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relating to the Beef Enquiry. I appreciate the mass of difficulties which the Minister had at that time, but this does not absolve him from his duty under the regulation to act without delay. All securities over and above the maximum amount of the claim made by the state on Hibernia should have been released not later than May, 1991 when the total of forfeitures required had been ascertained. The Minister is liable to Hibernia for the loss it has sustained on that account. However, it is absorbed in a larger entitlement to indemnity which Hibernia have in respect of the total amount for which it is liable to its bankers from the dates when all securities should have been released if no fault had been found by the Minister in connection with the sampling of Hibernia's product in 1989.

#### PROPORTIONALITY

The doctrine of proportionality is fundamental to European law. It is succincily explained in the following passage in Vaughan, Law of the European Community, First Edition, Volume 1 (updated) at paragraph 2.311:-

"The principle of proportionality requires that the means used to attain a given end should be no more that what is appropriate and necessary to attain that end; in other words, persons may be obtiged only to make the least sacrifice consonant with achieving the objective sought. In order to establish whether a provision of Community law is compatible with the principle of proportionality, it is necessary to establish whether the means it employees to achieve

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its aim correspond to the importance of the aim and whether those means are necessary in order to attain it. Whether a measure is disproportionate or not is not necessarily determined by reference to the individual position of any one particular group of operators. The principle of proportionality applies also to national measures. In the case of measures imposing sanctions, the proportionality of the measure may depend on whether it enforces a principal obligation whose observance is fundamental to the proper functioning of the scheme or system in question or whether it merely enforces a secondary obligation ..."

Two judgments of the European Court of Justice are of particular significance in terms of the case under review. In Maas -v- Bundesanstalt für landwirtschafaliche Marktordnung Cose, 21/85 it was held, inter alia, that

"In order to determine whether a provision of Community law contemplating forfeiture of a security in its entirety is compatible with the principle of proportionality, it is necessary to establish whether the obligations whose fulfilment it is intended to ensure must be regarded as principal obligations which are of fundamental importance to the proper functioning of the Community system in question and whose infringement may be punished by forfeiture of the entire security, without there being any breach of the principle of proportionality, or whether they are

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secondary obligations whose infringement should not be punished with the same rigour as is applied to the failure to fulfill a principal obligation."

In Atalanta -v- Produktschap Voor Vee En Vlees 79 ECR 2137 the following passage in the Decision occurs at p. 2151:-

".... it should also be observed that the absolute nature of Article 5(2) of the above mentioned regulation is contrary to the principle of proportionality in that it does not permit the penalty for which it provides to be made commensurate with the degree of failure to implement the contractual obligations or with the seriousness of the breach of those obligations."

Having regard to the premise on which this part of the judgment is based. I am satisfied for reasons referred to supra that the inclusion of trimmings in "plate and flank" and the failure to individually wrap each trimming are, at worst, minor transgressions and are not "of fundamental importance to the proper functioning of the Community system in question" as postulated in Maas <u>case 21/85</u> supra. In the light of this conclusion it follows that the penal consquences for Hiberula and their guaranters of the 100 gram rule and the 3 kg rule, the penal aspects of the extrapolation process and the penal forfeiture of securities — all of which are fundamental aspects of the system for financial corrections devised and imposed by the Minister, are unlawful as offending the rule of proportionality — the

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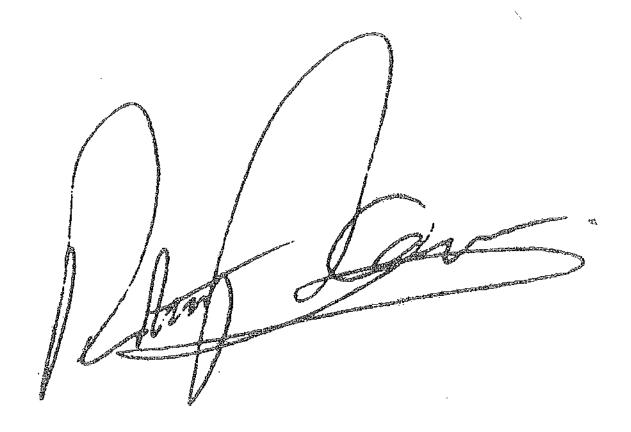
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essence of that doctrine being that where there is a breach of regulations the correction should be in accord with the gravity of the breach. It follows also that even if the Minister's scheme for linancial corrections imposed on Hibernia was specifically authorised by EU regulations, in the circumstances of this case they in turn would be struck down as offending the proportionality rule.

#### UNIFORMITY OF LAW THROUGHOUT THE EUROPEAN UNION

It has been conceded on behalf of the Minister that it is a basic principle of EC law that it must be applied throughout the Community without discrimination and it has been urged that in terms of the case under review, the Commission was entitled to devise a scheme for financial corrections binding on the Member States. I have no difficulty in accepting the first part of that proposition. The entire legal framework of EC law would suffer fundamental damage if each Member State was free to apply EC regulations in whatever way it saw fit. The APS and Export Refund schemes are creatures of the European Union having the objective of providing aids for the beef industry in all Member States, subject to due performance of the obligations on foot of the relevant regulations by all contractors in the Member States who in 1988



8<sup>th</sup> February 1996.

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1993 No. 352JR

THE HIGH COURT

JUDICIAL REVIEW

BETWEEN

BHOSPHORUS HAVA YOLLARI TURIZM VE TICARET

ANONIM SIRKETI

APPLICANT

AND

THE MINISTER FOR TRANSPORT, ENERGY AND COMMUNICATIONS,

IRELAND AND THE ATTORNEY GENERAL

AND TEAM AER LINGUS LIMITED

RESPONDENTS

Judgment of Mr. Justice Murphy delivered the 21st day of June 1994.

The issue in this important case may be stated simply. "Was the Minister for Transport, Energy and Communications (the Minister) or Ireland bound by virtue of Article 8 of Council Regulation (EEC) No. 990/93 to impound on the 8th June, 1993 an aircraft Boeing 737/300 aircraft registration No. TC.CYO then located at Dublin Airport"?

"concerning trade between the European Economic Community and the Federal Republic of Yugoslavia (Serbia and Montenegro)". The recitals to that regulation recall the recent and tragic history of the peoples and countries or provinces which composed the former Yugoslavia. It is recited that the Community recognised the independence of the Republic of Bosnia-Herzegovina on the 7th of April, 1992 and that that Republic subsequently became a member of the United Nations.

It is then asserted that the prolonged direct and indirect activities of the Federal Republic of Yugoslavia (Serbia and Montenegro) (to which I will refer as the Federal Republic) with regard to the Republic of Bosnia-Herzegovina were the main cause for the dramatic developments in that country and that the continuation of those activities would lead to further unacceptable loss of human life and material damage. The recitals expressly refer to the decision of the Community and its Member States to take measures to dissuade the Federal Republic from further violating the integrity and security of the Republic of Bosina-Herzegovina and to induce the Bosnian Serb party to co-operate in the restoration of peace in Bosnia. The recitals expressly note the actions taken by the United Nations in the following terms:

"The United Nations Security Council, acting pursuant to Chapter VII of the Charter of the United Nations, has adopted Resolution 820 (1993), in order to strengthen the embargo of the Federal Republic of Yugoslavia (Serbia and Montenegro), decided upon in Resolutions 713 (1991), 757 (1992) and 787 (1992)".

It was against that backround that the Community determined by Regulation 990/93 to strengthen the embargo already existing on the Federal Republic. Essentially the regulations prohibit the export to or the importation from the Federal Republic of any commodities or products. There is a particular provision dealing with air and sea transport which requires that Member States would (among other things) deny permission to any aircraft to take off from, land in or overfly, the territory of the Community if the plane is

destined to land in or has taken off from the territory of the Federal Republic. Article 9 of the regulations contains a particular provision for detaining vehicles (including aircraft) suspected of having violated or be in violation of certain EEC Regulations. However, these articles merely provide the context and background in which the crucial article, that is to say, Article 8 is set and that article provides as follows:-

"All vessels, freight vehicles, rolling stock and aircraft in which a majority or controlling interest is held by a person or undertaking in or operating from the Federal Republic of Yugoslavia (Serbia and Montenegro) shall be impounded by the competent authorities of the Member States.

Expenses of impounding vessels, freight vehicles, rolling stock and aircraft may be charged to their owners".

There may be many cases in which there will be no difficulty in applying the provisions of Article 8 aforesaid. This is not one of them.

In the present case, Yugoslav Airlines (JAT) were the owners of two aircraft B 737/300 which bore the registration marks YUANJ and YUANH respectively. By an agreement in writing (described as "a lease agreement") dated the 17th day of April, 1992, JAT therein described as "the lessor" leased those two aircraft to Bosphorus (therein described as "the lessee") for a term of 48 months from the delivery dates

thereof which were the 22nd of April, 1992 and the 6th of May, 1992 respectively. The lease was described as being "a dry lease" which, as I understand it, is essentially the lease of an aircraft without a crew. The lease provided for the payment of a monthly rental of \$150,000 in respect of each aircraft. In addition to that Bosphorus paid a sum of \$1,000,000 by way of deposit for each aircraft.

Subsequent to the delivery of the aircraft to it,
Bosphorus has had complete control thereof. The cabin and
flight crew are employees of Bosphorus. The destination of
the two aircraft is decided exclusively by the company and in
fact neither aircraft has, since the date of delivery,
returned to Yugoslavia or any of the States of the former
Yugoslavia. The aircraft have been used exclusively for the
purposes of the tour operation of Bosphorus Airways and over
a period of approximately a year have travelled between
Turkey and most of the Member States of the European Union.

The company Bosphorus was incorporated in Turkey on the 12th of March, 1992. 96% of the shares in that company are held by Mr. Mustafa Ozbay. He is a citizen of Turkey. He resides in Istanbul and he is Managing Director of the company. The remaining 4% of the shareholding in Bosphorus is owned by other Turkish citizens.

On delivery of the aircraft to Bosphorus they were both registered with the Ministry of Transport and Communications General Directorate of Civil Aviation in the Republic of Turkey. These certificates identify the aircraft involved and each gives the name of the owner as "Yugoslav Airlines (JAT)" — and the name of the operator as Bosphorus Havayollpi A.S. Evidence was given by a Turkish professor of law and practising lawyer to the effect that these

certificates were only issued after careful investigation by
the Turkish authorities: that they were conclusive evidence
that the planes were of Turkish nationality and under the
control of Bosphorus. The professor did of course recognise
that there were two interests in the plane in the sense that
JAT were the lessors and Bosphorus the lessee. He pointed
out, however, that it was possible to register planes in one
jurisdiction only under the Convention on International Civil
Aviation. In addition to the reference contained in the
certificate aforesaid, the lease agreement in respect of the
planes expressly provide in relation to ownership as follows:-

"Ownership stays to the lessor and the lessee has no right to intercede the aircraft, however the lessee has the right to inscribe the aircraft into the Turkish Register of Civil Aviation with notification the lessor is the owner of the aircraft".

I think it is important to emphasise that it is common case that the transaction between JAT and Bosphorus was entirely bona fide. There is no question of JAT having any interest direct or indirect in Bosphorus or in the management, supervision or direction of the business of that company.

The only interest which JAT has during the continuance of the term granted by the lease agreement is the right to receive the monthly rental payable by Bosphorus thereunder and the due performance by the lessee of the other conditions contained in the agreement. With regard to the payment of the monthly rental, the evidence is that these payments are

made to the credit of a "blocked" account by Bosphorus to the Central Bank of Turkey.

One of the aircraft in question, TC/CYO, was delivered the 16th of April, 1993 by Bosphorus to Team Aer Lingus for the purpose of having carried out thereon certain overhaul and maintenance services known as a "C-check". The service was completed by Team Aer Lingus on the 28th of May, 1993 but flight clearance for the plane was delayed until late in the evening of that day when the Company Secretary of Team Aer Lingus informed the representatives of Bosphorus that the Irish Government had issued instructions that "the aircraft was to be stopped". In a letter dated the 29th of May, 1993, Mr. O'Shea informed Mr. Ozbay as follows:~

"Further to our many conversations last night, I very much regret that we are unable to allow you to remove the above aircraft from our facility as planned.

As I explained to you already, mindful of UN sanctions presently in force affecting Yugoslavia, as a precautionary measure Team sought an opinion through our Government from the UN Sanctions Committee because the aircraft was leased from Yugoslavia Airlines.

We are still awaiting a response from the Sanctions Committee and we have been advised by our Government that it could be a violation of UN sanctions were we to release the aircraft prior to receiving formal clearance from the Sanctions Committee. Accordingly, we are unable to release the aircraft until such clearance is received by us.

We understand that the UN Sanctions Committee plans to meet next Wednesday and we would hope that matters will be resolved on that date".

The next development was the making of the European Commmunities (Prohibition of Trade with the Federal Republic of Yugoslavia (Serbia and Montenegro)) Regulations, 1993 (S.I. No. 144 of 1993) on the 4th of June 1993. These regulations were made by the Minister for Tourism and Trade in pursuance of the powers conferred on him by Section 3 of the European Communities Act, 1972 and for the purpose of giving full effect to the Council Regulation 990/93 aforesaid. That statutory instrument expressly constituted the Minister for Transport, Energy and Communications as the competent authority for the purposes of Articles 8 and 9 of the Council Regulations. Four days later - on the 8th of June 1993 - a Principal Officer of the Department of Transport, Energy and Communications advised Mr. O'Shea in the following terms:-

I wish to advise you that the Minister has today directed that Boeing 737/300 aircraft TC.CYO at Dublin Airport, which is Yugoslav owned, be impounded on his behalf by the Airport Police Fire Service of Aer Rianta pursuant to the powers conferred on him by the European Communities (Prohibition of Trade with the Republic of Yugoslavia (Serbia and Montenegro)) Regulations, 1993 (S.I. No. 144 of 1993) to implement EC Council Regulation 990/93 adopted in support of UN sanctions against Yugoslavia".

In the months of May and June, 1993 correspondence was exchanged between the Turkish authorities, the Irish Government and the Sanctions Committee of the United Nations or their respective representatives. What this correspondence makes clear is that the Sanctions Committee of the United Nations were strongly of the view that the aircraft in question should be impounded in accordance with the provisions of Security Council Resolution 820/1993. is, however, common case that the United Nations Resolutions do not form part of Irish domestic law and, accordingly, would not of themselves justify the Minister in impounding the aircraft. The real significance of the United Nations Resolutions insofar as they relate to the present proceedings is that Resolution 820/1993 of the Security Council Resolutions provided the genesis for Article 8 of the relevant European Regulation. Paragraph 24 of Resolution 820 aforesaid provides as follows:-

"Decides that all States shall impound all vessels, freight vehicles, rolling stock and aircraft in their territories in which a majority or controlling interest is held by a person or undertaking in or operating from the Federal Republic of Yugoslavia (Serbia and Montenegro) and these vessels, freight vehicles, rolling stock and aircraft may be forfeit to the seizing State upon a determination that they have been in violation of Resolutions 713 (1991), 757 (1992), 787 (1992) or the present resolution".

In those circumstances and in particular having regard to the fact that that very resolution is recited in the

interpretation of the terms used in the UNO Resolution could be of considerable assistance. Unfortunately, the careful researches carried out by Counsel on behalf of each party have been unable to unearth any such commentary and I am afraid I do not feel that the unexplained conclusion of the Chairman of the Security Council Committee is of any value to me in the performance of my function. Indeed, I believe that the conclusion of the Security Committee is not based upon the nature of the interest of JAT in the aircraft but on the fact that works were carried out on the plane. Certainly the communications from the Committee do not explore the meaning of the crucial terms.

Counsel for each party is in agreement with the general principle that the regulations in question should be interpreted purposively. That is to say that the Court should take a teleological or schematic approach to these regulations. These rules of interpretation were referred to by me at some length in Lawlor v. the Minister for Agriculture, 1988 I.L.R.M. 400 where I traced this rule of interpretation from the exciting paper read in 1976 by · Professor Kuscher, then a Judge of the Court of Justice in Luxembourg, and entitled "Methods of Interpretation as seen by a Judge at the Court of Justice" through to the adoption and incorporation of the said principles in Irish domestic law by the Supreme Court in Nestor v. Murphy, 1979 I.R. 326 but their rejection by the House of Lords as part of the English legal system in Buchanan v. Babco, 1978 A.C. 141. any rate, there is no doubt that the schematic and teleological approach is a fundamental principle of interpretation to be applied to EC Regulations and Directives.

Occasionally, in both European and Irish law, difficulty is encountered in identifying the precise purpose or end which the legislation under consideration is intended to achieve. No such problem arises in the present case. express purpose of the harsh commercial regime imposed by the regulations is to deter the Federal Republic from engaging in or continuing with activities which will lead to further unacceptable loss of human life and material damage. It is clear, beyond debate, that these regulations are intended to operate as a punishment, deterrent or sanction against the people or government of that troubled Republic. Conversely, it is equally clear that the regulations are not intended to punish or penalise peoples or countries who have not in any way caused or contributed to these tragic events. Between these two propositions there may be some grey areas. doubt sanctions or penalties imposed on one party may, incidentally, cause hardship to other parties. This may have to be accepted as the unavoidable consequence of the primary object of the regulations. It could hardly be suggested that the purpose of the regulations was to cause hardship to innocent parties save in so far as such hardship was a necessary concomitant of the sanction imposed on the target country and that the penalty suffered by the "innocent" party was not disproportionate to the sanction sought to be imposed on the "guilty" one.

No oral evidence was given by the Minister or any of his officers nor does the Statement of Opposition or the Affidavit grounding the same explain the precise basis on which the Minister concluded that the aircraft in question fell within Article 8 aforesaid. The most helpful explanation of the Minister's reasoning is to be found in a

letter of the 24th of June, 1993 addressed to Messrs Dillon Eustace, Solicitors on behalf of the Applicants, in which Mr. Peter O'Neill explained the Minister's position in the following terms:-

"The Minister fully appreciates that the "dry lease" under which Bosphorus Airways currently operates the aircraft would constitute that company the operational "owner" of the aircraft for most routine purposes.

The Minister is advised, however, that the Council Regulation EEC 990/93 of the 26th of April 1993 must be interpreted consistently with UN Resolution 820 (1993) which the regulation is designed to implement within the European Community.

The Minister appreciates that Bosphorus Airways is not "a person or undertaking" which is either "in or operating from the Federal Republic of Yugoslavia (Serbia and Montenegro)" but does not believe it is possible to avoid the effect and intention of Article 8 of the regulation by distinguishing different types of ownership interest in an aircraft. The Minister is advised that the intention and effect of the UN Resolution as implemented through the regulation is to impose sanctions upon that country by impounding the types of commercial asset mentioned in Article 8, including aircraft, in any case where a person or undertaking in or operating from the Federal Republic has any ownership interest of the kind mentioned. is not in dispute that subject to the operational interest conferred upon Bosphorus Airways by the 48

month dry lease, this particular aircraft is owned by JAT and that JAT is an undertaking to which Article 8 would apply".

The problem about Article 8 - or one of those problems - is that the regulation clearly and expressly distinguishes between the degree or percentage of interest held by the Yugoslav person or undertaking but neglects to draw any distinction between the nature, as opposed to the degree, of such interest as may exist. For example, Counsel on behalf of the Respondents readily and necessarily recognised that if the nature of the interest under consideration constituted the absolute ownership and the immediate right to possession and that that interest was shared between a Yugoslav national and a Turkish national as to 45% for the Yugoslav and 55% for the Turkish citizen that notwithstanding the very substantial involvement of the Yugoslav national, the article would have no application. On the other hand, if the Minister's contention is upheld, then where an aircraft (or freight vehicle or rolling stock) is the subject matter of a lease perhaps for a long period of years granted in consideration of a very substantial payment and a nominal annual rent by a Yugoslav citizen to a citizen of a Member State, that the aircraft would be captured by the article with the result that the citizen of the Member State would be gravely prejudiced with virtually no detriment to the lessors absolute but nominal right in reversion. "controlling" and "majority" would be found ordinarily in the context of company law and even then might give rise to considerable problems in application. To apply those terms

to physical possessions creates even greater difficulty. my view, the degree or extent of the interest referred to in the article must have been intended to identify a situation in which the person in or operating from Yugoslavia could exercise a decision-making function in relation to the use on a day to day basis of the asset in question. Any other construction would seem to be both unreal and unjust. To impound an asset for the possession and enjoyment of which a wholly innocent party has paid a substantial sum of money simply because another party has a theoretical right to receive a nominal rent in respect thereof must be absurd. Surely the purpose of the regulation is to deprive the guilty party of recourse to the aircraft, vehicle or whatever mode of transport is involved and which could itself be used to transport goods in breach of the embargo imposed by the regulations. In my opinion, the "interest" referred to in Article 8 is essentially the interest in possession or the right to enjoy control or regulate the use of the asset rather than an income derived from it. If the concern of the regulations was to deprive Yugoslav nationals or undertakings of an income, that could be done by other means as the present case has already demonstrated. As long as the position is that no citizen of Serbia and Montenegro has any use or control over the aircraft in question or the opportunity to receive any income derived from it, then it would seem to me that the regulations have achieved their purpose fully and the impounding of the aircraft would constitute a wholly unwarranted intervention in the business of Bosphorus.

Article 8 did not purport to confer on the Minister or any other responsible authority the duty of conducting any investigation or reviewing any evidence so as to satisfy himself that a particular asset was held as to an identified extent by a Yugoslav national. The duty imposed on the responsible authority was to act if and only if a particular state of facts existed, namely, where a majority or controlling interest in an aircraft was held by a person or undertaking in or operating from the Federal Republic and, in my view, that is not the position in the present. In my opinion, the majority and controlling interest in the aircraft in question is and was held by Bosphorus Airways and by no other person. In the circumstances the Minister, whether or not a responsible authority at the relevant date, was not empowered to impound the aircraft.

I think it appropriate to add that the Minister appeared to have made his decision with some reluctance and certainly appears to have taken every step open to him to co-operate with the international authorities in mitigating the hardship which his decision would necessarily cause to the Applicants.

I will hear the parties as to the form of the Order which should be made in the light of the foregoing findings.

Francis & Mul

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1994/120 J.R.

JUDICIAL REVIEW

BETWEEN

JOHN MICHAEL MULCAHY

APPLICANT

AND

THE MINISTER FOR THE MARINE

RESPONDENT

AND

COMHLUCHT IASCAIREACHT FANAD TEORANTA
NOTICE PARTY

JUDGMENT delivered the 4th day of November, 1994 by Keane J.

The Applicant in these proceedings is the owner of a fine house called "Carrablagh" on the shores of Lough Swilly near Portsalon in County Donegal. It is set in its own grounds which extend down to the seashore and commands extensive views over a splendid panorama of sea and land.

Respondent (whom I shall call "the Minister") has unlawfully granted the Notice Party (whom I shall call "the company") certain statutory licences on foot of which the company has established a salmon farm in the open sea some 400 yards from the seashore adjoining his property. He claims that these installations, consisting of a number of salmon cages moored in the water, seriously affect the amenities of the area, including in particular his property, and interfere with the rights of the public, including himself, to use these waters for boating, swimming, diving, fishing and other lawful activities. He also says that the establishment of the

salmon farm is significantly injurious to the eco-system of this part of Lough Swilly and will, in particular, by the spread of disease interfere with the existing fish life in the area.

The Minister and the company deny that the granting of the statutory licences was in any way unlawful. They also reject the assertion as to the possible injurious consequences of the establishment of the salmon farm and say that what is proposed is, initially at all events, a small scale and temporary experimental operation.

### THE FACTS

The facts, so far as they are not in dispute, are as follows. The Applicant and his wife bought "Carrablagh" in 1993. The Applicant is a banker in Hong Kong, who was born in South Africa, but is of Irish descent and is an Irish citizen. Having learnt of the proposal to establish the salmon farm, he wrote on the 21st December 1993 to the Minister expressing his concern. He pointed out in that letter that the walled garden at Carrablagh had been established by Henry Chichester Harte, a well known botanist, and that it had been established in that location because of what he described as the "unique micro-climate" on that section of the coastline. It was also Harte, according to the Applicant, who created some spectacular walks on the property with dramatic views of Lough Swilly and the Inishowen Peninsula. He said in that letter that:-

"The establishment of salmon cages would not be

landowner, but to the interests of a single landowner, but to the interests of the Fanad peninsula, Co. Donegal, and ultimately of Ireland itself. The thousands of visitors to the area every year are there to enjoy the amenities of the location in their pristine form. The salmon farms already in place have little assthetic attraction and are evidently polluting the water as well as seriously disrupting the visual aspect of the areas in which they are located."

The Applicant also drew attention in that letter to what he said were a number of maladies known to affect salmon farms.

There appears to have been no reply to that letter and on the 16th February, 1994, solicitors acting on his behalf wrote to the Minister stating that their client believed that a formal application had now been made for a licence and that, if such a licence were granted, proceedings would be instituted. On the 18th March, 1994, Mr. David Glynn, a Principal Officer in the Department of the Minister, informed the Applicant's solicitors that no decision had been taken by the Minister but that, in the event of a decision being made to grant licences, the solicitors would be notified of the statutory basis for such a decision. By letter dated 18th March, 1994, Mr. Glynn informed Mr. Anthony Fox, a director of the company, that the relevant licences had been executed by the Minister and were attached to the letter.

The first licence was granted by the Minister in purported exercise of the powers conferred on him by the

Clause 2 of the licence provides that it is to be subject to certain conditions. Condition (c) provides that the stock of salmon in the cages is not to exceed such quantity as might be specified by the Minister from time to time and in any event should not exceed 250,000 salmon. There are also conditions as to the use of chemicals and antibiotics, the keeping of records and the monitoring of the operation by the Minister and the company.

Condition (i) provides that the licence is to remain in operation until the 31st December, 1994. Finally, under Clause 3, the Minister is given liberty at any time to revoke or amend the licence if he considers that it is in the public interest so to do and also in certain other contingencies.

The second licence was granted by the Minister in purported exercise of the powers conferred on him by the Foreshore Act, 1933. It is headed "Foreshore Act 1933 Licence" and will be referred to in this judgment as the "Foreshore Licence". It was in the following terms:-

"The Minister for the Marine (hereinafter referred to as 'the Minister') in exercise of the powers vested in him by Section 3(1) of the Foreshore Act 1933 hereby grants (the Company) license to use and occupy that part of the foreshore at Lough Swilly in the County of Donegal defined in the attached schedule and more particularly delineated on the map annexed hereto and thereon coloured red for the purpose of mooring fourteen (14) aqualine cages each having a circumference of 80 metres x 10 metres deep and having

a combined capacity of 71,400 cubic metres for the cultivation of 250,000 salmon ...."

This licence was also granted subject to certain conditions. Condition 1 provides that it is also to remain in force until the 31st December, 1994. Condition 9 entitles the Minister to terminate the licence at any time by giving the Company three weeks' notice in writing to that effect.

The company is a joint venture formed with Norwegian interests who own seventy five per cent of the shares, the remaining twenty five per cent being owned by Irish shareholders, the majority of whom live in the area of the Fanad peninsula. Mr. Fox said in an affidavit, filed in response to the affidavit of the Applicant grounding the application for judicial review, that the company operated an integrated salmon farm, i.e., a farm which involved the development of fish through the entire life cycle. Eggs were normally harvested in December and the fish were then grown in fresh water until the following April 1:e., 14/15 months later. At that stage, he said that they become smolts, i.e., fish 8 inches to 10 inches long which have changed colour and which must at that stage be transferred to sea water. are then transferred to fish cages moored in sea water, where they are fed and cultivated for at least a further 18 months until the following December when they are ready for harvesting for export and sale.

Mr. Fox said - and it was not disputed on behalf of the Applicant - that it was internationally accepted that it was not desirable to continue the uninterrupted use of the same fish cages for a continuous supply of fish of different generations: rather, it was the preferred practice to allow Fisheries Acts, 1959-1991. It is headed "Fish Culture Licence" and will be so referred to in this judgment. It was in the following terms:

"The Minister for the Marine (hereinafter referred to as 'the Minister') in exercise of the powers conferred on him by the Fisheries Acts, 1959 - 1991, hereby authorises (the company) ..... at the place and in the waters delineated in red on the map annexed hereto (hereinafter referred to as 'the fishery') the exclusive right to:

- of salmon in cages, details of which have been submitted to and approved by the Minister, placed in the area of Lough Swilly, County Donegal, defined in the attached schedule and designated in the agreement dated the 28th day of November 1986 and the map annexed thereto between the licensee and the Minister;
  - (b) at any time of year to purchase, have in possession or sell salmon and salmon smolts the acquisition of which have been approved by the Minister;
  - (c) at any time of year to take and have in possession salmon and salmon smolts within the confines of the area referred to at (a) above;
  - (d) for the management of the fish farm, to have in possession and use nets, traps or other such devices as may be approved by the Minister for the taking of salmon and salmon smolts."

for a "fallow" interval at the end of any production period, so as to allow a stock free period between successive generations of fish. He said that in 1992 and 1993 the company suffered serious losses of juvenile salmon stocks which had just been transferred to the sea and that it became all the more essential to locate an additional site to allow "fallowing" of the original site and the monitoring of fish development. He said that, although the total area required for the fish cages was quite small, being less than the size of a football pitch, it was nevertheless difficult to locate ideal sites for the stock. The fish cages were in fact 10 inches polyethylene in a continuous circle with a circumference of 25 metres, these being the only portion of the cage visible in the water.

Mr. Fox said that, at its peak in June, 1993, the company employed in excess of 140 staff and that many other jobs in the area depended indirectly on the income generated by the company. Both he and Mr. Glynn contested the Applicant's claim that the cages would be either visually obstrusive or that the salmon farm operation would cause any serious damage to the eco-system of Lough Swilly and they emphasised, in particular, the restrictive conditions subject to which the licences were granted and their temporary and revocable nature.

On the 22nd March 1994, the Applicant applied to
Carney J., and was granted by him, leave to apply for an
order of certification by way of application for judicial review
in respect of the Fish Culture Licence and the Foreshore
Licence and an injunction restraining the fish farming
operations being carried on on foot of the licences on the

grounds set out in the statement supporting the application. The Minister and the company having filed statements of opposition, the present application was brought before the Court to make absolute the order of certiorari and grant a permanent injunction. An interim injunction which had been granted restraining the Notice Party from operating the fish farm was discharged by Carroll J. on the 25th March 1994.

Of the grounds set out in the statement filed in support of the application for leave to apply for judicial review, the following were relied on at the hearing before me:-

- "(1) (The Minister) failed to comply with the principles of natural and constitutional justice and basic fairness of procedures.
  - (2) (The Minister) acted ultra vires in purporting to consider the request under Section 3 of the Foreshore Act 1933 and Section 15 of the Fisheries (Consolidation) Act 1959.
  - (3) Section 3 of the Foreshore Act 1933 and Section 15 of the Fisheries (Consolidation) Act 1959 do not permit any interference with public rights such as is contemplated by the proposed development at Portsalon.
  - (4) By reason of the Minister's failure to consider the request pursuant to Section 54 of the Fisheries Acts 1980 (sic).
  - (5) That the Minister erred in failing to order an inquiry as contemplated by Section 54 of the Fisheries Act 1980 before making a decision.

of the principles of natural and constitutional justice in failing to allow the Applicant sight of the application for permission and the file of which it formed part in order that the Applicant for judicial review might have been in a position to make an effective challenge or make effective representations in relation thereto."

# THE APPLICABLE LAW.

The Fisheries (Consolidation) Act 1959 (hereafter "the 1959 Act") was, as its short title indicates, a consolidating measure. In addition to setting out the powers and duties of the Minister's predecessor (the Minister for Lands) in respect of fisheries, it contained provisions in relation to such matters as boards of conservators, the granting of licences for fishing for salmon, trout and sels, regulations as to nets and provisions in relation to fishing weirs and dams. It also contained provisions setting out the close seasons for fishing for salmon, trout, pollen and eels.

Section 15 (under which the Fish Culture Licence was purportedly granted) provides that:-

"(1) The Minister may, whenever and so often as he thinks fit, by licence (in this section referred to as a Fish Culture Licence) authorise, subject to such conditions as he thinks fit and specifies in the licence, a named person to carry on at a specified place such operations, in relation to

the culture of fish of a specified kind, as may be specified in the licence.

- (2) Notwithstanding anything contained in this Act or any instrument made thereunder, a person to whom a Fish Culture Licence is granted and any person acting under the directions of such first mentioned person may, subject to the conditions specified in the licence, do any of the things authorised by the licence.
- (3) The Minister, if he so thinks fit, may amend a Fish Culture Licence within ten years from the date on which the licence was granted.
- (4) The Minister may revoke a Fish Culture Licence -
  - (a) if the licensee is convicted of an offence under the repealed enactments or an offence under any provision of this Act, or
  - (b) if he is satisfied that there has been a breach of any condition specified in the licence."

Sub-section (5) makes certain provisions in relation to the amendment or revocation of such a licence which are not material to these proceedings.

"Fish" is defined in Section 3 as including:-

"all crustaceans and molluscs found in the sea, and brood and spawn of fish ....."

However, although oysters and other shellfish can prima facie

the Act relating to oysters should be noticed at this point.
Under Section 245 the Minister is empowered to grant to
certain persons "Oyster Bed Licences". Where, however, an
application for such a licence is made, the Minister is
required under S. 247 to hold a public inquiry as to the
expediency of granting the application and to consider the
report of the officer appointed to hold the inquiry before
making any decision on the application. It will be noted
that there is no such provision in relation to the granting
of fish culture licences. Part XIV of the 1959 Act also
provides for the making of "Oyster Fishery Orders", but those
provisions are not material to these proceedings.

The 1959 Act was amended on a number of occasions.

The Fisheries Act 1980, S. 54 of which is relevant to these proceedings, provides in S. 1(3) that:-

"The Fisheries Acts, 1959 to 1976, the Fisheries (Amendment) Act, 1978, and this Act shall be construed together as one."

Section 54 (1)(a) of the 1980 Act provides that:-

"It shall not be lawful for any person at any place to engage in aquaculture save under and in accordance with a fish culture licence, an oyster-bed licence, a licence granted by the Minister under this section or an oyster fishery order."

Sub-section (2) provides that:-

- "(a) Subject to the following provisions of this section, the Minister may by order designate an area specified in the order to be an area within which it shall be lawful to engage in aquaculture pursuant to and in accordance with a licence granted by the Minister under this section.
  - (b) An order under this section which designates an area which is wholly or partly comprised of an area of the sea, or an order amending such an order under this section, shall not be made without the consent of the Minister for Tourism and Transport.
  - (c) An area specified in an order under this sub-section may be wholly or partly comprised of any waters which by virtue of Section 10(9) of this Act may be included in a fisheries region."

# Sub-section (3) provides that:-

"Whenever the Minister proposes to make an order under this section or to amend such an order the following provisions shall apply:-

(a) he shall deposit and keep deposited, at such place or each of the places as he shall determine for such period (being a period of not less than three weeks beginning on the date of publication of the notice referred to in paragraph (b) of this sub-section as he shall determine) such plan or plans or other documents as will show clearly

both the area and the waters therein to which the proposed order is to apply;

- (b) he shall publish in the <u>Iris Oifigiuil</u> and in at least one daily newspaper published in the State notice of the nature of the intended order, and in addition to the foregoing such notice shall state that -
  - (i) representations and objections as regards the proposed order may be made in writing to the Minister during the said period (which representations and objections are hereby authorised to made) and
  - (ii) copies of the documents deposited pursuant to this section may be inspected at any reasonable hour during the said period, and the place or places at which such document may be so inspected."

## Sub-section (4) provides that:-

- "(a) The Minister, having regard to any
  representations or objections made under
  sub-section (3) of the section, may, if he thinks
  fit, appoint a person to hold an inquiry and
  report to him in writing in regard to the
  proposed order
  - (b) If the Minister appoints under this sub-section a person to hold an inquiry, every person by whom an objection to or representation as regards the proposed order is made shall be entitled to

appear and be heard (either in person or though Counsel or a Solicitor) at the hearing."

Sub-section (5) provides that:-

- "(a) Where the Minister, having complied with the requirements of sub-section (3) of this section and having considered any report made to him under sub-section (4) of this section, or in case no such report is made, any representations made under the said sub-section (3) and any objections so made which are not withdrawn, is of the opinion that, notwithstanding the existence of any public right to fish in the waters to which the proposed order is made would relate, it would be in the public interest were an order under this section to be made, he may make such an order in the form originally proposed or with such variation or amendment as in the circumstances of the case he considers appropriate.
  - (b) In case the Minister makes an order under this section he shall, as soon as may be, publish notice of the making thereof in the Iris official and in at least one daily newspaper published in the State."

Sub-section (7) provides that:-

"Any person who is aggrieved by the making of an order under this section may, within the period of 28 days

beginning on the day of which notice of the making of the order is published pursuant to the section in the <a href="Iris Oifigiuil">Iris Oifigiuil</a>, appeal to the High Court against the order and a decision of the High Court on such an appeal shall be final and not appealable."

Sub-section (9)(a) provides that:-

"Subject to sub-section (10) of this section the Minister may, whenever and so often as he thinks fit, on payment to him of the prescribed fee (if any) by licence (in this section referred to as an 'aquaculture licence') authorise, subject to such conditions as he thinks fit and specifies in the licence, a person specified in the licence to carry on at a place or in water so specified, being a place or waters situated within a designated area, such operations in relation to aquaculture as may be so specified, and in addition to the foregoing the Minister may, if he thinks fit, specify in an aquaculture licence, by means of a map or otherwise, the boundaries or limits of the place or waters in relation to which the licence is granted."

Sub-section 10(a) prohibits the granting of an aquaculture licence within the limits of any oyster-bed or oyster fishery without the consent of the person beneficially entitled to the bed or fishery. Sub-section 10(b) provides that:-

"An aquaculture Licence to engage in aquaculture

within the limits of a several fishery shall only be granted -

- (i) to the owner of such fishery, or
- (ii) with the consent in writing of such owner."

Sub-section (15)(a) provides that:-

"A person who immediately before the passing of this Act was engaged in aquaculture may apply to the Minister for a licence under this sub-section and the Minister shall if he is satisfied that the person was lawfully so engaged authorise, subject to such conditions as the Minister considers appropriate and specifies in the licence, the person to carry on at the place or in waters at or in which the aquaculture is so carried on (which place or waters shall be specified in the licence) the operations in relation to aquaculture in which the Minister is satisfied that the person was so engaged (which operations shall be so specified)."

Sub-section (16) prohibits the Minister from granting any fish culture licence as regards any place situated within a designated area.

Sub-section (19) defines "aquaculture" as -

"culture of any species of fish, aquatic invertebrate animal of whatever habitat or aquatic form of any food which is suitable for the nutrition of fish."

Section 3(1) of the Foreshore Act, 1933, (hereafter

"the 1933 Act") as adapted, provides that:-

"if, in the opinion of the Minister, it is in the public interest that a licence shall be granted to any person in respect of any foreshore belonging to (Ireland) authorising such person to place any .... works in or on such foreshore .... the Minister may, subject to the provisions of this Act, grant by deed under his official seal such licence to such person for such term not exceeding ninety-nine years commencing at or before the date of such licence, as the Minister shall think proper."

### Section 3(9) provides that:-

"Whenever an application is made to the Minister for the grant of a licence under this section, the Minister may, if he thinks fit, hold a public inquiry in regard to the granting of such licence."

These provisions of the 1959 Act, the 1980 Act and the 1933 Act were considered by Johnson J. in Madden and Others—v— The Minister for the Marine and Another, (1993) 1 IR 567. In that case, licences had been purportedly granted under Section 3 of the 1933 Act and Section 15 of the 1959 Act. These gave the applicants the right to construct and maintain fish farming facilities on the foreshore at Ballyvaughan Bay in County Clare. The area was described in the judgment as "a place widely utilised for fishing, tourist interests and water sports" and as being the centre of a

large tourist industry "with many environmental advantages". Notice of the application for the licences had been published in a local newspaper and written objections were received by the Minister from a number of people in the area. Johnson J. found that the Minister had deliberately concealed from the objectors the fact that a licence under the 1933 Act had already been granted at the stage that they made their objections in writing. The learned Judge also considered that the Minister, by utilising the procedures under the 1933 Act and the 1959 Act, instead of the provisions of Section 54 of the 1980 Act, had deprived the applicants in that case of an inquiry under the 1959 Act and a public inquiry under the 1933 Act and that, in addition, the jurisdiction of the High Court had been purportedly ousted by the failure to utilise the 1980 Act. The learned Judge was of the view that:-

"Section 15 of the Act of 1959 is inappropriate to a situation where public rights officially are being interfered with, and where the rights of other citizens are being interfered with by the granting of such a licence. That interference should not take place without notice or without access to the Courts where the Oireachtas provides for such."

In addition, Johnson J. found that the Minister, in representing to the applicants that he was considering their objections at a time when he had already granted a licence and in failing to make available to the applicants the information upon which he had based his decision, did not act

in accordance with the principles of constitutional justice. He cited, in this context, the following observation of Walsh J., giving the judgment of the Supreme Court in East Donegal Cooperative Livestock Mart Limited -v- Attorney General, (1970) IR 317:-

"Therefore, he is required to consider every case upon its own merits, to hear what the applicant or the licensee (as the case may be) has to say, and to give the latter an opportunity to deal with whatever case may be thought to exist against the granting of a licence or for the refusal of a licence or for the attaching of conditions, or for the amendment or revocation of conditions which have already attached, as the case may be."

A number of orders under Section 54 of Fisheries Act 1980 have been made from time to time by the Minister. They are set out in an appendix to this judgment. In the case of an order relating to Smerwick Harbour, an appeal was brought to the High Court under Section 54 (7) and on the hearing of the appeal the order was set aside by O'Hanlon J. His judgment is reported sub nom. Courtney & Others -v- Minister for the Marine, (1989) ILRM at p. 605.

## SUBMISSIONS OF THE PARTIES.

On behalf of the Applicant, Mr. Sutton S.C., submitted that the present case was indistinguishable from <u>Madden</u> and that the judgment of Johnson J. should be followed. He said that the Oireachtas had clearly intended that fish culture

licences under the 1959 Act should, in general, be granted to the owners of several fisheries in private waters, where it appeared to the Minister that the restrictive provisions of that Act in relation to matters such as the close seasons should not apply to the operations carried on in such a fishery. He argued that, at the time the 1980 Act was enacted, the development of commercial fish farms on an extensive scale along the west and south coasts of Ireland had obviously made it desirable that a more elaborate scheme of statutory control in the public interest over such operations should be established. He said that the designated area order procedure laid down in Section 54 of that Act was precisely such a scheme and that it could not have been intended by the Oireachtas that the provisions of the section could, in effect, be rendered nugatory by the Minister granting a series of fish culture licences under the 1959 Act and foreshore licences under the 1933 Act, the cumulative effect of which would be to render a large area, such as Lough Swilly, a designated area in practical terms without the machinery of an inquiry and/or an appeal to the High Court envisaged by that section being utilised in any way. He said that it was clearly not the legislative intention that the rights of the public in regard to such waters, as distinct from private waters, including the pursuit of such lawful activities as boating, swimming, diving and angling, could be seriously eroded or abridged by operations such as those being carried on by the company without the objections or representations of aggrieved members of the public ever being heard at an inquiry and without any recourse to the High Court by way of appeal as envisaged in Section 54.

Alternatively, Mr. Sutton submitted that the decision of the Minister was clearly vitiated by his failure to observe the requirements of natural justice. If the Minister was empowered to grant the licences in question under the 1933 Act and the 1959 Act, then, in the absence of any public inquiry or any right of appeal to the High Court, it was incumbent on the Minister to ensure that he took into account any representations or objections of persons whose rights as members of the public might be affected by the granting of such licences. In failing to furnish the Applicant with the material on which his decision was based including the detailed environmental study furnished by the company, he was depriving the Applicant of the opportunity to which he was entitled to comment on such material, thereby depriving the Applicant of the fair hearing to which he was entitled before the decision to grant the two licences was made.

Mr. Hedigan S.C., on behalf of the Minister submitted that the present case was distinguishable from Madden. In the latter case, he said, the constructions to which objection was taken were of a fixed and permanent nature, whereas, in the present case, the fallowing cages were expressly designated as temporary only and the licences came to an end on December 31st.

Mr. Hedigan submitted, in the alternative, that Madden was erroneous in point of law and should not be followed. He said that there was nothing in the wording of Section 15 of the 1959 Act to indicate that it was confined in its application to several fisheries in private waters. Had that been the intention of the Oireachtas, it could have said so. As it was, the Oireachtas had clearly left the Minister with

a discretion as to which form of procedure he would employ and it was entirely within the Minister's competence, as a matter of policy, to avail or not of the designated area procedure as he thought fit.

Mr. Hedigan further submitted that there had been no violation of natural justice in this case. The Applicant had put his objections to the granting of the licence fully and forcibly before the Minister and the Court was entitled to assume that the Minister had given proper consideration to those objections before he decided to grant the licences.

Mr. Turlough O'Donnell on behalf of the company adopted Mr. Hedigan's submissions, with one important qualification. Mr. Hedigan had conceded that there was nothing in the terms of Section 15 which precluded the Minister from granting a series of fish culture licences in an area such as Lough Swilly which would, in effect, convert it into a designated area, without the procedures of an inquiry and/or appeal to the High Court being utilised. O'Donnell, however, submitted that, while the section literally construed would have that effect, any decision by the Minister which could be seen as an attempt to circumvent the protection afforded to the public by S. 54 would be liable to challenge in the Courts under the principle laid down in the East Donegal case, i.e., that the Oireachtas must be presumed to have intended that proceedings permitted by an act of the Oireachtas are to be conducted in accordance with the principles of constitutional justice. That approach was also ultimately adopted by Mr. Hedigan when replying to Mr. Sutton's submissions.

It is beyond argument that, if S. 15 of the 1959 Act is construed literally and in isolation from the provisions of the 1980 Act, and in particular S. 54 thereof, the grant of the Fish Culture Licence in this case was a lawful exercise of the Minister's powers, as was the grant of the Foreshore Licence under the 1933 Act. I am satisfied, however, that it cannot have been the intention of the Oireachtas that the Minister, by the simple expedient of granting a whole series of fish culture licences and foreshore licences, could effectively render otiose the elaborate structure provided in S. 54 of the 1980 Act for protecting the rights of the public. While the Court is not, in the absence of a constitutional challenge, entitled to do violence to the plain language of an enactment in order to avoid an unjust or anomolous consequence, that does not preclude the Court from departing from the literal construction of an enactment and adopting in its place a teleological or purposive approach, if that would more faithfully reflect the true legislative intention gathered from the Act as a whole.

In the present case, that would not mean distorting the actual language used in S. 15 of the 1959 Act. It would, however, mean attributing to the Oireachtas the intention, in enacting S. 54 of the 1980 Act, of providing an exclusive machinery for the granting of aquaculture licences in public waters. I am satisfied that such a teleological or purposive construction must be adopted, if the Court is to give effect to the intention of the Oireachtas.

The Minister and the company were ultimately driven to

arguing that decisions by the Minister which had the effect of rendering the S. 54 procedure nugatory could be set aside by the Courts. It is, however, in my view impossible to attribute to the Oireachtas an intention that the Minister should be entitled to grant an unspecified series of fish culture licences in public waters subject to a qualification that, depending on the happenstance of litigation, the point might be reached at which his policy could be successfully challenged in the Courts. Ultimately, one must choose between a literal and a teleological or purposive interpretation and I am satisfied that it is the latter which must prevail.

I am fortified in arriving at that conclusion by the decision in Madden. I do not accept that the decision is distinguishable on the ground that the installations in that nature were of a permanent, rather than of a temporary, nature. It was not disputed in the present case that, if the Minister were satisfied with the experience of the temporary licence, he would be prepared to grant a licence of a more permanent nature. Nor do I attach any significance to the description by Johnson J. of the Minister's activities in that case as "inappropriate". Had the learned judge intended to convey by the use of that expression that the Minister had merely made a policy choice which appeared unsound, but was intra vires, he could not have arrived at his conclusion that the grant of the licences in that case was unlawful.

That is sufficient to dispose of the present case, but

I am also satisfied that, in any event, the Minister in the

present case in granting the licences failed to act in

accordance with the requirements of natural justice. If,

contrary to the conclusion I have already reached, the licences could have been granted in this case without even considering the possibility of an inquiry under the 1959 Act or without permitting the Applicant to appeal to the High Court, it became all the more important that the objections of the Applicant to the proposal should be fully considered before the licences were granted. I am prepared to assume that the Minister gave full weight to the objections of the Applicant as conveyed in his letter of December 21st, 1993. Nor was he obliged to transmit his entire file to the Applicant, as was contended on his behalf. However, in failing to furnish to the Applicant or his Solicitors the basic material on which he arrived at his own decision, including in particular the environmental impact statement carried out on behalf of the company in February, 1992, he deprived the Applicant of the opportunity of making any comments on that material. In the result, the case of the Applicant against the granting of the licences was not fully heard by the Minister in breach of the maxim audi alteram partem. On this ground also, I am satisfied that the decision to grant the two licences must be set aside.

In the result, there will be an Order quashing by way of Certiorari the Fish Culture Licence and the Foreshore Licence. I will hear Counsel as to the form of any injunctive relief which should be granted in the light of these findings.

Sprt Ben 1/en 21/11/1994

### APPENDIX

Inner Bantry Bay, Co. Cork

Achill Sound/Bellacragher, Co. Mayo

Blacksod/Broadhaven, Co. Mayo

Kenmare River, Co. Kerry

Killary Harbour, Co. Galway

Carlingford, Co. Louth

Mulroy Bay, Co. Donegal

Kilkieran Bay, Co. Galway

Bertraghboy Bay, Co. Galway

Mannin Bay/Streamstown, Co. Galway

Ballynakill, Co. Galway

Inver/McSwyne's Bay, Co. Donegal

Clew Bay, Co. Mayo

Clare Island, Co. Mayo

Ventry Harbour and Trabeg Bay, Co. Kerry

# Patrick Lawlor, Plaintiff v. The Minister for Agriculture, Noel Duffy and Mary Duffy, Defendants [1986 No. 11837P]

High Court

2nd October 1987

Constitution - Property rights - Ownership - Exercise - Exigencies of the common good - Retroactivity - European Communities (Milk Levy) Regulations 1985 (S.I. No. 416) - European Communities Act 1972 (No. 27), s. 3 - Constitution of Ireland 1937, Articles 40 and 43.

Constitution - Conformity - Immunity - Membership of European Communities - Measures necessitated by the obligations of membership of the Communities - Constitution of Ireland, 1937 Article 29, s. 4, sub-s. 3.

Sale of land - Dairy farm - Milk Guota" Transfer - Ministerial regulation - Retroactive effect - Interim period - Whether quota retained by vendor in absence of express agreement - European Communities (Milk Levy) Regulations; 1985 (S.I. No. 416) - European Communities Act 1972 (No. 27) s. 3 - Commission Regulation (EEC) No. 1371/84.

Statute - Statutory interpretation - European Communities legislation - Principles of interpretation - Domestic legislation enacted to implement E.E.C. regulation - Schematic or teleological approach.

The EEC milk super levy scheme, formulated in 1984 to curb milk production throughout the Community, fixed maximum milk production quotas for each Member State, each of which was in turn obliged to provide the necessary internal implementing administrative structure, which would apportion quotas to all milk purchasers and, through them ultimately to the milk producers. Quota excess was to be penalised by a levy and milk quotas in Ireland were essentially fixed at 1983 levels. Article 5 of Commission Regulation (EEC) No. 1371/84 provided: "Where an entire holding is sold, leased or transferred by inheritance, the corresponding reference quantity [i.e. "quota"] shall be transferred in full to the producer who takes over the holding." By the European Communities (Milk Levy) Regulations, 1985, made on the 12th December, 1985, that requirement of art. 5 was given retroactive effect, save in relation to the period between 1st January, 1983, and 1st April, 1984, in cases where an agreement in writing stipulated that the quota was to be retained by the vendor.

By agreement in writing dated the 18th November, 1983, the plaintiff sold a 90 acre dairy farm to the second and third defendants. The agreement contained no specific term regarding the farm's milk quota. On the 14th August, 1986, the first defendant informed the plaintiff that the second and third defendants were entitled to the quota attached to the farm. The plaintiff contended that the regulations of 1985 with their retrospective effect were unconstitutional being an unjust attack on the property rights of the plaintiff; that they were ultra vires the powers conferred by s. 3 of the European Communities Act, 1972, on the first defendant; and that as the regulations were not necessitated by the obligations of membership of the Communities, they were not exempted from constitutional scrutiny by the provisions of Article 29, s. 4, sub-s. 3 of the Constitution.

Held by Murphy J., in dismissing the plaintiffs claim, 1, that the European Communities (Milk Levy) Regulations, 1985, did not constitute a general attack on the right of private ownership of property guaranteed by Article 43 of the Constitution.

2. That the Regulations of 1985, by curbing the right to enter into and to expand dairy production, did delimit certain rights of ownership, but such limitation was clearly with a view to reconciling the exercise of those rights with the common good.

3. That the limitation of ownership rights contained in the Regulations of 1985 was not, in all the circumstances, such as called for monetary compensation.

4. That the interference with property rights, having conformed with Article 43, did not require to be further examined by reference to Article 40. section 3.

1 I.R.

(4) orders restraining the first defendant from assigning or causing to be allocated any portion of the plaintiff's reference quantities to the second or third defendants; and

(5) orders restraining the second and third defendants from making representations to the first defendant with the object of causing such allocations to be made.

By affidavit sworn on the 15th December, 1986, the plaintiff deposed that he would suffer damage if 78,013 gallons of milk, equivalent to 41% of his total quota, were assigned to the second and third defendants. By affidavit sworn the 20th January, 1987, the second defendant deposed that he and the third defendant had submitted with the plaintiff to a special arbitration procedure set up by the first defendant, in which the plaintiff had contended that the reference quantity properly referrable to the Burtonstown farm, the subject matter of the agreement for sale dated the 28th November, 1983, amounted to only 30,000 gallons, but that the arbitrator had decided that the proper amount was 78,013 gallons, and that it was solely on foot of that award that the plaintiff had embarked upon alternate proceedings in the High Court. An affidavit on behalf of the first defendant was sworn by Michael Corry on the 23rd January, 1987. Pursuant to notice of motion dated the 19th December, 1986, the High Court (Blayney J.) on the 2nd February, 1987, granted interlocutory injunctions in the terms of (3) and (5) above, the plaintiff through his counsel having given an undertaking as to damages. Notice pursuant to O. 60 of the Rules of the Superior Courts, 1986, was served on the Attorney General that at the hearing the plaintiff would be seeking a declaration that the European Communities (Milk Levy) Regulations, 1985 (S.I. 416 of 1985) did not come within the scope or ambit of Article 29, s. 4, sub-s. 3 of the Constitution.

Article 12 of the European Communities (Milk Levy) Regulations, 1985 (S.I. 416) provides:-

"(1) (a) Any person who purports to sell or transfer or sells or transfers land or any part of any land without at the same time assigning to the purchaser or transferee, as the case may be, of that land or that part of that land the relevant reference quantity shall be guilty of an offence.

(b) Any person who purports to lease or leases land or any part of any land for a period of not less than three years without at the same time assigning to the lessee of that land or that part of that land the relevant reference quantity shall be guilty of an offence.

(c) Any person who purports to purchase, or who purchases, or who takes a lease of, any land or any part of any land for a period of not less than three years without an assignment of the relevant reference quantity shall be guilty of an offence.

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(d) Any person who purports to lease or leases, or takes a lease, of any land or any part of any land for a period of less than three years, and assigns or takes an assignment of the relevant reference quantity shall be guilty of an offence.

(e) Any person who is found guilty of an offence under this paragraph shall be liable on summary

conviction to a fine not exceeding £1,000.

(2) Subparagraphs (1) and (2) of Article 5 of Commission Regulation No. 1371 shall be applicable to other transfers referred to in subparagraph (3) of the said Article 5 except that as regards, and only as regards, the period commencing on the 1st day of January, 1983, and ending on the 1st day of April, 1984, the following provisions shall have effect:-

(a) this Regulation shall not be construed as applying in relation to a sale, lease, transfer or disposal of land in relation to which an agreement in writing had previously been concluded whereby it was agreed that all or part of the relevant reference quantity was to be retained by the person selling, leasing, transferring or disposing of the land, and

(b) nothing in the Regulations shall be construed as affecting such an agreement."

# Section 3 of the European Communities Act, 1972, provides:-

"(1) A Minister of State may make regulations for enabling section 2 of this Act to have full effect.

(2) Regulations under this section may contain such incidental, supplementary and consequential provisions as appear to the Minister making the regulations to be necessary for the purposes of the regulations (including provisions repealing, amending or applying, with or without modification, other law, exclusive of this Act).

(3) Regulations under this section shall not create an indictable offence."

# Article 7 of Council Regulation (EEC) No. 857/84 provides:-

"1. Where an undertaking is sold, leased or transferred by inheritance, all or part of the corresponding reference quantity shall be transferred to the purchaser, tenant or heir according to procedures to be

2. Under formula B, where a purchaser replaces, wholly or in part, one or more purchasers, his annual reference quantity shall be established:for the end of the current 12 month period, by taking into account all or part of the reference quantities on a pro rata basis of the time still to run; for the following period of 12 months, by adopting all or part of the reference quantities of the purchaser or

purchasers whom he replaces.

3. Member States may provide that a part of the quantities be added to the reserve referred to in Article 5."

### Article 5 of Commission Regulation (EEC) No. 1371/84 provides:—

"For the purposes of applying Article 7(3) of [Council Regulation No. 857/84/E.E.C.] the following rules shall apply to the transfer of reference quantities granted to producers and purchasers in application of formulas A and B and of reference quantities granted to producers selling for direct consumption:-

1. Where an entire holding is sold, leased or transferred by inheritance, the corresponding reference

quantity shall be transferred in full to the producer who takes over the holding.

2. Where one or several parts of a holding is sold, leased or transferred by inheritance, the corresponding reference quantity shall be distributed among the producers operating the holding in proportion to the areas used for milk production or according to other objective criteria laid down by Member States. Member States may disregard transferred parts the area of which used for milk production is less than a minimum size which they shall determine.

3. The provisions of subparagraphs 1 and 2 above shall also be applicable in other cases of transfer which, under the various national rules, have comparable legal effects as far as producers are concerned. Member States may apply the provisions of subparagraphs 1 and 2 in respect of transfers taking place during and

after the reference period."

Article 29, s. 4, sub-s. 3 of the Constitution of Ireland, 1937, provides:—

"3 The State may become a member of the European Coal and Steel Community (established by Treaty signed at Paris on the 18th day of April, 1951), the European Economic Community (established by Treaty signed at Rome on the 25th day of March, 1957) and the European Atomic Energy Community (established by Treaty signed at Rome on the 25th day of March, 1957). No provision of this Constitution invalidates laws enacted, acts done or measures adopted by the State necessitated by the obligations of membership of the Communities or prevents laws enacted, acts done or measures adopted by the Communities, or institutions thereof, from having the force of law in the State."

Article 40, s. 3 of the Constitution, 1937, provides:-

"3. 1 The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.

2 The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name, and property rights of every citizen."

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Article 43 of the Constitution, 1937, provides:—

- "1. 1 The State acknowledges that man, in virtue of his rational being, has the natural right, antecedent to positive law, to the private ownership of external goods.
  - 2 The State accordingly guarantees to pass no law attempting to abolish the right of private ownership or the general right to transfer, bequeath, and inherit property.
- 2. 1 The State recognises, however, that the exercise of the rights mentioned in the foregoing provisions of this Article ought, in civil society, to be regulated by the principles of social justice.
  - 2 The State, accordingly, may as occasion requires delimit by law the exercise of the said rights with a view to reconciling their exercise with the exigencies of the common good."

The action was heard by the High Court (Murphy J.) on the 14th, 15th, 16th, 17th, and 21st July, 1987.

John D. Cooke S.C. and James O'Reilly for the plaintiff.

Hugh Geoghegan S.C. (with him Carroll Moran) for the first defendant.

Patrick Keane S.C. and Richard Law Nesbitt for the second and third defendants.

Cur. adv. vult.

Murphy J.

2nd October 1987

This case raises the question as to whether and, if so, to what extent the purchaser reference quantity (or the milk quota as it is more commonly known) passed with the sale of property which took place pursuant to a contract of sale dated the 28th November, 1983.

## The Regulatory Background

Whether it was the result of mistaken policies or technological advances in the agricultural industry is irrelevant. It is sufficient to note that the European Economic Community recognised that the Community as a whole was suffering

from surpluses as a result of imbalance between supply and demand for, amongst other things, milk and milk products. Various regulations were made which had the effect of introducing what was known as "a uniform co-responsibility levy on all milk delivered to dairies and on certain dairy products sold direct from the farm" with a view to correcting this imbalance. These measures did not resolve the problems.

In March of 1984 the Council of the European Communities decided to introduce an additional levy on quantities of milk delivered beyond a guaranteed threshold. The general scheme determined by the Council was to establish the figure for the quantity of milk or milk equivalent representing the level of internal consumption and then current export possibilities of the Community as a whole and, having done so, to distribute that figure among the Member States on the basis of milk deliveries within their territories during the 1981 calendar year. Among the many refinements made - no doubt as a result of protracted economic and political debate - to this simple concept was the provision that the base year for Ireland (and indeed Italy) should be the calendar year 1983. Whilst the scheme envisaged a Community target and national limits for the Member States, the fundamental concept was to penalise the producer who exceeded that part of the national quota or reference quantity ascribed to him.

This superlevy scheme was introduced by Council Regulation (EEC) No. 856/84 of the 31st March, 1984, and duly published in the Official Journal of the European Communities on the 1st April, 1984. That regulation, having clearly stated that its purpose was to curb the increase in production, went on to provide that the levy system could be implemented in each region of the territory of Member States in accordance with one or other of two formulas, the first of which imposed the levy on the producer in the first instance, and the other provided for the imposition of the levy on the purchaser of the milk or milk products in excess of the relevant reference quantity. However in the latter event there was express provision requiring the purchaser to pass on the levy to those producers who had increased their deliveries above he appropriate quota. Levies were also to be imposed on producers who sold quantities for direct consumption in excess of the reference quantity. General regulations (Council Regulation (EEC) No. 857/84) were duly made on the 31st March, 1984, and published in the Official Journal. Article 2 of Regulation 857/84 provided that the reference quantity (or quota as it is referred to in practice) should be equal to the quantity of milk or milk equivalent delivered by the producer (where formula A was adopted) or purchased by the purchaser (where formula B was selected) in the base year subject to certain adjustments which are not material to the present case. The actual levy fell to be determined by the Commission at or as a substantial proportion of the target price for milk in accordance with art. 1 of the Regulation 857/84. At this stage too it may be noted that by an administrative decision notified to the Commission on the 25th April, 1984, this country elected to be treated as a single region to which formula B would apply.

Article 8 of Regulation 857/84 provided that where formula B applied:-

"Member States may take the necessary steps making it possible for the purchasers of milk and milk products to manage the reference quantities allocated to them..."

Article 10 provided (as had been required in principle by Regulation 804/68) that the purchaser liable for a levy (under formula B) should recover it through the price to be paid to the producers. However, the article to which attention in particular was directed was art. 7, para. 1 which provided as follows:—

"Where an undertaking is sold, leased or transferred by inheritance, all or part of the corresponding reference quantity shall be transferred to the purchaser, tenant or heir according to procedures to be determined."

In art, 12 a number of terms used throughout the regulations were defined. "Purchaser" was defined as "an undertaking or grouping which purchases milk or other milk products either to treat or process them or to sell them to one or more undertakings treating or processing milk or other milk products." Effectively, therefore, purchasers in this country would be equated with the milk co-operative societies. The word "producer" was defined as:—

"A natural or legal person or group of natural or legal persons farming a holding located within the geographical territory of the Community selling milk or other milk products directly to the consumer and/or supplying the purchaser."

The word "holding" was in turn defined as:-

"All the production units operated by the producer and located within the geographical territory of the Community."

In the course of the evidence some dispute arose as to how far the public generally and the farming community in particular were aware of the negotiations leading up to the introduction of the superlevy. It would appear that informed journalists were commenting on the lines of the proposals ultimately adopted towards the end of 1983. However, the promulgation of the regulations in Ireland may be said to have occurred by an advertisement published in the national papers by the Department of Agriculture on the 7th April, 1984. That advertisement summarised the regulations in the following terms:—

"Under an E.E.C. Regulation for controlling milk production a total reference quantity of 5.525 million tonnes (about 1,180 million gallons) has been fixed for Ireland for the marketing year 2nd April 1984 to 31st March 1985. In the distribution of this total by creameries dairies and other purchasers account will be taken of the fact that the overall quantity is equivalent to estimated deliveries in 1983 plus about 4.6316%. A levy equal to the target price for milk (about 96.3p per gallon) will be payable by purchasers on deliveries in excess of reference quantities as determined by the Minister for Agriculture. Any levy payable will be collected quarterly but there is provision for an end of year adjustment. Detailed rules for the implementation of the new arrangements will be made shortly following discussions between the Department of Agriculture and representatives of milk producers and processors."

[1990] 1 I.R.

On the 16th May, 1984, the Commission of the European Communities by Commission Regulation (EEC) No. 1371/84 made detailed rules for the application of the additional or superlevy. This Commission Regulation recited and invoked the Council Regulations (EEC) Nos. 804/68, 856/84 and 857/84 and in particular art. 7, para. 1 of the latter regulation. In art. 5 of the Commission Regulation (EEC) No. 1371/84 specific rules are provided to apply to the transfer of reference quantities granted to producers and purchasers in application of formulas A and B for the purposes of art. 7, para. 1 aforesaid. Those rules are as follows:-

"1. Where an entire holding is sold, leased or transferred by inheritance, the corresponding reference

quantity shall be transferred in full to the producer who takes over the holding.

2. Where one or several parts of a holding is sold, leased or transferred by inheritance, the corresponding reference quantity shall be distributed among the producers operating the holding in proportion to the areas used for milk production or according to other objective criteria laid down by Member States. Member States may disregard transferred parts the area of which used for milk production is less than a minimum size which they shall determine.

3. The provisions of subparagraphs 1 and 2 above shall also be applicable in other cases of transfer which, under the various national rules, have comparable legal effects as far as producers are concerned. Member States may apply the provisions of subparagraphs 1 and 2 in respect of transfers taking place during and

after the reference period."

It is the validity, effect and operation of this article which is crucial to the present case.

The national regulations dealing with the superlevy are entitled "European Communities (Milk Levy) Regulations, 1985" (S.I. No. 416 of 1985) and were made by the Minister for Agriculture on the 12th December, 1985. The Minister purported to make these regulations in exercise of the powers conferred on him by (inter alia) s. 3 of the European Communities Act, 1972. In passing it may be said that whilst criticism was directed at the Minister or his Department for failure to introduce national regulations at an earlier date, firstly, even at the present date other Member States have not as yet introduced appropriate national regulations, and secondly, there was a need for discussion between the Minister as the competent authority and the various bodies affected by the introduction of the scheme. Indeed there was a number of respects in which the evidence established clearly that the Minister was influenced by the representations made to him. One respect in which this was so was the allocation between the purchasers of the total national reference quantity. Apparently all of the parties potentially affected preferred a scheme under which the national quota was distributed in toto rather than a partial distribution plus the creation of a national reserve. Article 4 of the national regulations provided as follows:-

"(1) The Minister shall, pursuant to Article 2 of Council Regulation No. 857, allocate to each purchaser a reference quantity which shall be determined

by reference to the quantity of milk or milk equivalent purchased by the purchaser during the reference year, and each purchaser shall, subject to the provisions of Article 3 of that regulation, allocate a reference quantity to each producer who, during the reference year, delivered a quantity of milk to the purchaser."

Article 12, para. 1 of the national regulations contain detailed provisions making it a criminal offence for any person to dispose of land or to take a disposition of land without at the same time transferring and taking a transfer of the reference quantity or quota relevant to the land so disposed. Clearly those provisions are prospective in their operation. However, para. 2 of art. 12 goes on to provide that the provisions of paras. 1 and 2 of art. 5 of Commission Regulation (EEC) No. 1371/84, that is to say, the express Community provision against disposing of land otherwise than in conjunction with the reference quantity, should be applicable with retrospective effect subject to the qualification that in respect of the period from the 1st January, 1983, to the 1st April, 1984, the provisions should not apply:--

"... in relation to a sale, lease, transfer or disposal of land in relation to which an agreement in writing had previously been concluded whereby it was agreed that all or part of the relevant reference quantity was to be retained by the person selling, leasing, transferring or disposing of the land . . . "

Whilst the courts do approach retrospective provisions with some hesitation, the foregoing provision has the added complication that the draftsman appears to have purported to deal with the situation which would arise as a result of farmers not merely having anticipated the introduction of the superlevy regulations but also the inclusion of some provisions enabling the parties to regulate rights as between themselves to the quota enjoyed in relation to lands disposed

of before the regulations came into effect.

Perhaps it would be possible to summarise the effect of the superlevy regulations by saying that in the first instance they fixed an EEC limit for the production of milk and milk products. Secondly, they determined a national (or where appropriate, regional) reference quantity. Thirdly, where formula B was adopted the competent authority (in Ireland the Minister for Agriculture) fixed the reference quantity for every purchaser (the co-operatives) by reference to the deliveries taken by them in the calendar year 1983 and fourthly, the purchasers in turn allocated a reference quantity or quota to the producer who was, as the definition already quoted indicates, a person "farming a holding and supplying milk to the purchaser". Again, the holding is defined as including "all of the production units" operated by the producer.

The sanction for overproduction, that is to say, the imposition of the additional levy, did not apply at all in any year unless the national quota was exceeded. If it was so exceeded the purchasers who had taken deliveries in excess of the quantities allocated to them by reference to their purchases in the year 1983 became liable to pay the levy to the Minister but the provisions already referred to then enabled (and indeed required) the co-operative to penalise the farmer who

over-produced by recovering the levy from him. Looking at the procedure

in reverse, therefore, one can see that it could happen that a farmer could over-produce or over-supply a particular creamery but, due to a shortfall by other producers, that the co-operative would not be in excess of its quota. Alternatively, the producer might escape liability because even if the particular co-operative had exceeded its limit its excess might be compensated for by a diminution in deliveries to other creameries.

The scheme to curb milk production was no doubt desirable. Perhaps it was inescapable but certainly it was revolutionary. The competent authority in every region within the EEC was in fact required to penalise each and every farmer/producer who sold milk after the 2nd April, 1984, or if he had produced and sold milk to penalise him if he increased his output beyond that achieved in the base year. Awesome though this problem was in Ireland (and perhaps Italy) it must have been greater still in the other Member States where the base year was 1981 rather than 1983 as it was in Ireland.

I confess I would have expected to find complex administrative machinery set up by statute to introduce and police this revolutionary regime. Virtually no such administrative machinery exists. The broad concept laid down by the EEC regulations and amplified to some extent by the national regulations contained in the statutory instrument already referred to provide the only legislative basis for the scheme and the actual work is carried out administratively by the officials of the Minister for Agriculture acting as the competent authority. Indeed the administrative basis of the scheme would appear to rest on a circular letter dated the 5th April, 1984, from the Department of Agriculture and signed by Mr. Corry, who gave evidence in this case, and addressed to each registered creamery. This circular drew attention to the provisions of the milk superlevy scheme and called upon every creamery to make returns to the department of their total level of intake in the year 1983 on a quarterly as well as annual basis. The circular promised that upon receipt of those figures and following verification of the returns that the creamery would be notified of the quota applying to each creamery. It appears nat the creameries in turn wrote to individual producers notifying them of their milk deliveries to that particular creamery for the year 1983 and their superlevy quota for the year 1984/5 based on the deliveries for the relevant year. Such notices were put in evidence and again it would appear astonishing that such crucial decisions could be made and recorded with such simplicity and informality. It is clear now but it must have been apparent even in 1984 that a substantial milk quota was one of those intangible rights so common in modern society such as intoxicating liquor licences or planning permissions which can transform the value of a holding into a different order of magnitude.

#### The Facts

It is in the context of the legislative provisions discussed above that I now turn to consider the facts of the present case. Prior to April, 1983, the plaintiff, Mr. Patrick Lawlor, was the owner of two farms in County Meath. The home farm was

situate at Brownstown (hereinaster referred to as "the Brownstown farm") and the outfarm was situate at Burtonstown (and accordingly referred to as "the Burtonstown farm"). Each was a residential farm and each was unquestionably a dairy farm. By coincidence they were almost identical in area, the Brownstown farm being 90 acres and the Burtonstown farm 91 acres. They were some four miles apart but the quality of the ground was not significantly different. The Burtonstown farm had been acquired in 1978 for a sum of £220,000 and for financial reasons Mr. Lawlor decided in 1983 to dispose of that holding. The farm was put up for auction by Messrs. Patrick Smith & Son, auctioneers, on the 25th October, 1983, and was described in the general particulars as "a 90 acre residential dairy farm". A contract was subsequently signed by the third defendant (apparently on her own behalf and on behalf of the second defendant) and it is of some significance that in that contract the special conditions expressly excluded "milking equipment and feeders". There was, however, an offer by Mr. Lawlor set out in a letter of November, 1983, addressed to Mrs. Casey-Duffy offering to sell her for a sum of £11,000 the milking equipment all of which was then situate at the Burtonstown farm and described in the schedule to that letter. It is common case that that offer was accepted by the purchasers. For the purposes of his dairy farming business Mr. Lawlor had entered into important contracts with Bailieborough Dairies Limited and Drogheda and Dundalk Dairies (registered as Ryan Dairies Limited) which gave him a guaranteed outlet for all or the greater part of his production. I accept that Mr. Lawlor offered the purchasers the benefit of part of these milk supply contracts and that this offer was declined by the purchasers. On the other hand I am satisfied that Mr. Lawlor and his wife are mistaken in saying that the purchasers had stated or indicated that they did not intend to engage in milk production. Furthermore, it is absolutely clear that the contract was not entered into on the basis of any such representation. The contract itself provided for the postponement of completion until certain contracts entered into by the purchasers in relation to their own lands had been completed. This clause and certain provisions with regard to interest consequential thereon gave rise to problems so that the actual transfer f the land by Mr. Lawlor to Mrs. Duffy was not executed until the 29th May, 1984, although the purchasers had been allowed into possession in February of that year.

By letter dated the 14th August, 1986, Mr. O'Donnell an officer in the Department of Agriculture wrote to the plaintiff referring to the sale of the Burtonstown farm and pointed out that the production of that farm together with the Brownstown farm and an additional 41 acres of land rented for milk production yielded 183,753 gallons of milk which were supplied by Mr. Lawlor to the Bailieborough Co-operative and the Drogheda and Dundalk Dairies in the year 1983, and that this gave him a quota of 190,276 gallons. Mr. O'Donnell then went on to say:—

"The regulations state that where one or several parts of a holding are sold leased or transferred by inheritance, the corresponding reference quantity (quota) shall be distributed among producers operating the holding in proportion to the areas used for milk production in the reference year i.e., in Ireland's

case the calendar year 1983. Since Mr. Duffy now owns 41% of the land used for milk production in the reference year he is entitled, under the E.C. regulations, to a corresponding portion of the quota. The corresponding portion of the quota is 78,013 gallons.

Arrangements will now be made for the appropriate reduction of your quota at Bailieborough Co-operative

and Drogheda and Dundalk Dairies."

The foregoing letter is misleading in two respects. Firstly, it gives the impression that the quota to be transferred was based solely on the proportion of Mr. Lawlor's dairy holdings which had been disposed of and secondly, that the Department or Minister had the function of determining producer quotas.

In fact the Minister was brought into the matter, quite correctly, by Tir Laighean Co-op Limited who wrote to the Dairying Division of the Department on the 8th July, 1985, and the 3rd January, 1986. The purpose of the second letter was to secure an adjustment of that co-operative's quota as a result of the fact that the purchasers of the Burtonstown farm intended to transfer the output of that farm to Tir Laighean in place of the Drogheda and Dundalk Dairies. Undoubtedly such an adjustment falls within the Minister's responsibilities as it is his function to fix the quotas for the purchaser/co-operatives. It was following upon the correspondence with Tir Laighean that a representative of the Department, Mr. Eamon Mansfield, called upon the plaintiff. The purpose of his interviews with Mr. Lawlor, and indeed his inspection of the lands and the records relating to the herds which had been kept there, was to establish "the areas used for milk production" by Mr. Lawlor prior to the sale, and the proportion of those lands which had been included in the sale to the purchasers.

By January, 1986, Mr. Lawlor was fully conscious of the value of a milk quota. He was anxious to ensure that he vould retain as large a fraction of his original quota as possible. Accordingly he argued that a substantially greater part of his 1983 milk production had been derived from the Brownstown farm than the Burtonstown farm. Indeed he procured, on the advice of Mr. Mansfield, letters from the co-operative societies concerned in support of that argument. In addition, however, expert evidence was given by Mr. R.A. Collins, a bachelor of agricultural science, in support of the contention that it was the home farm, the Brownstown farm, which was the more significant "area for the production of milk". Mr. Collins gave his evidence on the basis of information supplied to him by Mr. Lawlor and on a reconstruction of the disposition of Mr. Lawlor's herd throughout the year 1983 as between the two farms. Effectively it was contended that during 1983 there was a policy of transferring freshly calved cows from the Burtonstown farm to the Brownstown farm and replacing them with a similar number of cows at the end of their lactation. It was also contended that the calf replacements which were bred by Mr. Lawlor (who sold such replacements as exceeded his requirements) constituted part of a cattle business rather than a dairy business and that accordingly the area which they occupied in the Burtonstown farm was not an area of milk production.

It is fair to say that the arguments presented by Mr. Lawlor to the officials of the Department in 1986 were received

not merely sympathetically but with an

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open mind. Indeed it is clear that some officials of the Department took the view that a higher proportion of the milk output should be apportioned to the Brownstown farm than the Burtonstown farm notwithstanding the fact that the two farms were virtually identical in area and similar in soil composition. The Department had in fact produced notes for the information of dairy produce inspectors, such as Mr. Mansfield, and having quoted the relevant Community regulations went on in a chapter entitled "Application of the Terms 'Areas used for milk production" to provide as follows:-

"This term means the areas of the farm used for the purposes of maintaining a dairy production unit including pasture land used for cows producing milk and replacement heifers. This would include land used for growing hay and silage (to be used for feed) and land used for growing crops to feed to the dairy herd together with the appropriate farm buildings. Growing of tillage crops (not for feed), bog land etc. are excluded. The apportionment of the quota to the purchaser or lessee must be made according to the "areas used for milk production" in the relevant reference years i.e. 1983 calendar year in the case of a quota for deliveries to creameries or dairies or 1981 calendar year in the case of a quota for direct sales to consumption. Therefore the appropriate quota is calculated in proportion to the area in dairy production on the above basis."

Without questioning Mr. Collins's integrity there is - as he would recognise - a difficulty in fully accepting his conclusions, as there are no management or other records showing precisely how the herds were distributed amongst the various holdings in the year 1983. I would be slow to accept conclusions based upon a reconstruction of the events. With regard to the other point which was hotly contested, namely, whether replacement calves formed part of the dairy herd or a cattle business I have no doubt that the former is the correct answer in the context of the present dispute. Obviously stock in trade in any industry or business can be viewed differently for different purposes but it does seem to me that to exclude the fields occupied by calves bred primarily as replacements for a major dairy herd from the "areas used for milk production" as that term is used in the relevant EEC regulations would be far too fine a distinction.

In my view the experts in the Department made a very careful and proper analysis of all of the relevant factors and in my view arrived at a correct conclusion as to the extent of the areas used for milk production. Indeed it seems to me that Mr. Mansfield was able to demonstrate the correctness of the Department's decision by comparing the gallonage achieved

in the year 1983 with that achieved by Mr. Lawlor in 1985.

Accordingly it follows in my view that the adjustment which the Minister made in the reference quantities allocated to the purchaser/co-operatives concerned was correct and it would follow that a corresponding adjustment would properly be made by the co-operative to Mr. Lawlor as producer. I reject the case made on behalf of the plaintiff insofar as it is contended that the adjustment was incorrect in its conclusion or reached by procedures which were unfair.

### The Argument

Whist the challenge to the validity of the superlevy regulations, that is to say, both the Community regulations and the Ministerial regulations purporting to give effect thereto is both wide ranging and sophisticated, I think I may, without injustice, summarise it as follows:-

1. The domestic regulations (S.I. 416 of 1985) insofar as they purport to give retrospective effect to the provisions of paras. 1 and 2 of art. 5 of Commission Regulation (EEC) No. 1371/84 are firstly, unconstitutional as constituting an unjust attack on the property rights of the plaintiff and secondly, ultra vires the Minister's powers because they were not made within the framework of the terms and objects of the enabling legislation or in accordance with constitutional propriety.

2. That the defendants could not rely on the provisions of Article 29, s. 4, sub-s. 3 of the Constitution to exempt the domestic regulations from the purview of the Constitution as those regulations were not "necessitated by the

obligations of membership of the Communities".

3. That art. 5, para, 3 of Commission Regulation (EEC) No. 1371/84 insofar as it provided that subparagraphs 1 and 2 of that article should or might have retrospective effect was null and void because it was made without sufficient reason or adequate motivation.

The constitutional argument on the part of the plaintiff is simple to this extent. It is said that the plaintiff had in April, 1984, a valuable property right consisting of a milk quota amounting to approximately 190,000 gallons. That such a quota was valuable is beyond dispute. The plaintiff then complains that by the domestic regulations made nearly two years later this valuable property right was reduced by approximately one half. That, it is said, is a flagrant abuse by the State, through subordinate legislation, of the plaintiff's property rights and a gross failure by the State to defend and vindicate those rights. In this context reference was made to the decision of the Supreme Court in The Housing (Private Rented Dwellings) Bill, 1981 [1983] I.R. 181 and in particular to a passage in the judgment of the former Chief Justice, at p. 191, as follows:---

"The effect of the rebates permitted by s. 9 is that, for a period of five years after the enactment of the Bill as law, landlords are to receive an amount which will be substantially less than the just and proper rent payable in respect of their property. In the absence of any constitutionally permitted justification, this clearly constitutes an unjust attack upon their property rights. The Bill offers no such justification for depriving the landlord of part of his or her just rent for the period specified in the Bill. This Court has already held that the pre-existing rent control constituted an unjust attack upon property rights. In such circumstances, to impose different but no less unjust deprivations upon landlords cannot but be unjust having regard to the provisions of the Constitution."

The decision of Barrington J. in Brennan and Others v. The Attorney General [1983] I.L.R.M. 449 was invoked partly by way of precedent and partly as an illustration of laws which because of their arbitrary and unreasonable nature failed to vindicate the property rights of the citizen. The decision in Burke v. Minister for Labour [1979] I.R. 354 was cited in part as authority for the proposition, which I accept of course, that delegated legislation must accord with constitutional requirements and in particular for the general statement of Henchy J. in relation to delegated functions set out at p. 361 of the report as follows:-

"Where Parliament has delegated functions of that nature, it is to be necessarily inferred as part of the legislative intention that the body which makes the orders will exercise its functions, not only with constitutional propriety and due regard to natural justice, but also within the framework of the terms and objects of the relevant Act and with basic fairness, reasonableness and good faith."

It was recognised that the validity of the superlevy regulations and in particular para. 3 of article 5 of Commission Regulation (EEC) No. 1371/84 might have been challenged in the Court of Justice of the European Communities under Article 173 of the Treaty within the time limit specified in that Article or, alternatively, under Article 184 in accordance with the procedures laid down therein, notwithstanding the expiry of the period specified in Article 173. On the other hand it was accepted that it was not competent for this court to annul the particular regulation. Any challenge to the regulation in these proceedings would require a reference by this court to the Court of Justice of the European Communities under Article 177 of the Treaty.

In his challenge to the disputed regulation by reference to the Treaty, counsel on behalf of the plaintiff relied upon the following authorities: Germany v. Commission [1963] E.C.R. 63; Toepfer v. Commission [1965] E.C.R. 405; Bock v. Commission [1971] E.C.R. 897; Kaufhof v. Commission [1976] E.C.R. 431; Watson and Belmann [1976] E.C.R.

1185 and Racke v. Hauptzollamt Mairz [1979] E.C.R. 69.

Having regard to my limited function in relation to this aspect of the matter I do not propose to examine these authorities at any length. Perhaps it would be fair to say that these cases establish or illustrate the principle that retroactivity must in general be avoided in Community legislation and, secondly, that the means taken to achieve legislative aims must bear a reasonable correspondence or proportionality with the intended objective. These indeed are principles which are perhaps equally well established in our national system (see Burke v. Minister for Labour [1979] I.R. 354 and Hamilton v. Hamilton [1982] I.R. 466). In addition, however, it was contended on behalf of the plaintiff that the regulations of the Commission must be based on an appropriate statement of reasons and that they might be condemned if the recitals lacked an appropriate degree of clarity (see Germany v. Commission [1963] E.C.R. 63, above).

### The Defence

The defence, particularly that of the Minister, is based partly on fact and partly on law. The principal witness on behalf of the Minister was Mr. Michael Corry. He is a principal officer in the Department of Agriculture and he was intimately concerned with the negotiations and planning which resulted in the superlevy regulations. His expertise and his integrity were beyond question. Moreover, the fact that Mr. Corry was in a position to deal fully and candidly with all of the problems which he and his colleagues had foreseen or encountered, and the reasons for the courses which they adopted, distinguished the present from almost every other constitutional issue where the intention of the legislature is deduced or inferred ordinarily from the legislation itself and the arguments based thereon frequently owe more to the ingenuity of the lawyers than the intention of the legislators. The national interest which the Minister and perhaps successive Ministers for Agriculture sought to achieve was the maximum national reference quantity. As already explained there was a wide consensus that the national reference quantity should be fully allocated among purchasers. It was undesirable that the quota should be exceeded but on the other hand it was important that it should be fully utilised. Once the Community accepted the quota system it followed that the use by the farming community of its lands for dairy purposes must be interfered with to some extent. Mr. Corry believed it was clear from Council Regulation (EEC) No. 857/84 and in particular article 7 thereof that the quotas were to be "land based". That view is further supported by the definition of the words "producer" and "holding" in article 12 of the same regulation. Indeed the concept of milk quotas divorced from land would seem to me to be meaningless. Article 5 of Commission Regulation (EEC) No. 1371/84 and article 12, s. 1 of the domestic regulations makes it clear that subsequent to the introduction of the regulations in any event the producers quota or an appropriate part thereof would pass with dairy lands. It was against that background that the Minister's advisers had o consider what regulations should be made in relation to sales of land which took place after the commencement of the base year and before the 2nd April, 1984. As Mr. Corry pointed out, if a hypothetical purchaser had paid the full value for the dairy land and received no quota there would be an outcry and, in the absence of a national reserve, there would be no means of remedying the injustice. If a vendor who sold part of his land retained the full quota in respect of the portion retained by him, this might indeed lead to greater efficiency, but that had been contrary to the intention of the Community in introducing the levy. Mr. Corry and his colleagues were aware of course that sales had taken place during the base year, yet they believed - and in my view correctly - that some decision had to be made as to how the quota would be dealt with where all or part of a dairy farm was disposed of during the base year. To that extent Mr. Corry did not interpret article 5, para. 3 of Commission Regulation (EEC) No. 1371/84 as conferring on the State a discretion. It was necessary to make a decision as to how the pre-regulation sales would affect the allocation of quotas.

The Department was aware of perhaps a dozen vendors who were in a similar position to that of the plaintiff in the present

The defendants contest at every level the argument presented on behalf of the plaintiff. It is said first that the plaintiff had no property right in the milk quota, secondly, that if it did constitute a property right it was not attacked and thirdly, that if the operation of the superlevy regulations did constitute an attack, then it was not unjustified. This indeed is the approach which was adopted by the Supreme Court in analysing the Rent Restrictions Act, 1960, in <u>Blake v. The Attorney General</u> [1982] I.R. 117 and in particular attention may be drawn to the comments of O'Higgins C.J. at pp. 139 and 140 of the report. However, the argument on behalf of the defendants goes even further. It is contended that the effect of the domestic regulations does not fall to be considered by reference to the standard of protection for property and other rights provided by Article 40, s. 3, sub-s. 2 of the Constitution because it conforms to the requirements of Article 43 thereof. The distinction between Article 43 and the relevant sub-article of Article 40 was discussed in <u>Dreher v. Irish Land Commission</u> [1984] I.L.R.M. 94 and in particular in a passage from the judgment of Walsh J. at p. 96 which was subsequently cited with approval by O'Higgins C.J. in <u>O'Callaghan v. Commissioner for Public Works</u> [1985] I.L.R.M. 364 and by Finlay C.J. in <u>Electricity Supply Board v. Gormley</u> [1985] I.R. 129. The particular passage from the judgment of Walsh J. is in the following terms:—

"The State in exercising its powers under Article 43 must act in accordance with the requirements of social justice but clearly what is social justice in any particular case must depend on the circumstances of the case. In Article 40.3.2 'the State undertakes by its laws to protect as best it may from unjust attack and, in the case of injustice done, vindicate . . . [the] property rights of every citizen.' I think it is clear that any State action that is authorised by Article 43 of the Constitution and conforms to that Article cannot by definition be unjust for the purpose of Article 40.3.2. It may well be that in some particular cases social justice may not require the payment of any compensation upon a compulsory acquisition that can be justified by the State as being required by the exigencies of the common good. It is not suggested that the present case is one such, nor is it in dispute that in the present case the appellant was entitled to just compensation for the land compulsorily acquired from bim."

In the <u>O'Callaghan Case</u> [1985] I.L.R.M. 364 it was held that the preservation orders made under the National Monuments Act, 1954, did not constitute an unjust attack on the right of ownership. It was a limitation on the user of the lands and the absence of a provision for the payment of compensation in respect of the limitation of use did not amount to an unjust attack. Orders made under the statute in question delimit the exercise of the rights of ownership so that they may be reconciled with the exigencies of the common good but do not delimit the right of private ownership or the general right to transfer land. The application of the same principle led to a different result in the case of <u>Electricity Supply Board v.</u> Gormley [1985] I.R. 129. There it was held that whilst the erection of pylons for

the transmission of the national electricity supply was required by the common good the Court rejected the contention that the acquisition of the right to erect the pylon without the legal duty to pay compensation did not constitute an attack on the

property rights of the landowner. I do not doubt that at the present day a milk quota is a valuable intangible asset. Indeed there was clear evidence that the existence of an appropriate quota in relation to dairy land might well double the value thereof. It does seem to me that there is a fallacy in the plaintiff's argument in basing his claim arising from an interference in the year 1984 on his right to a milk quota. The entire superlevy system from its inception on the 2nd April, 1984, was a massive interference with or limitation on the manner in which farmers could profitably make use of their lands. This was the far-reaching decision which was made with a view to curbing milk production and restoring the balance between production and consumption so that the Common Agricultural Policy could operate in the interests of all of the producers within the Member States. Far-reaching though these provisions were it seems to me quite clear that in their purpose and effect they amounted to a regulation or limitation on the use of lands by individual producers "with a view to reconciling their exercise with the exigencies of the common good". The allocation of quotas in the first instance was merely the machinery by which milk production would be pegged back to the agreed levels. When quotas are determined for regional or national purposes clearly one may speak in tonnes or gallons. Likewise this is true under formula B where one is discussing quantities of milk or milk products delivered to purchasers within a given period, but when quotas are related - as ultimately they must be - to production by producers they must relate to the holdings on which the milk is produced. In the working out of the regulation the producer's quota is in the first instance related to the producer and the quantity of milk supplied by him to a purchaser in the base year but on any interpretation of the EEC regulations or the domestic regulations it is quite clear that the quota itself takes into account the fact that the milk is produced on the farmer's landholding. As the defendants contend and Mr. Corry believed the quotas were from their inception "land based".

Attention was drawn to the appropriate canons of interpretation of EEC legislation. In particular reference was made to the second edition of H.G. Schermers, Judicial Protection in the European Communities (1979) at pp. 15-23 and the comments to be found therein on the teleological and schematic approaches to interpretation. With respect it seems to me that the principles of interpretation were most helpfully and authoritatively dealt with in the paper read by Professor Kutscher, the President of the Chamber at the Court of Justice in Luxembourg in 1976 on "Methods of Interpretation as seen by a Judge at the Court of Justice". I may quote at some length a passage from para. 1.36 of that paper as follows:—

"It would be superfluous to point out once more what importance schematic interpretation has in the case law of the Court of Justice. Its application corresponds to the special features which characterise the legal system of the community. If this legal system takes the form of a broadly conceived plan and if it confines itself essentially to setting aims and directions as well as

to establishing principles and programmes for individual sectors, and if in addition there is no legislature which fills in the framework drawn up by the treaties within a reasonable time . . . the judge is compelled to supplement the law on his own and to find the detailed rules without which he is unable to decide the case brought before him. The judge can succeed in this task only by having recourse to the scheme the guidelines and the principles which can be seen to underlie the broad plan and the programme for individual sectors. Without recourse to these guidelines and principles it is not even possible to give precise definition to the significance and scope of the general rules and concepts of which the treaties make such abundant use . . . It is plain that such a schematic interpretation which sees the rules of community law in their relationship with each other and with the scheme and principles of the plan, cannot escape a certain systemization and therefore on occasion demand that solutions of a problem be inferred by deduction from general principles of law."

It is interesting to note from his decision in <u>Buchanan & Co. v. Babco Ltd.</u> [1977] Q.B. 208 at p.213 that Lord Denning M.R. was equally impressed by Judge Kutscher's paper and explained the European method of interpretation in the following terms:—

"They adopt a method which they call in English by strange words - at any rate they were strange to me - the "schematic and teleological" method of interpretation. It is not really so alarming as it sounds. All it means is that the judges do not go by the literal meaning of the words or by the grammatical structure of the sentence. They go by the design or purpose which lies behind it. When they come upon a situation which is to their minds within the spirit - but not the letter - of the legislation, they solve the problem by looking at the design and purpose of the legislature - at the effect which it was sought to achieve. They then interpret the legislation so as to produce the desired effect. This means that they fill in gaps, quite unashamedly, without hesitation. They ask simply: what is the sensible way of dealing with this situation so as to give effect to the presumed purpose of the legislation?"

It is proper to say, however, that the House of Lords on appeal from the Court of Appeal, reported at [1978] A.C. 141, made it clear that they did not share Lord Denning's enthusiasm for the schematic or teleological approach nor did they find any justification for incorporating it in the English legal system.

It seems to me that in construing EEC regulations I am bound to apply the canons of interpretation so clearly adumbrated by Judge Kutscher in his paper, and with regard to domestic legislation it does seem to me that similar principles must be applicable at least insofar as it concerns the application of community regulations to this State. Moreover, it does seem to me that the teleological and schematic approach has for many years been adopted in this country - though not necessarily under that description - in the interpretation of the Constitution. The innumerable occasions in which the preamble to the Constitution has been invoked and in particular the desire therein expressed "to promote the common good, with due observance of Prudence, Justice and Charity, so that the dignity

and freedom of the individual may be assured, true social order attained, the unity of our country restored and concord established with other nations" in seeking to "fill the gaps" in the Constitution is itself an obvious example of the teleological approach. Indeed in somewhat more mundane circumstances arising in the interpretation of the Family Home Protection Act, 1976, in <u>Nestor v. Murphy</u> [1979] I.R. 326, 329, Henchy J. expressly decided that the Court "must adopt what has been called a schematic or teleological approach."

If no national regulations had been made and if indeed art. 5, para. 3 of Commission Regulation (EEC) No. 1371/84 had not been incorporated in the regulations (or indeed was invalid as the plaintiff contends) the court would be faced with the task of applying and interpreting the surviving superlevy regulations in accordance with the clearly established intention of the Community to curb milk production by penalising farmers in the Community who after the 2nd April, 1984, produced milk where they had not done so in the base year or, if they had been in milk production in that year, exceeded the quantities produced by them in that year. It was evident - particularly in those Member States where the base year was 1981 - that changes in ownership of dairy lands would have taken place between the commencement of the base year and the date on which the regulations became operative. This involves in one sense the interpretation of the prospective effect of the regulations. The true question as I see it, is "to whom is the quota to be allocated?" The farmer in, say, Germany who delivered several thousand gallons of milk to his purchaser in 1981 but died in 1982? The dairy farmer who subsequent to the base year sold the vast bulk of his holding at the full market price for dairy land and retained for himself a residence and pleasure grounds? What of the purchaser who buys the entire holding of the dairy farmer who had been in milk production throughout the base year? Is the vendor to be allocated a quota even though he possesses no land at all and the purchaser to be prevented from engaging in dairy production?

It seems to me that the scheme and purpose of the regulations would force any court to the conclusion that what the Community intended was that quotas should be allocated by reference to milk production on given holdings throughout the pase year and that in the event of those holdings having changed hands or being subdivided between the base year and the coming into operation of the superlevy regulations that the persons acquiring the holdings should acquire also quotas appropriate to the amount and the nature of the lands acquired by them. I believe that this was inherent in the original scheme and that para, 3 of art. 5 aforcsaid (or more particularly the second part of that paragraph) was little more than an aide memoire to the Member States reminding them of the need to make provision to cope with changes which have taken place subsequent to the commencement of the base year. Obviously the statutory regulations are better calculated than any judgment by a court to provide the precise detail to which administrators are entitled to have regard in administering a scheme of such complexity and importance. Nevertheless, it seems to me that in substance what has been described as "the retroactive effect" of article 5, para. 3 and the domestic milk levy regulations of December, 1985, introduced no new concept. The

5. That the Regulations, in any event, did conform with Article 40, section 3. They carefully and correctly

balanced the interests of all the parties whose rights required to be considered and were in no sense arbitrary or

6. That the immunity from constitutional scrutiny contained in Article 29, s. 4, sub-s. 3 was not limited to measures which required in all their parts to be enacted but included all acts and measures which were consequent upon membership of the European Communities and in general fulfilment of the obligations of such membership even where the State had a discretion as to how it would meet the general spirit of its obligations.

Per Murphy J. In construing European Communities regulations and the provisions of domestic legislation implementing those regulations within the State, the court may adopt a teleological approach so as to achieve and implement the true scheme and purpose of the measures.

Cases mentioned in this report:—

Blake v. The Attorney General [1982] LR. 117; [1981] I.L.R.M. 34.

Brennan and Others v. Attorney General [1983] I.L.R.M. 449.

Bock v. Commission [1971] E.C.R. 897.

Buchanan & Co. v. Babco Ltd. [1977] Q.B. 208; [1977] 2 W.L.R. 107; [1977] I All E.R. 518 (C.A.); [1978] A.C. 141; [1977] 3 W.L.R. 907; [1977] 3 AH E.R. 1048.

Burke v. Minister for Labour [1979] I.R. 354.

Dreher v. Irish Land Commission [1984] I.L.R.M. 94.

Electricity Supply Board v. Gormley [1985] I.R. 129; [1985] I.L.R.M. 494.

Germany v. Commission [1963] E.C.R. 63; [1963] C.M.L.R. 347.

Hamilton v. Hamilton [1982] I.R. 466.

Kaushof v. Commission [1976] E.C.R. 431.

Nestor v. Murphy [1979] I.R. 326.

O'Callaghan v. Commissioner for Public Works [1985] L.L.R.M. 364.

Racke v. Hauptzollamt Mainz [1979] E.C.R. 69.

The Housing (Private Rented Dwellings) Bill; 1981 [1983] I.R. 181; [1983] I.L.R.M. 246.

Toepfer v. Commission [1965] E.C.R. 405; [1966] C.M.L.R. 111.

Watson and Belmann [1976] E.C.R. 1185; [1976] 2 C.M.L.R. 552.

Plenary Summons.

The facts are as set out in the judgment of Murphy J., post. By plenary summons dated the 17th December, 1986, the plaintiff sought:-

(1) a declaration that the plaintiff was entitled to the reference quantities ("quotas") formerly assigned to him by the first defendant within the meaning of divers milk super levy regulations;

(2) a declaration that the property comprised in an agreement for sale dated the 28th November, 1983, did not comprise or include any milk quota or reference quantity in respect of the lands thereby sold;

(3) orders restraining the first defendant from communicating with Bailieborough or Dundalk and Drogheda Dairies for the purposes of reducing the reference quantities assigned to the plaintiff;

granting of the quotas was an action lying in the future and it was essentially a matter of interpretation of the regulations as to how one would identify the persons and in particular the producers to whom such quotas should be allocated. I believe that the disputed regulations did little more than clarify the intentions of the Community in this respect and provide somewhat clearer - though by no means perfect - machinery to enable the desired result to be achieved.

In these circumstances my conclusions may be summarised as follows:---

- 1. The superlevy regulations in no way attempt to abolish the right of private ownership or the general right to transfer, bequeath or inherit property. They do delimit the exercise of certain rights of ownership but this delimitation is clearly with a view to reconciling the exercise of ownership rights with the exigencies of the common good. The general limitation or curbing on the right to enter into or expand dairy production in all of the circumstances is not a limitation on ownership rights such as calls for monetary compensation.
- 2. The interference with the property rights of dairy farmers in general and Mr. Lawlor, the plaintiff, in particular, having conformed with Article 43 of the Constitution, does not require to be examined by reference to Article 40, section 3. Furthermore if the matter did fall to be considered under that Article, I am quite satisfied that the careful balance which was made between the rights of vendors and purchasers subsequent to the commencement of the base period and the solution applied that is to say the retrospective operation of the regulations were in no sense unjust. They were neither capricious nor arbitrary. They considered and weighed fairly and, in my view, correctly the interests of all the parties whose rights were bound to be affected once it was accepted that there would be an overall limitation on milk production.
- 3. If contrary to the views already expressed the view was to be taken that the domestic regulations offended the provisions of Articles 40 or 43 of the Constitution, I am satisfied that the apparent infringement would fall within the exception provided by Article 29, s. 4, sub-s. 3 of the Constitution. It seems to me that the word "necessitated" in that sub-section could not be limited in its construction to laws, acts or measures all of which required in all of their parts to be enacted, done or adopted by the obligations of membership of the Community. It seems to me that the word "necessitated" in this context must extend to and include acts or measures which are consequent upon membership of the Community and in general fulfilment of the obligations of such membership, and even where there may be a choice or degree of discretion vested in the State as to the particular manner in which it would meet the general spirit of its obligations of membership.
- 4. It was no part of the duty of the Minister as the competent authority or otherwise to allocate a milk quota as such either to the plaintiff or to the purchaser/defendants. He did, however, have the duty to allocate quotas to the purchaser/cooperatives and for the purposes of that task it was necessary for him in the circumstances which had occurred to ascertain the appropriate fraction of the milk quota to be transferred from the Bailieborough Co-operative Society to the Tir Laighean Co-operative Society. That task involved the carrying out of the

exercise which was in fact conducted by Mr. Mansfield and I am satisfied not only that the exercise was carried out competently and fairly but I believe that the particular decisions implicit in the final conclusion were correct and that indeed the decision itself was as accurate as one could possibly hope to achieve.

5. Whilst it has been recognised by both parties that it is no part of the function of this court to determine whether or not any part of the EEC regulations were invalid it would be open to this court to refer the matter to the Court of Justice of the European Communities under Article 177 of the Treaty of Rome if I considered that a decision of that court was necessary to enable me to give my judgment to these proceedings. I do not consider such a reference to be necessary. For the reasons already adumbrated in the consideration of the principles of constitutional justice applicable to the superlevy regulations as a whole, I am quite satisfied that from the outset, that is to say, the 2nd April, 1984, it was clear that the quotas were to be land based and to be calculated by reference to activities which occurred in an earlier year. In those circumstances it was and is in my view inevitable that some provisions would have to be made dealing with the changes which had occurred between the commencement of the base year and the introduction of the regulations and it was also clear that those regulations would either possess or appear to possess a retroactive effect.

In these circumstances I would dismiss the plaintiff's claim.

Solicitors for the plaintiff: Branigan & Matthews,

Solicitor for the first defendant: Chief State Solicitor.

Solicitors for the second and third defendants: Wm. Fry & Sons.

Éanna Mulloy, B.L.

[1990] 1 I.R. 356

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### PART IV

This part came into operation on 1 August 1991.

#### DISCLOSURE OF INTERESTS IN SHARES

#### CHAPTER 1

Share Dealings by Directors, Secretaries and their Families

Obligation of director or secretary to notify interests in shares or debentures of company.

- 53.—(1) Subject to the provisions of this section a person who, at the commencement of this section is a director or secretary of a company and is then interested in shares in, or debentures of, the company or any other body corporate, being the company's subsidiary or holding company or a subsidiary of the company's holding company or thereafter becomes a director or secretary of a company and, at the time when he becomes a director or secretary of a company, is so interested, shall notify the company in writing—
  - (a) of the subsistence of his interests at that time, and
  - (b) of the number of shares of each class in, and the amount of debentures of each class of, the company or any such other body corporate as aforesaid in which each interest of his subsists at that time.
- (2) A director or secretary of a company shall notify the company in writing of the occurrence, while he is a director or secretary, of any of the following events and the date on which it occurred—
  - (a) any event in consequence of whose occurrence he becomes, or ceases to be, interested in shares in, or debentures of, the company or any other body corporate, being the company's subsidiary or holding company or a subsidiary of the company's holding company;
  - (b) the entering into by him of a contract to sell any such shares or debentures;
  - (c) the assignment by him of a right granted to him by the company to subscribe for shares in, or debentures of, the company; and
  - (d) the grant to him by another body corporate, being the

company's subsidiary or holding company or a subsidiary of the company's holding company, of a right to subscribe for shares in, or debentures of, that other body corporate, the exercise of such a right granted to him and the assignment by him of such a right so granted;

stating the number or amount, and class, of shares or debentures involved.

- (3) The provisions of section 54 shall have effect for the interpretation of, and otherwise in relation to, subsections (1) and (2).
- (4) Section 56 shall have effect with respect to the periods within which obligations imposed by subsections (1) and (2) on persons must be fulfilled by them.
- (5) Section 57 shall have effect with respect to certain circumstances in which obligations imposed by subsections (1) and (2) are to be treated as not discharged.
- (6) In the case of a person who is a director or secretary of a company at the time when this section comes into operation subsection (2) shall not require the notification by him of the occurrence of an event before that time; and that subsection shall not require the notification by a person of the occurrence of an event whose occurrence comes to his knowledge after he has ceased to be a director or secretary.
- (7) A person who fails to fulfil, within the proper period, an obligation to which he is subject by virtue of subsection (1) or (2) shall be guilty of an offence.
- (8) An obligation imposed by this section shall be treated as not being fulfilled unless the notice by means of which it purports to be fulfilled is expressed to be given in fulfilment of that obligation.
- (9) This section applies to shadow directors as to directors, but the making of a notification by a person under this section shall not, in itself, be proof that the person making the notification is a shadow director.
- (10) Nothing in this section shall operate so as to impose an obligation with respect to shares in a body corporate which is the

wholly owned subsidiary of another body corporate; and for this purpose a body corporate shall be deemed to be the wholly owned subsidiary of another if it has no members but that other and that other's wholly owned subsidiaries and its or their nominees.

(11) This section and sections 54, 56, 57 and 59 shall have effect in place of section 190 of the Principal Act and of so much of section 193 of that Act as relates to section 190, and that section and so much of section 193 as relates thereto shall, accordingly, cease to have effect.

Nature of an interest within section 53.

- 54.—(1) The provisions of this section shall apply in determining for the purposes of section 53 whether a person has an interest in shares or debentures.
- (2) Any reference to an interest in shares or debentures shall be read as including a reference to any interest of any kind whatsoever in shares or debentures; and accordingly there shall be disregarded any restraints or restrictions to which the exercise of any right attached to the interest is or may be subject.
- (3) Where any property is held on trust and any interest in shares or debentures is comprised in that property, any beneficiary of that trust who, apart from this subsection, does not have an interest in the shares or debentures shall be taken to have such an interest; but this subsection is without prejudice to the following provisions of this section.
- (4) A person shall be taken to have an interest in shares or debentures if—
  - (a) he enters into a contract for their purchase by him (whether for cash or other consideration); or
  - (b) not being the registered holder, he is entitled to exercise any right conferred by the holding of those shares or debentures or is entitled to control the exercise of any such right.
- (5) A person shall be taken to be interested in shares or debentures if a body corporate is interested in them and--
  - (a) that body corporate or its directors are accustomed to act in accordance with his directions or instructions; or

- (b) he is entitled to exercise or control the exercise of onethird or more of the voting power at general meetings of that body corporate.
- (6) Where a person is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of a body corporate and that body corporate is entitled to exercise or control the exercise of any of the voting power at general meetings of another body corporate (the "relevant voting power"), then, for the purposes of subsection (5) (b), the relevant voting power shall be taken to be exercisable by that person.
- (7) A person shall be taken to have an interest in shares or debentures if, otherwise than by virtue of having an interest under a trust—
  - (a) he has a right to call for delivery of the shares or debentures to himself or to his order; or
  - (b) he has a right to acquire an interest in shares or debentures or is under an obligation to take an interest in shares or debentures;

whether in any case the right or obligation is conditional or absolute.

- (8) For the purposes of subsection (4) (b) a person shall be taken to be entitled to exercise or control the exercise of any right conferred by the holding of shares or debentures if he has a right (whether subject to conditions or not) the exercise of which would make him so entitled or is under an obligation (whether so subject or not) the fulfilment of which would make him so entitled.
- (9) A person shall not by virtue of subsection (4) (b) be taken to be interested in any shares or debentures by reason only that he has been appointed a proxy to vote at a specified meeting of a company or of any class of its members and at any adjournment of that meeting or has been appointed by a body corporate to act as its representative at any meeting of a company or of any class of its members.
- (10) Without prejudice to subsection (2), rights or obligations to subscribe for any shares or debentures shall not be taken for the purposes of subsection (7) to be rights to acquire, or obliga-

tions to take, any interest in shares or debentures.

- (11) Where persons have a joint interest each of them shall be deemed to have that interest.
- (12) It is immaterial that shares or debentures in which a person has an interest are unidentifiable.
- (13) Delivery to a person's order of shares or debentures in fulfilment of a contract for the purchase thereof by him or in satisfaction of a right of his to call for delivery thereof, or failure to deliver shares or debentures in accordance with the terms of such a contract or on which such a right falls to be satisfied, shall be deemed to constitute an event in consequence of the occurrence of which he ceases to be interested in them, and so shall the lapse of a person's right to call for delivery of shares or debentures.

Interests to be disregarded,

- 55.—(1) The following interests shall be disregarded for the purposes of section 54 and sections 56 to 58-
  - (a) where property is held on trust and an interest in shares
    or debentures is comprised in that property, an interest
    in reversion or remainder or of a bare trustee and any
    discretionary interest;
  - (b) an interest of a person subsisting by virtue of-
    - (i) his holding units in-
      - (I) a registered unit trust scheme within the meaning of section 3 of the Unit Trusts Act, 1972;
      - (II) a unit trust to which section 31 of the Capital Gains Tax Act, 1975, as amended by section 34 of the Finance Act, 1977 relates;
      - (III) an undertaking for collective investment in transferable securities, within the meaning of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989 (S.I. No. 78 of 1989);
    - (ii) a scheme made under section 46 of the Charities Act, 1961;

subsection (3) are satisfied;

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- (c) an interest for the life of himself or another of a person under a settlement in the case of which the property comprised in the settlement consists of or includes shares or debentures, and the conditions mentioned in
  - (d) an interest in shares or debentures held by a member of a recognised stock exchange carrying on business as a stock broker which is held by way of security only for the purposes of a transaction entered into by the person or body concerned in the ordinary course of business of such person or body;
  - (e) such interests, or interests of such a class, as may be prescribed for the purposes of this paragraph by regulations made by the Minister.
- (2) A person shall not by virtue of section 54 (4) (b) be taken to be interested in shares or debentures by reason only that he has been appointed a proxy to vote at a specified meeting of a company or of any class of its members and at any adjournment of that meeting, or has been appointed by a body corporate to act as its representative at any meeting of a company or of any class of its members.
- (3) The conditions referred to in subsection (1) (c) are, in relation to a settlement-
  - (a) that it is irrevocable, and
  - (b) that the settlor (within the meaning of section 96 of the Income Tax Act, 1967) has no interest in any income arising under, or property comprised in, the settlement.

56.—(1) An obligation imposed on a person by section 53 (1) to notify an interest must, if he knows of the existence of the interest on the relevant day (that is to say, in a case in which he is a director or secretary at the beginning of the day on which that section comes into operation, the last previous day, and, in a case in which he thereafter becomes a director or secretary, the day on which he becomes it), be fulfilled before the expiration of the period of five days beginning with the day next following the relevant day; otherwise it must be fulfilled before the expiration of the period of five days beginning with the day next following that on which the existence of the interest comes to his knowl-

Periods within which obligations under section 53 must be discharged.

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(2) An obligation imposed on a person by section 53 (2) to notify the occurrence of an event must, if at the time at which the event occurs he knows of its occurrence, be fulfilled before the expiration of the period of five days beginning with the day next following that on which it occurs; otherwise, it must be fulfilled before the expiration of the period of five days beginning with the day next following that on which the occurrence of the event comes to his knowledge.

Circumstances in which obligation under section 53 is not discharged.

- 57.—(1) Where an event of whose occurrence a director or secretary is, by virtue of section 53 (2) (a), under obligation to notify a company consists of his entering into a contract for the purchase by him of shares or debentures, the obligation shall be taken not to be discharged in the absence of inclusion in the notice of a statement of the price to be paid by him under the contract, and an obligation imposed on a director or secretary by virtue of section 53 (2) (b) shall be taken not to be discharged in the absence of inclusion in the notice of the price to be received by him under the contract.
- (2) An obligation imposed on a director or secretary by virtue of section 53 (2) (c) to notify a company shall be taken not to be discharged in the absence of inclusion in the notice of a statement of the consideration for the assignment (or, if it be the case that there is no consideration, that fact), and where an event of whose occurrence a director is, by virtue of section 53 (2) (d), under obligation to notify a company consists in his assigning a right, the obligation shall be taken not to be discharged in the absence of inclusion in the notice of a similar statement.
- (3) Where an event of whose occurrence a director or secretary is, by virtue of section 53 (2) (d), under obligation to notify a company consists in the grant to him of a right to subscribe for shares or debentures, the obligation shall not be taken to be discharged in the absence of inclusion in the notice of a statement of—
  - (a) the date on which the right was granted,
  - (b) the period during which or time at which the right is exercisable,
  - (c) the consideration for the grant (or, if it be the case that

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there is no consideration, that fact), and

- (d) the price to be paid for the shares or debentures.
- (4) Where an event of whose occurrence a director or secretary is, by virtue of section 53 (2) (d), under obligation to notify a company consists in the exercise of a right granted to him to subscribe for shares or debentures, the obligation shall be taken not to be discharged in the absence of inclusion in the notice of a statement of-
  - (a) the number of shares or amount of debentures in respect of which the right was exercised, and
  - (b) if it be the case that they were registered in his name, that fact, and, if not, the name or names of the person or persons in whose name or names they were registered.

together (if they were registered in the names of two persons or more) with the number or amount thereof registered in the name of each of them.

- (5) For the purposes of this section any reference, however expressed, to any price paid, given or received in respect of any interest in shares or debentures shall be construed as including a reference to any consideration other than money given or received in respect of any such interest.
- 58.—(1) Where a person authorises any other person ("the Other provisions agent") to acquire or dispose of, on his behalf, interests in shares in, or debentures of, a company, he shall secure that the agent notifies him immediately of acquisitions or disposals of interests in such shares or debentures effected by the agent which will or may give rise to any obligation on his part to make a notification under this Chapter with respect to his interest in those shares or debentures.

relating to notification.

- (2) An obligation to make any notification imposed on any person by this Chapter shall be treated as not being fulfilled unless the notice by means of which it purports to be fulfilled identifies him and gives his address.
- (3) Where a person fails to fulfil, within the proper period, an obligation to which he is subject by virtue of section 53, no right

or interest of any kind whatsoever in respect of the shares or debentures concerned shall be enforceable by him, whether directly or indirectly, by action or legal proceeding.

- (4) Where any right or interest is restricted under subsection (3), any person in default under that subsection or any other person affected by such restriction may apply to the court for relief against a disability imposed by or arising out of subsection (3) and the court on being satisfied that the default was accidental, or due to inadvertence, or some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may grant such relief either generally, or as respects any particular right or interest on such terms and conditions as it sees fit.
- (5) Where an applicant for relief under subsection (4) is a person referred to in subsection (3), the court may not grant such relief if it appears that the default has arisen as a result of any deliberate act or omission on the part of the applicant.
- (6) Subsection (3) shall not apply to an obligation relating to a person ceasing to be interested in shares in, or debentures of, a company.
- (7) A person who fails without reasonable excuse to comply with subsection (1) shall be guilty of an offence.

Register of interests.

- **59.**—(1) Every company shall keep a register for the purposes of section 53.
- (2) Whenever the company receives information from a director or secretary in consequence of the fulfilment of an obligation imposed on him by that section, the company shall enter in the register, against the name of that person, that information and the date of the entry.
- (3) Every company shall, whenever it grants to a director or secretary a right to subscribe for shares in, or debentures of, the company, enter in the register against his name—
  - (a) the date on which the right is granted,
  - (b) the period during which or time at which it is exercisable,
  - (c) the consideration for the grant (or, if it be the case that

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there is no consideration, that fact), and

- (d) the description of shares or debentures involved and the number or amount thereof, and the price to be paid therefor.
- (4) Whenever such a right as is mentioned in subsection (3) is exercised by a director or secretary, the company shall enter in the said register against his name that fact (identifying the right), the number or amount of shares or debentures in respect of which it is exercised and, if it be the case that they were registered in his name, that fact, and, if not, the name or names of the person or persons in whose name or names they were registered, together (if they were registered in the names of two persons or more) with the number or amount thereof registered in the name of each of them.
  - (5) This section applies to shadow directors as to directors.
- 60.—(1) The register to be kept under section 59 shall be so Provisions made up that the entries therein against the several names inscribed therein appear in chronological order.

- (2) An obligation imposed by section 59 (2) to (4) shall be fulfilled before the expiration of the period of 3 days beginning with the day next following that on which it arises.
- (3) The nature and extent of an interest recorded in the said register of a director or secretary in any shares or debentures shall, if he so requires, be recorded in the said register.
- (4) The company shall not, by virtue of anything done for the purposes of this section, be affected with notice of, or put upon inquiry as to, the rights of any person in relation to any shares or debentures.
  - (5) The said register shall-
    - (a) if the company's register of members is kept at its registered office, be kept there;
    - (b) if the company's register of members is not so kept, be kept at the company's registered office or at the place where its register of members is kept;

and shall during business hours (subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member of the company without charge and of any other person on payment of 30p or such less sum as the company may prescribe for each inspection.

- (6) The company shall send notice to the registrar of companies of the place where the said register is kept and of any change in that place, save in a case in which it has at all times been kept at its registered office.
- (7) Unless the said register is in such a form as to constitute in itself an index, the company shall keep an index of the names entered therein which shall—
  - (a) in respect of each name, contain a sufficient indication to enable the information inscribed against it to be readily found; and
  - (b) be kept at the same place as the said register;

and the company shall, within 14 days after the date on which a name is entered in the said register, make any necessary alteration in the index.

(8) Any member of the company or other person may require a copy of the said register, or of any part thereof, on payment of 15p or such less sum as the company may prescribe, for every hundred words or fractional part thereof required to be copied.

The company shall cause any copy so required by any person to be sent to that person within the period of 10 days beginning with the day next following that on which the requirement is received by the company.

- (9) The said register shall also be and remain open and accessible to any person attending the company's annual general meeting at least one quarter hour before the appointed time for the commencement of the meeting and during the continuance of the meeting.
- (10) If default is made in compliance with subsection (9), the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a fine not exceeding £1,000; and if default is made for 14 days in complying with subsection (6) the company and every officer of the company who is in default shall be liable to a fine not exceeding £1,000; and if

default is made in complying with section 59 or with subsection (1), (2) or (7) of this section or if an inspection required under this section is refused or any copy required thereunder is not sent within the proper period the company and every officer of the company who is in default shall be liable to a fine not exceeding £1,000.

- (11) In the case of a refusal of an inspection required under this section of the said register, the court may by order compel an immediate inspection thereof; and in the case of a failure to send within the proper period a copy required under this section, the court may by order direct that the copy required shall be sent to the person requiring it.
- 61,-(1) A company may remove an entry against a person's Removal of name from the register of interests in shares and debentures kept entries from under section 59 if more than 6 years has elapsed since the date of the entry being made, and either-

- (a) that entry recorded the fact that the person in question has ceased to have an interest notifiable under this Chapter in shares in, or debentures of, the company, or
- (b) it has been superseded by a later entry made under the said section 59 against the same person's name;

and in a case within paragraph (a) the company may also remove that person's name from the register.

- (2) Where a name is removed from a company's register of interests in shares or debentures in pursuance of subsection (1), the company shall within 14 days of the date of that removal make any necessary alterations in any associated index.
- (3) If default is made in complying with subsection (2), the company and every officer of it who is in default shall be guilty of an offence and liable to a fine.
- 62.—(1) Entries in a company's register of interests in shares Entries, when not and debentures under this Chapter shall not be deleted except in to be removed. accordance with section 61.

(2) If an entry is deleted from a company's register of interests in shares in contravention of subsection (1), the company shall restore that entry to the register as soon as is reasonable and

practicable.

(3) If default is made in complying with subsection (1) or (2), the company and every officer of it who is in default shall be guilty of an offence and liable to a fine.

Disclosure of interests in directors' report.

- 63.—(1) Subject to subsection (2), the directors' report or the notes to the company's accounts in respect of a financial year shall, as respects each person who, at the end of that year, was a director of the company, state—
  - (a) whether or not he was, at the end of that year, interested in shares in, or debentures of, the company or any other body corporate being the company's subsidiary or holding company or a subsidiary of the company's holding company;
  - (b) if he was so interested---
    - (i) the number and amount of shares in, and debentures of, each body (specifying it) in which he was then interested,
    - (ii) whether or not he was, at the beginning of that year (or, if he was not then a director, when he became a director), interested in shares in, or debentures of, the company or any other such body corporate, and,
    - (iii) if he was, the number and amount of shares in, and debentures of, each body (specifying it) in which he was interested at the beginning of that year or, as the case may be, when he became a director.
- (2) The reference in subsection (1) to the directors' report and the notes to the company's accounts are references to the report and notes respectively which are required by virtue of the Companies (Amendment) Act, 1986 to be annexed to the Annual Return and where a company does not annex the report of the directors, as permitted by section 10 (2) of the aforementioned Act, the information required in subsection (1) shall be contained in the notes to the company's accounts.
- (3) The references in subsection (1) to the time when a person became a director shall, in the case of a person who became a director on more than one occasion, be construed as referring to

the time when he first became a director.

- (4) For the purposes of this section "the directors' report" means the report by the directors of a company which, by section 158 (1) of the Principal Act, is required to be attached to every balance sheet of the company.
- (5) The information required by subsection (1) to be given in respect of the directors of the company shall also be given in respect of the person who was the secretary of the company at the end of the financial year concerned.

# 64.—(1) For the purposes of section 53—

Extension of section 53 to spouses and children.

- (a) an interest of the spouse of a director or secretary of a company (not being himself or herself a director or secretary thereof) in shares or debentures shall be treated as being the director's or secretary's interest, and
- (b) the same applies to an interest of a minor child of a director or secretary of a company (not being himself or herself a director or secretary thereof) in shares or debentures.

### (2) For those purposes-

- (a) a contract, assignment or right of subscription entered into, exercised or made by, or grant made to, the spouse of a director or secretary of a company (not being himself or herself a director or secretary thereof) shall be treated as having been entered into, exercised or made by, or, as the case may be, as having been made to, the director or secretary, and
- (b) the same applies to a contract, assignment or right of subscription entered into, exercised or made by, or grant made to, a minor child of a director or secretary of a company (not being himself or herself a director or secretary thereof).
- (3) A director or secretary of a company shall be under obligation to notify the company in writing of the occurrence, while he or she is director or secretary, of either of the following events, namely—

- (a) the grant to his or her spouse or minor child by the company, of a right to subscribe for shares in, or debentures of, the company, and
- (b) the exercise by the spouse or minor child of such a right as aforesaid granted by the company to the spouse or child.
- (4) In a notice given to the company under subsection (3) there shall be stated—
  - (a) in the case of the grant of a right, the like information as is required by section 53 to be stated by the director or secretary on the grant to him by another body corporate of a right to subscribe for shares in, or debentures of, that other body corporate, and
  - (b) in the case of the exercise of a right, the like information as is required by that section to be stated by the director or secretary on the exercise of a right granted to him by another body corporate to subscribe for shares in, or debentures of, that other body corporate.
- (5) An obligation imposed by subsection (3) on a director or secretary must be fulfilled by him before the expiration of the period of 5 days beginning with the day next following that on which the occurrence of the event that gives rise to it comes to his knowledge.
- (6) A person who fails to fulfil, within the proper period, an obligation to which he is subject under subsection (3) shall be guilty of an offence.
- (7) The provisions set out in sections 54 and 55 shall have effect for the interpretation of, and otherwise in relation to, subsections (1) and (2), and subsections (8) and (9) of section 53 shall, with any requisite modification, have effect for the purposes of this section as they have effect for the purposes of that section
- (8) For the purposes of section 59 an obligation imposed on a director or secretary by this section shall be treated as if imposed by section 53.

Duty of company to notify stock exchange, 65.—(1) Whenever a company in the case of whose shares or debentures dealing facilities are provided by a recognised stock

exchange is notified of any matter by a director or secretary in Note 5. consequence of the fulfilment of an obligation imposed on him by section 53 or 64, and that matter relates to shares or debentures for which such dealing facilities are provided, the company shall be under an obligation to notify that stock exchange of that matter; and the stock exchange may publish, in such manner as it may determine, any information received by it under this subsection.

- (2) An obligation imposed by subsection (1) must be fulfilled before the end of the day next following that on which it arises.
- (3) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence.
- 66.—(1) If it appears to the Minister that there are circumstances suggesting that contraventions may have occurred, in relation to shares in, or debentures of, a company, of section 30, 53 or 64 (3) to (5) he may appoint one or more competent Note 5. inspectors to carry out such investigations as are requisite to establish whether or not contraventions have occurred as aforesaid and to report the result of their investigations to the Minister.

Investigation of share dealing.

- (2) The appointment under this section of an inspector may limit the period to which his investigation is to extend or confine it to shares or debentures of a particular class or both.
- (3) For the purposes of any investigation under this section, section 10 shall apply---
  - (a) with the substitution, for references to any other body corporate whose affairs are investigated by virtue of section 9, of a reference to any other body corporate which is, or has at any relevant time been, the company's subsidiary or holding company, and
  - (b) with the necessary modification of the reference, in section 10 (5), to the affairs of the company or other body corporate, so, however, that it shall apply to members of a recognised stock exchange who are individuals and to officers (past as well as present) of members of such an exchange who are bodies corporate as it applies to officers of the company or of the

other body corporate.

- (4) The inspectors may, and, if so directed by the Minister, shall, make interim reports to the Minister, and, on the conclusion of the investigation, shall make a final report to the Minister.
- (5) Any such report shall be written or printed, as the Minister may direct, and the Minister may cause it to be published.
- (6) Sections 9, 16 to 18, 22, 23 (1) and 23 (3) shall, with any necessary modifications, apply for the purposes of this section.
- (7) The expenses of an investigation under this section shall be defrayed by the Minister.
- (8) Where a person is convicted of an offence on a prosecution instituted as a result of the investigation the High Court may, on the application of the Minister, order that person to pay the said expenses to such extent as the court may direct.

#### CHAPTER 2

## Individual and Group Acquisitions

Obligation of disclosure and the cases in which it may arise.

## 67.—(1) Where a person either—

- (a) to his knowledge acquires an interest in shares comprised in a public limited company's relevant share capital, or ceases to be interested in shares so comprised (whether or not retaining an interest in other shares so comprised), or
- (b) becomes aware that he has acquired an interest in shares so comprised or that he has ceased to be interested in shares so comprised in which he was previously interested,

then, subject to the provisions of sections 68 to 79, he shall be under an obligation ("the obligation of disclosure") to make notification to the company of the interests which he has, or had, in its shares.

(2) In relation to a public limited company, "relevant share

capital" means the company's issued share capital of a class carrying rights to vote in all circumstances at general meetings of the company and it is hereby declared for the avoidance of doubt that—

- (a) where a company's relevant share capital is divided into different classes of shares, references in this Chapter to a percentage of the nominal value of its relevant share capital are to a percentage of the nominal value of the issued shares comprised in each of the classes taken separately, and
- (b) the temporary suspension of voting rights in respect of shares comprised in issued share capital of a company of any such class does not affect the application of this Chapter in relation to interests in those or any other shares comprised in that class.
- (3) Where, otherwise than in circumstances within subsection (1), a person—
  - (a) is aware at the time when it occurs of any change of circumstances affecting facts relevant to the application of the next following section to an existing interest of his in shares comprised in a company's share capital of any description, or
  - (b) otherwise becomes aware of any such facts (whether or not arising from any such change of circumstances),

then, subject to the provisions of sections 68 to 79, he shall be under the obligation of disclosure.

- (4) The acquisition by any person of an interest in shares or debentures of a company registered in the State shall be deemed to be a consent by that person to the disclosure by him, his agents or intermediaries of any information required to be disclosed in relation to shares or debentures by the Companies Acts.
- **68.**—(1) For the purposes of the obligation of disclosure, the interests to be taken into account are those in relevant share capital of the company concerned.
- (2) A person has a notifiable interest at any time when he is interested in shares comprised in that share capital of an aggre-

gate nominal value equal to or more than the percentage of the nominal value of that share capital which is for the time being the notifiable percentage.

- (3) All facts relevant to determining whether a person has a notifiable interest at any time (or the percentage level of his interest) are taken to be what he knows the facts to be at that time.
- (4) The obligation of disclosure arises under section 67 (1) or (3) where the person has a notifiable interest immediately after the relevant time, but did not have such an interest immediately before that time.
  - (5) The obligation also arises under section 67 (1) where-
    - (a) the person had a notifiable interest immediately before the relevant time, but does not have such an interest immediately after it, or
    - (b) he had a notifiable interest immediately before that time, and has such an interest immediately after it, but the percentage levels of his interest immediately before and immediately after that time are not the same.
- (6) For the purposes of this section, "the relevant time" means—
  - (a) in a case within section 67 (1) (a) or (3) (a), the time of the event or change of circumstances there mentioned,
  - (b) in a case within section 67 (1) (b) or (3) (b), the time at which the person became aware of the facts in question.

"Percentage level" in relation to notifiable interests.

- 69.—(1) Subject to the qualification mentioned below, "percentage level", in section 68 (5) (b), means the percentage figure found by expressing the aggregate nominal value of all the shares comprised in the share capital concerned in which the person is interested immediately before or (as the case may be) immediately after the relevant time as a percentage of the nominal value of that share capital and rounding that figure down, if it is not a whole number, to the next whole number.
  - (2) Where the nominal value of the share capital is greater

immediately after the relevant time than it was immediately before, the percentage level of the person's interest immediately before (as well as immediately after) that time is determined by reference to the larger amount.

70.—(1) The reference in section 68 (2) to the notifiable percentage is to 5 per cent, or such other percentage as may be prescribed by the Minister under this section.

- (2) The Minister may prescribe the percentage to apply in determining whether a person's interest in a company's shares is notifiable under section 67; and different percentages may be prescribed in relation to companies of different classes or descriptions.
- (3) Where in consequence of a reduction prescribed under this section in the percentage made by such order a person's interest in a company's shares becomes notifiable, he shall then come under the obligation of disclosure in respect of it; and the obligation must be performed within the period of 10 days next following the day on which it arises.
- 71.—(1) Subject to section 70 (3) a person's obligation to Particulars to be make a notification under section 67 must be performed within the period of 5 days next following the day on which the obligation arises; and the notification must be in writing to the compa-

- (2) The notification must specify the share capital to which it relates, and must also-
  - (a) state the number of shares comprised in that share capital in which the person making the notification knows he was interested immediately after the time when the obligation arose, or
  - (b) in a case where the person no longer has a notifiable interest in shares comprised in that share capital, state that he no longer has that interest.
- (3) A notification with respect to a person's interest in a company's relevant share capital (other than one stating that he no longer has a notifiable interest in shares comprised in that share capital) shall include particulars of-

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- (a) the identity of each registered holder of shares to which the notification relates, and
- (b) the number of those shares held by each such registered holder,

so far as known to the person making the notification at the date when the notification is made.

- (4) A person who has an interest in shares comprised in a company's relevant share capital, that interest being notifiable, is under obligation to notify the company in writing—
  - (a) of any particulars in relation to those shares which are specified in subsection (3), and
  - (b) of any change in those particulars,

of which in either case he becomes aware at any time after any interest notification date and before the first occasion following that date on which he comes under any further obligation of disclosure with respect to his interest in shares comprised in that share capital.

An obligation arising under this section must be performed within the period of 5 days next following the day on which it

- (5) The reference in subsection (4) to an interest notification date, in relation to a person's interest in shares comprised in a public limited company's relevant share capital, is to either of the following—
  - (a) the date of any notification made by him with respect to his interest under this Part, and
  - (b) where he has failed to make a notification, the date on which the period allowed for making it came to an end.
- (6) A person who at any time has an interest in shares which is notifiable is to be regarded under subsection (4) as continuing to have a notifiable interest in them unless and until he comes under obligation to make a notification stating that he no longer has such an interest in those shares.

72.—(1) For the purposes of sections 67 to 71 a person is taken to be interested in any shares in which his spouse or any minor child of his is interested.

Notification of family and corporate

- (2) For those purposes, a person is taken to be interested in shares if a body corporate is interested in them and-
  - (a) that body or its directors are accustomed to act in accc lance with his directions or instructions, or
  - (b) he is entitled to exercise or control the exercise of onethird or more of the voting power at general meetings of that body corporate.
- (3) Where a person is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of a body corporate and that body corporate is entitled to exercise or control the exercise of any of the voting power at general meetings of another body corporate ("the effective voting power") then, for the purposes of subsection (2) (b), the effective voting power is taken as exercisable by that person.
- (4) For the purposes of subsections (2) and (3) a person is entitled to exercise or control the exercise of voting power if-
  - (a) he has a right (whether subject to conditions or not) the exercise of which would make him so entitled, or
  - (b) he is under an obligation (whether or not so subject) the fulfilment of which would make him so entitled.
- 73.—(1) Subject to the following provisions of this section an Agreement to agreement between two or more persons which includes provision for the acquisition by any one or more of the parties to the agreement of interests in shares comprised in relevant share capital of a particular public limited company ("the target company") is an agreement to which this section applies if-

acquire interests in a public limited company.

(a) it also includes provisions imposing obligations or restrictions on any one or more of the parties to the agreement with respect to their use, retention or disposal of interests in that company's shares acquired in pursuance of the agreement (whether or not together with any other interests of theirs in that company's shares to which the agreement relates); and

(

(b) any interest in the company's shares is in fact acquired by any of the parties in pursuance of the agreement;

and in relation to such an agreement references in this section, and in sections 74 and 75, to the target company are to the company which is the target company for that agreement in accordance with this section.

- (2) The reference in subsection (1) (a) to the use of interests in shares in the target company is to the exercise of any rights or of any control or influence arising from those interests (including the right to enter into any agreement for the exercise, or for control of the exercise, of any of those rights by another person).
- (3) Once any interest in shares in the target company has been acquired in pursuance of such an agreement as is mentioned above, this section continues to apply to that agreement irrespective of—
  - (a) whether or not any further acquisitions of interests in the company's shares take place in pursuance of the agreement, and
  - (b) any change in the persons who are for the time being parties to it, and
  - (c) any variation of the agreement,

so long as the agreement continues to include provisions of any description mentioned in subsection (1) (a).

References in this subsection to the agreement include any agreement having effect (whether directly or indirectly) in substitution for the original agreement.

- (4) In this section, and also in references elsewhere in this Part to an agreement to which this section applies, "agreement" includes any agreement or arrangement; and references in this section to provisions of an agreement—
  - (a) accordingly include undertakings, expectations or understandings operative under any arrangement, and
  - (b) (without prejudice to the above) also include any provisions, whether express or implied and whether absolute or not.

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- (5) This section does not apply to an agreement which is not legally binding unless it involves mutuality in the undertakings, expectations or understandings of the parties to it; nor does the section apply to an agreement to underwrite or sub-underwrite any offer of shares in a company, provided the agreement is confined to that purpose and any matters incidental to it.
- 74.—(1) In the case of an agreement to which section 73 applies, each party to the agreement shall be taken (for purposes of the obligation of disclosure) to be interested in all shares in the target company in which any other party to it is interested apart from the agreement (whether or not the interest of the other party in question was acquired, or includes any interest which was acquired, in pursuance of the agreement).

Obligation of disclosure arising under section 73.

- (2) For those purposes, and also for those of section 75, an interest of a party to such an agreement in shares in the target company is an interest apart from the agreement if he is interested in those shares otherwise than by virtue of the application of section 73 and this section in relation to the agreement.
- (3) Accordingly, any such interest of the person (apart from the agreement) includes for those purposes any interest treated as his under section 72 or by the application of section 73 and this section in relation to any other agreement with respect to shares in the target company to which he is a party.
- (4) A notification with respect to his interest in shares in the target company made to that company under this Part by a person who is for the time being a party to an agreement to which section 73 applies shall—
  - (a) state that the person making the notification is a party to such an agreement,
  - (b) include the names and (so far as known to him) the addresses of the other parties to the agreement, identifying them as such, and
  - (c) state whether or not any of the shares to which the notification relates are shares in which he is interested by virtue of section 73 and this section and, if so, the number of those shares.
  - (5) Where a person makes a notification to a company under

this Part in consequence of ceasing to be interested in any shares of that company by virtue of the fact that he or any other person has ceased to be a party to an agreement to which section 73 applies, the notification shall include a statement that he or that other person has ceased to be a party to the agreement (as the case may require) and also (in the latter case) the name and (if known to him) the address of that other.

Obligation of persons acting together to keep each other informed.

- 75.—(1) A person who is a party to an agreement to which section 73 applies shall be subject to the requirements of this section at any time when—
  - (a) the target company is a public limited company, and he knows it to be so, and
  - (b) the shares in that company to which the agreement relates consist of or include shares comprised in relevant share capital of the company, and he knows that to be the case, and
  - (c) he knows the facts which make the agreement one to which section 73 applies.
- (2) Such a person shall be under obligation to notify every other party to the agreement, in writing, of the relevant particulars of his interest (if any) apart from the agreement in shares comprised in relevant share capital of the target company—
  - (a) on his first becoming subject to the requirements of this section, and
  - (b) on each occurrence after that time while he is still subject to those requirements of any event or circumstances within section 67 (1) (as it applies to his case otherwise than by reference to interests treated as his under section 74 as applying to that agreement).
- (3) The relevant particulars to be notified under subsection (2) are—
  - (a) the number of shares (if any) comprised in the target company's relevant share capital in which the person giving the notice would be required to state his interest if he were under the obligation of disclosure with respect to that interest (apart from the agreement)

immediately after the time when the obligation to give notice under subsection (2) arose, and

- (b) the relevant particulars with respect to the registered ownership of those shares, so far as known to him at the date of the notice.
- (4) A person who is for the time being subject to the requirements of this section shall be under obligation to notify every other party to the agreement, in writing—
  - (a) of any relevant particulars with respect to the registered ownership of any shares comprised in relevant share capital of the target company in which he is interested apart from the agreement, and
  - (b) of any change in those particulars,

of which in either case he becomes aware at any time after any interest notification date and before the first occasion following that date on which he becomes subject to any further obligation to give notice under *subsection* (2) with respect to his interest in shares comprised in that share capital.

- (5) The reference in subsection (4) to an interest notification date, in relation to a person's interest in shares comprised in the target company's relevant share capital, is to either of the following—
  - (a) the date of any notice given by him with respect to his interest under subsection (2), and
  - (b) where he has failed to give that notice, the date on which the period allowed by this section for giving the notice came to an end.
- (6) A person who is a party to an agreement to which section 73 applies shall be under an obligation to notify each other party to the agreement, in writing, of his current address—
  - (a) on his first becoming subject to the requirements of this section, and
  - (b) on any change in his address occurring after that time and while he is still subject to those requirements.

- (7) A reference to the relevant particulars with respect to the registered ownership of shares is to such particulars in relation to those shares as are mentioned in section 71(3)(a) or (b).
- (8) A person's obligation to give any notice required by this section to any other person must be performed within the period of 5 days next following the day on which that obligation arose.

Interests in shares by attribution.

- 76.—(1) Where section 67 or 68 refers to a person acquiring an interest in shares or ceasing to be interested in shares, that reference in certain cases includes his becoming or ceasing to be interested in those shares by virtue of another person's interest.
- (2) This section applies where he becomes or ceases to be interested by virtue of section 72 or (as the case may be) section 74 whether—
  - (a) by virtue of the fact that the person who is interested in the shares becomes or ceases to be a person whose interests (if any) fall by virtue of either section to be treated as his, or
  - (b) in consequence of the fact that such a person has become or ceased to be interested in the shares, or
  - (c) in consequence of the fact that he himself becomes or ceases to be a party to an agreement to which section 73 applies to which the person interested in the shares is for the time being a party, or
  - (d) in consequence of the fact that an agreement to which both he and that person are parties becomes or ceases to be one to which the said section 73 applies.
- (3) The person shall be treated under section 67 as knowing he has acquired an interest in the shares or (as the case may be) that he has ceased to be interested in them, if and when he knows both—
  - (a) the relevant facts with respect to the other person's interest in the shares, and
  - (b) the relevant facts by virtue of which he himself has become or ceased to be interested in them in accordance with section 72 or 74.

- (4) He shall be deemed to know the relevant facts referred to in subsection (3) (a) if he knows (whether contemporaneously, or not) either of the subsistence of the other person's interest at any material time or of the fact that the other has become or ceased to be interested in the shares at any such time; and "material time" is any time at which the other's interests (if any) fall or fell to be treated as his under section 72 or 74.
- (5) A person is to be regarded as knowing of the subsistence of another's interest in shares or (as the case may be) that another has become or ceased to be interested in shares if he has been notified under section 75 of facts with respect to the other's interest which indicate that he is or has become or ceased to be interested in the shares (whether on his own account or by virtue of a third party's interest in them).
- 77.—(1) This section applies, subject to section 78, in deter- Interests in shares mining for purposes of sections 67 to 71 whether a person has a which are to be notifiable interest in shares.

notified.

- (2) A reference to an interest in shares is to be read as including an interest of any kind whatsoever in the shares. Accordingly there are to be disregarded any restraints or restrictions to which the exercise of any right attached to the interest is or may be subject.
- (3) Where property is held on trust and an interest in shares is comprised in the property, a beneficiary of the trust who apart from this subsection does not have an interest in the shares is to be taken as having such an interest; but this subsection is without prejudice to the following provisions of this section.
  - (4) A person is taken to have an interest in shares if—
    - (a) he enters into a contract for their purchase by him (whether for cash or other consideration), or
    - (b) not being the registered holder, he is entitled to exercise any right conferred by the holding of the shares or is entitled to control the exercise of any such right.
- (5) For the purposes of subsection (4) (b), a person is entitled to exercise or control the exercise of any right conferred by the holding of shares if he-

- (a) has a right (whether subject to conditions or not) the exercise of which would make him so entitled, or
- (b) is under an obligation (whether so subject or not) the fulfilment of which would make him so entitled.
- (6) A person is taken to have an interest in shares if, otherwise than by virtue of having an interest under a trust—
  - (a) he has a right to call for delivery of the shares to himself or to his order, or
  - (b) he has a right to acquire an interest in shares or is under an obligation to take an interest in shares,

whether in any case the right or obligation is conditional or absolute.

- (7) Without prejudice to subsection (2), rights or obligations to subscribe for any shares shall not be taken for the purposes of subsection (6) to be rights to acquire, or obligations to take, any interest in shares.
- (8) Where persons have a joint interest each of them shall be taken to have that interest.
- (9) It is immaterial that shares in which a person has an interest are unidentifiable.
- (10) Delivery to a person's order of shares in fulfilment of a contract for the purchase thereof by him or in satisfaction of a right of his to call for delivery thereof, or failure to deliver shares in accordance with the terms of such a contract or on which such a right falls to be satisfied, shall be deemed to constitute an event in consequence of the occurrence of which he ceases to be interested in them, and so shall the lapse of a person's right to call for delivery of shares.

Interests to be disregarded.

78.—(1) The following interests in shares shall be disregarded for the purposes of sections 67 to 71—

Note 5.

 (a) where property is held on trust and an interest in shares is comprised in that property, an interest in reversion or remainder or of a bare trustee and any discretionary interest;

- (b) an interest of a person subsisting by virtue of-
  - (i) his holding units in
    - a registered unit trust scheme within the meaning of section 3 of the Unit Trusts Act, 1972;
    - (II) a unit trust to which section 31 of the Capital Gains Tax Act, 1975, as amended by section 34 of the Finance Act, 1977, relates;
    - (III) an undertaking for collective investment in transferable securities, within the meaning of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989 (S.I. No. 78 of 1989);

or

- (ii) a scheme made under section 46 of the Charities Act, 1961;
- (c) an interest for the life of himself or another of a person under a settlement in the case of which the property comprised in the settlement consists of or includes shares, and the conditions mentioned in subsection (3) are satisfied;
- (d) an exempt security interest;
- (e) an interest of the President of the High Court subsisting by virtue of section 13 of the Succession Act, 1965;
- (f) an interest of the Accountant of the High Court in shares held by him in accordance with rules of court;
- (g) such interests, or interests of such a class, as may be prescribed for purposes of this paragraph by regulations made by the Minister.
- (2) A person shall not by virtue of section 77 (4) (b) be taken to be interested in shares by reason only that he has been appointed a proxy to vote at a specified meeting of a company or of any class of its members and at any adjournment of that

meeting, or has been appointed by a body corporate to act as its representative at any meeting of a company or of any class of its members.

- (3) The conditions referred to in subsection (1) (c) are, in relation to a settlement—
  - (a) that it is irrevocable, and
  - (b) that the settlor (within the meaning of section 96 of the Income Tax Act, 1967) has no interest in any income arising under, or property comprised in, the settlement.
- (4) An interest in shares is an exempt security interest for purposes of subsection (1) (d) if—
  - (a) it is held by-
    - (i) the holder of a licence under section 9 of the Central Bank Act, 1971, or an insurance company within the meaning of the Insurance Acts, 1909 to 1990,
    - (ii) a trustee savings bank (within the meaning of the Trustee Savings Banks Acts, 1863 to 1979) or a Post Office Savings Bank within the meaning of the Post Office Savings Bank Acts, 1861 to 1958,
    - (iii) Agricultural Credit Corporation plc or Industrial Credit Corporation plc,
    - (iv) a member of a recognised stock exchange carrying on business as a stockbroker, and
  - (b) it is held by way of security only for the purposes of a transaction entered into by the person or body concerned in the ordinary course of business of such person or body.

Other provisions relating to notification.

79.—(1) Where a person authorises any other person ("the agent") to acquire or dispose of, on his behalf, interests in shares comprised in relevant share capital of a public limited company, he shall secure that the agent notifies him immediately of acquisitions or disposals of interests in shares so comprised effected by the agent which will or may give rise to any obligation on his part to make a notification under this Chapter

with respect to his interest in that share capital.

(2) An obligation to make any notification imposed on any person by this Chapter shall be treated as not being fulfilled unless the notice by means of which it purports to be fulfilled identifies him and gives his address, and in a case where he is a director or secretary of the company, is expressed to be given in fulfilment of that obligation.

# (3) Where a person-

- (a) fails to fulfil, within the proper period, an obligation to make any notification required by this Chapter; or
- (b) in purported fulfilment of any such obligation makes to a company a statement which he knows to be false or recklessly makes to a company a statement which is false; or
- (c) fails to fulfil, within the proper period, an obligation to give any other person any notice required by section 75,

no right or interest of any kind whatsoever in respect of any shares in the company concerned, held by him, shall be enforceable by him, whether directly or indirectly, by action or legal proceeding.

- (4) Where any right or interest is restricted under subsection (3), any person in default under that subsection or any other person affected by such restriction may apply to the court for relief against a disability imposed by or arising out of subsection (3) and the court on being satisfied that the default was accidental, or due to inadvertence, or some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may grant such relief either generally, or as respects any particular right or interest on such terms and conditions as it sees fit.
- (5) Where an applicant for relief under subsection (4) is a person referred to in subsection (3), the court may not grant such relief if it appears that the default has arisen as a result of any deliberate act or omission on the part of the applicant.
  - (6) Subsection (3) shall not apply to an obligation relating to a

person ceasing to be interested in shares in any company.

- (7) A person who-
  - (a) fails to fulfil, within the proper period, an obligation of disclosure imposed on him by this Chapter, or
  - (b) fails to fulfil, within the proper period, an obligation to give any other person a notice required by section 75, or
  - (c) fails without reasonable excuse to comply with subsection (1),

shall be guilty of an offence.

- (8) It shall be a defence for a person charged with an offence under subsection (7) (b) to prove that it was not possible for him to give the notice to that other person required by section 75 within the proper period, and either—
  - (a) that it has not since become possible for him to give the notice so required; or
  - (b) that he gave that notice as soon after the end of that period as it became possible for him to do so.

Register of interests in shares,

- 80.—(1) Every public limited company shall keep a register for purposes of sections 67 to 71 and whenever the company receives information from a person in consequence of the fulfilment of an obligation imposed on him by any of those sections, it is under obligation to inscribe in the register, against that person's name, that information and the date of the inscription.
- (2) Without prejudice to subsection (1), where a company receives a notification under this Part which includes a statement that the person making the notification, or any other person, has ceased to be a party to an agreement to which section 73 applies, the company shall be under obligation to record that information against the name of that person in every place where his name appears in the register as a party to that agreement (including any entry relating to him made against another person's name).
  - (3) An obligation imposed by subsection (1) or (2) must be

fulfilled within the period of 3 days next following the day on which it arises.

- (4) The nature and extent of an interest recorded in the said register of a person in any shares shall, if he so requires, be recorded in the said register.
- (5) The company shall not, by virtue of anything done for the purposes of this section, be affected with notice of, or put upon enquiry as to, the rights of any person in relation to any shares.
- (6) The register must be so made up that the entries against the several names entered in it appear in chronological order.
- (7) Unless the register is in such form as to constitute in itself an index, the company shall keep an index of the names entered in the register which shall in respect of each name contain a sufficient indication to enable the information entered against it to be readily found; and the company shall, within 10 days after the date on which a name is entered in the register, make any necessary alteration in the index.
- (8) If the company ceases to be a public limited company it shall continue to keep the register and any associated index until the end of the period of 6 years beginning with the day next following that on which it ceases to be such a company.
  - (9) The register and any associated index-
    - (a) shall be kept at the place at which the register required to be kept by the company by section 59 (register of directors' and secretaries' interests) is kept, and
    - (b) shall be available for inspection in accordance with section 88.
- (10) If default is made in complying with any of the provisions of this section, the company and every officer of it who is in default shall be liable to a fine not exceeding £1,000, and for continued contravention, to a daily default fine not exceeding £50.
- 81,-(1) A public limited company may by notice in writing Company require a person whom the company knows or has reasonable investigations. cause to believe to be or, at any time during the 3 years

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immediately preceding the date on which the notice is issued (but excluding any time before the commencement of this section), to have been interested in shares comprised in the company's relevant share capital—

- (a) to confirm that fact or (as the case may be) to indicate whether or not it is the case, and
- (b) where he holds or has during that time held an interest in shares so comprised, to give such further information as may be required in accordance with the following subsection.
- (2) A notice under this section may require the person to whom it is addressed---
  - (a) to give particulars of his own past or present interest in shares comprised in relevant share capital of the company (held by him at any time during the 3 year period mentioned in subsection (1)),
  - (b) where the interest is a present interest and any other interest in shares subsists or, in any case, where another interest in the shares subsisted during that 3 year period at any time when his own interest subsisted, to give (so far as lies within his knowledge) such particulars with respect to that other interest as may be required by the notice,
  - (c) where his interest is a past interest, to give (so far as lies within his knowledge) particulars of the identity of the person who held that interest immediately upon his ceasing to hold it.
- (3) The particulars referred to in subsection (2) (a) and (2) (b) include particulars of the identity of persons interested in the shares in question and of whether persons interested in the same shares are or were parties to any agreement to which section 73 applies or to any agreement or arrangement relating to the exercise of any rights conferred by the holding of the shares.
- (4) A notice under this section shall require any information given in response to the notice to be given in writing within such reasonable time as may be specified in the notice.

- (5) Sections 72 to 74 and 77 apply for the purpose of construing references in this section to persons interested in shares and to interests in shares respectively, as they apply in relation to sections 67 to 70 (but with the omission of any reference to section 78).
- (6) This section applies in relation to a person who has or previously had, or is or was entitled to acquire, a right to subscribe for shares in a public limited company which would on issue be comprised in relevant share capital of that company as it applies in relation to a person who is or was interested in shares so comprised; and references in this section to an interest in shares so comprised and to shares so comprised are to be read accordingly in any such case as including respectively any such right and shares which would on issue be so comprised.
- 82.—(1) Whenever in pursuance of a requirement imposed on Registration of a person under section 81 a company receives information to which this section applies relating to shares comprised in its relevant share capital, it is under obligation to enter against the name of the registered holder of those shares, in a separate part of its register of interests in shares-

interests disclosed under section 81.

- (a) the fact that the requirement was imposed and the date on which it was imposed, and
- (b) any information to which this section applies received in pursuance of the requirement.
- (2) This section applies to any information received in pursuance of a requirement imposed by section 81 which relates to the present interests held by any persons in shares comprised in relevant share capital of the company in question.
- (3) Subsections (3) to (10) of section 80 apply in relation to any part of the register maintained in accordance with subsection (1) of this section, reading references to subsection (1) of that section to include subsection (1) of this section.
- 83.—(1) A company may be required to exercise its powers Company under section 81 on the requisition of members of the company holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital of the company as carries at that date the right of voting at general meetings of the company.

investigations on requisition by members.

- (2) The requisition must-
  - (a) state that the requisitionists are requiring the company to exercise its powers under section 81.
  - (b) specify the manner in which they require those powers to be exercised, and
  - (c) give reasonable grounds for requiring the company to exercise those powers in the manner specified,

and must be signed by the requisitionists and deposited at the company's registered office.

- (3) The requisition may consist of several documents in like form each signed by one or more requisitionists.
- (4) On the deposit of a requisition complying with this section the company shall exercise its powers under section 81 in the manner specified in the requisition.
- (5) If default is made in complying with subsection (4), the court may, on the application of the requisitionists, or any of them, and on being satisfied that it is reasonable to do so, require the company to exercise its powers under section 81 in a manner specified in the order.

Company report to members.

- 84.—(1) On the conclusion of an investigation carried out by a company in pursuance of a requisition under section 83 it is the company's duty to cause a report of the information received in pursuance of that investigation to be prepared, and the report shall be made available at the company's registered office within a reasonable period after the conclusion of that investigation.
  - (2) Where-
    - (a) a company undertakes an investigation in pursuance of a requisition under section 83, and
    - (b) the investigation is not concluded before the end of 3 months beginning with the date immediately following the date of the deposit of the requisition,

the company shall cause to be prepared, in respect of that period and each successive period of 3 months ending before the

conclusion of the investigation, an interim report of the information received during that period in pursuance of the investigation. Each such report shall be made available at the company's registered office within a reasonable period after the end of the period to which it relates.

- (3) The period for making any report prepared under this section available as required by subsection (1) or (2) shall not exceed 15 days.
- (4) The company shall, within 3 days of making any report prepared under this section available at its registered office, notify the requisitionists that the report is so available.
- (5) An investigation carried out by a company in pursuance of a requisition under section 83 shall be regarded for the purposes of this section as concluded when the company has made all such inquiries as are necessary or expedient for the purposes of the requisition and in the case of each such inquiry, either a response has been received by the company or the time allowed for a response has elapsed.
  - (6) A report prepared under this section-
    - (a) shall be kept at the company's registered office from the day on which it is first available there in accordance with subsection (1) or (2) until the expiration of 6 years beginning with the day next following that day, and
    - (b) shall be available for inspection in accordance with section 88 so long as it is so kept.
- (7) If default is made in complying with subsection (1), (2), (3), (4) or (6) (a), the company and every officer of the company who is in default shall be guilty of an offence and be liable to a fine.
- 85.—(1) Where notice is served by a company under section Penalty for failure 81 on a person who is or was interested in shares of the company and that person fails to give the company any information required by the notice within the time specified in it, the company may apply to the court for an order directing that the shares in question be subject to restrictions under section 16.

to provide information.

- (2) Such an order may be made by the court notwithstanding any power contained in the applicant company's memorandum or articles enabling the company itself to impose similar restrictions on the shares in question.
- (3) Subject to the following subsections, a person who fails to comply with a notice under section 81 shall be guilty of an offence.
- (4) A person shall not be guilty of an offence by virtue of failing to comply with a notice under section 81 if he proves that the requirement to give the information was frivolous or vexatious.
- (5) Where an order is made under this section directing that shares shall be subject to restrictions under section 16, the company or any person aggrieved by the order may apply to the court for an order directing that the shares shall cease to be subject thereto.
- (6) Subsections (6) to (16) of section 16 shall apply in relation to any shares subject to the restrictions imposed by that section by virtue of an order under this section but with the omission in subsections (6) to (15) of any reference to the Minister.

Removal of entries from register.

- 86.—(1) A company may remove an entry against a person's name from its register of interests in shares if more than 6 years have elapsed since the date of the entry being made, and either—
  - (a) that entry recorded the fact that the person in question had ceased to have an interest notifiable under this Chapter in relevant share capital of the company, or
  - (b) it has been superseded by a later entry made under section 80 against the same person's name;

and in a case within paragraph (a) the company may also remove that person's name from the register.

(2) If a person in pursuance of an obligation imposed on him by any provision of this Chapter gives to a company the name and address of another person as being interested in shares in the company, the company shall, within 15 days of the date on which it was given that information, notify the other person that he has been so named and shall include in that notification—

- (a) particulars of any entry relating to him made, in consequence of its being given that information, by the company in its register of interests in shares, and
- (b) a statement informing him of his right to apply to have the entry removed in accordance with the following provisions of this section.
- (3) A person who has been notified by a company in pursuance of subsection (2) that an entry relating to him has been made in the company's register of interests in shares may apply in writing to the company for the removal of that entry from the register; and the company shall remove the entry if satisfied that the information in pursuance of which the entry was made was incorrect.
- (4) If a person who is identified in a company's register of interests in shares as being a party to an agreement to which section 73 applies (whether by an entry against his own name or by an entry relating to him made against another person's name as mentioned in subsection (2) (a)) ceases to be a party to that agreement, he may apply in writing to the company for the inclusion of that information in the register; and if the company is satisfied that he has ceased to be a party to the agreement, it shall record that information (if not already recorded) in every place where his name appears as a party to that agreement in the register.
- (5) If an application under subsection (3) or (4) is refused (in a case within subsection (4), otherwise than on the ground that the information has already been recorded) the applicant may apply to the court for an order directing the company to remove the entry in question from the register or (as the case may be) to include the information in question in the register; and the court may, if it thinks fit, make such an order.
- (6) Where a name is removed from a company's register of interests in shares in pursuance of subsection (1) or (3) or an order under subsection (5), the company shall within 14 days of the date of that removal make any necessary alteration in any associated index.
- (7) If default is made in complying with subsection (2) or (6), the company and every officer of it who is in default shall be guilty of an offence and liable to a fine.

Entries, when not to be removed.

- 87.—(1) Entries in a company's register of interests in shares under this Chapter shall not be deleted except in accordance with section 86.
- (2) If an entry is deleted from a company's register of interests in shares in contravention of subsection (1), the company shall restore that entry to the register as soon as is reasonably practicable.
- (3) If default is made in complying with subsection (1) or (2), the company and every officer of it who is in default shall be guilty of an offence and liable to a fine.

Inspection of register and reports.

- 88.—(1) Any register of interests in shares and any report which is required by section 84 (6) to be available for inspection in accordance with this section shall, during business hours (subject to such reasonable restrictions as the company may in general meeting impose, but so that not less than 2 hours in each day are allowed for inspection) be open to the inspection of any member of the company or of any other person without charge.
- (2) The register referred to in subsection (1) shall also be and remain open and accessible to any person attending the company's annual general meeting at least one quarter hour before the appointed time for the commencement of the meeting and during the continuance of the meeting.
- (3) Any such member or other person may require a copy of any such register or report, or any part of it, on payment of 15 pence or such less sum as the company may prescribe, for every 100 words or fractional part of 100 words required to be copied; and the company shall cause any copy so required by a person to be sent to him before the expiration of the period of 10 days beginning with the day next following that on which the requirement is received by the company.
- (4) If an inspection required under this section is refused or a copy so required is not sent within the proper period, the company and every officer of it who is in default shall be guilty of an offence and liable to a fine.
- (5) In the case of a refusal of an inspection required under this section of any register or report, the court may by order compel an immediate inspection of it; and in the case of failure to send a copy required under this section, the court may by order direct

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that the copy required shall be sent to the person requiring it.

89.—Sections 90 to 96 are for the purpose of giving effect to 'The 1988 Council Directive 88/627/EEC of 12th December, 1988\* ("the Directive. 1988 Directive") on the information to be published when a major holding in a listed company is acquired or disposed of.

90.—(1) In sections 91 to 96—

Provisions as to interpretation.

"the Exchange" means the Committee of the Irish Unit of the International Stock Exchange of the United Kingdom and the Republic of Ireland Limited;

"functions" includes powers and duties and references to the exercise of functions include, as respects powers and duties, references to the exercise of powers and the carrying out of duties.

- (2) For the purposes of sections 91 to 96, each of the following shall be a "relevant authority" in relation to the Exchange-
  - (i) its committee of management,
  - (ii) its manager, however described.
  - 91.—(1) This section applies to interests in shares which-

Obligation to notify certain interests to the Exchange.

- (a) are comprised in relevant share capital of a public limited company, and
- Note 5.
- (b) are officially listed on the Exchange.
- (2) Where a person becomes aware that he has acquired or ceased to have an interest in shares to which this section applies and, following that acquisition or disposal, the percentage level (within the meaning of section 69) of his interest in that share capital exceeds or falls below the percentage levels referred to in subsection (3), he shall, in addition to the obligation of disclosure to which he is subject under section 67, be under an obligation to notify the Exchange of his interest in the shares following the acquisition or cessation, as the case may be.
- (3) The percentage levels referred to in subsection (2) are 10 per cent, 25 per cent, 50 per cent and 75 per cent. \*OJ No. L348, 17.12.1988, p.62.

- (4) The provisions of this Chapter shall apply as regards the interests which are to be notified to the Exchange, and the manner in which they are to be so notified, as they apply to the interests to be notified to a company under this Chapter.
- (5) Where the Exchange receives a declaration under this section it shall, subject to subsection (6), publish, in such manner as it shall determine, and within three days of its receipt, the information contained in that declaration.
- (6) The Exchange may decide not to publish the information contained in the declaration if, but only if, it is satisfied—
  - (a) that the disclosure of such information would be contrary to the public interest, or
  - (b) that such disclosure would be seriously detrimental to the company or companies concerned:

#### Provided that-

- (i) the Exchange shall not decide not to publish the information under paragraph (b) unless it is satisfied that a decision to do so would be unlikely to mislead the public with regard to the facts and circumstances knowledge of which is necessary for the assessment of the interests in question, and
- (ii) notwithstanding any decision taken under this subsection, the Exchange may publish the information later than three days after its receipt where it is satisfied that the considerations in paragraph (a) or (b) no longer apply.

Duty of relevant authority to report to Director of Public Prosecutions.

Note 5.

92.—(1) If it appears to a relevant authority of the Exchange that any person has contravened section 91, such authority shall forthwith report the matter to the Director of Public Prosecutions and shall furnish to the Director of Public Prosecutions such information and give to him such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of such authority and relating to the matter in question, as the Director of Public Prosecutions may require.

- (2) Where it appears to a member of the Exchange that any person has contravened section 91, he shall report the matter forthwith to a relevant authority of the Exchange, who shall thereupon come under the duty referred to in subsection (1).
- (3) If it appears to a court in any proceedings that any person has committed a contravention as aforesaid, and that no report relating to the matter has been made to the Director of Public Prosecutions under subsection (1), that court may, on the application of any person interested in the proceedings concerned or of its own motion, direct a relevant authority of the Exchange to make such a report, and on a report being made accordingly, this section shall have effect as though the report had been made in pursuance of subsection (1).
- (4) If, where any matter is reported or referred to the Director of Public Prosecutions under this section, he considers that the case is one in which a prosecution ought to be instituted and institutes proceedings accordingly, it shall be the duty of a relevant authority of the Exchange, and of every officer of the company whose securities are concerned, and of any other person who appears to the Director of Public Prosecutions to have relevant information (other than any defendant in the proceedings) to give all assistance in connection with the prosecution which he or they are reasonably able to give.
- (5) A relevant authority shall have the same powers and duties for the purposes of this section as it has under section 117.
- (6) Where the Minister considers it necessary or expedient to do so for the proper and effective administration of this section, he may make such regulations as he thinks appropriate in relation to—
  - (a) the powers of authorised persons, or
  - (b) the matters in respect of which, or the persons from whom, authorised persons may require information under section 117, as applied by subsection (5).
- 93.—(1) The annual report required by Regulation 11 of the European Communities (Stock Exchange) Regulations, 1984 (S.I. No. 282 of 1984) ("the 1984 Regulations") shall include—

Application and amendment of the 1984 Regulations.

Note 5.

(a) the number of written complaints received suggesting

possible contraventions of section 91,

- (b) the number of reports made under section 92,
- (c) the number of instances in which, following the exercise of powers by authorised persons under section 117, as applied by section 92, reports were not so made, and
- (d) such other information as may be prescribed.
- (2) The First Schedule to the 1984 Regulations is hereby amended by the substitution, for paragraph 5 (c) of Schedule C of the Annex to Council Directive 79/279/EEC of 5 March 1979\* set out in that Schedule, of the following:
  - "(c) The company must inform the public of any changes in the structure (shareholders and breakdown of holdings) of the major holdings in its capital as compared with information previously published on that subject as soon as such changes come to its notice.

In particular, a company which is not subject to Council Directive 88/627/EEC on the information to be published when a major holding in a listed company is acquired or disposed of must inform the public within nine calendar days whenever it comes to its notice that a person or entity has acquired or disposed of a number of shares such that his or its holding exceeds or falls below one of the thresholds laid down in Article 4 of that Directive.".

Obligation of professional secrecy.

Note 5..

- 94.—(1) Information obtained by any of the following persons by virtue of the exercise by the Exchange of its functions under this Part shall not be disclosed except in accordance with law, namely—
  - (a) a relevant authority of the Exchange,
  - (b) an authorised person, or
  - (c) any person employed or formerly employed by the Exchange.

\*OJ No. L66, 16.3.1979, p.21.

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- (2) Subsection (1) shall not prevent a relevant authority of the Exchange from disclosing any information to the Minister under this Part or to a similar authority in another Member State of the European Communities pursuant to section 96.
- (3) Any person who contravenes subsection (1) shall be guilty of an offence.
- 95.—A relevant authority of the Exchange shall not be liable. Immunity from in damages in respect of anything done or omitted to be done by the authority in connection with the exercise by it of its functions Note 5. under sections 91 to 96 unless the act or omission complained of was done or omitted to be done in bad faith.
- 96 .- A relevant authority of the Exchange in exercising its Co-operation functions under sections 91 to 94 shall comply with Article 12 between authorities in Member States) between authorities in Member States. functions under sections 91 to 94 shall comply with Article 12 of the 1988 Directive.

Note 5.

#### CHAPTER 3

Disclosure Orders: Companies other than Public Limited Companies

97.—(1) The provisions of this Chapter shall apply to all Application of Chapter 3. bodies corporate incorporated in the State other than-

- (a) a public limited company;
- (b) a society registered under the Industrial and Provident Societies Acts, 1893 to 1978;
- (c) a society registered under the Building Societies Act, 1989; and
- (d) any body corporate which is prohibited by statute or otherwise from making any distribution of its income or property among its members while it is a going concern or when it is in liquidation.
- (2) Any reference in this Chapter to a company shall be

deemed to be a reference to any body corporate to which, by virtue of subsection (1), this Chapter applies.

(3) Any reference in this Chapter to share capital or relevant share capital shall, in relation to a company, be deemed to be a reference to the issued share capital of a class carrying rights to vote in all circumstances at general meetings of the company, and references to shares shall be construed accordingly.

Disclosure order.

- 98.—(1) For the purposes of this Chapter, "disclosure order" means an order of the court which obliges—
  - (a) any person whom the court believes to have or to be able to obtain any information as to—
    - (i) persons interested at present, or at any time during a period specified in the order, in the shares or debentures of a company,
    - (ii) the names and addresses of any of those persons,
    - (iii) the name and address of any person who acts or has acted on behalf of any of those persons in relation to the shares or debentures,

to give such information to the court; or

- (b) any person whom the court believes to be, or at any time during a period specified in the order to have been, interested in shares or debentures of a company to confirm that fact or (as the case may be) to indicate whether or not it is the case and, where he holds or has during that period held any interest in such shares or debentures, to give such further information as the court may require; or
- (c) any person interested in shares or debentures of a company specified in the order to disclose to the court the information required under subparagraphs (i) and (ii) and (iii) of paragraph (a) and such further information as the court may require.
- (2) Any person who has a financial interest in a company may apply to the court for a disclosure order in respect of all or any of the shares of or debentures in the company.

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- (3) An application under subsection (2) shall be supported by such evidence as the court may require.
- (4) The court may, before hearing an application under subsection (2), require the applicant to give security for payment of the costs of hearing the application or any consequential proceedings.
  - (5) The court may make a disclosure order only if—
    - (a) it deems it just and equitable to do so; and
    - (b) it is of the opinion that the financial interest of the applicant is or will be prejudiced by the non-disclosure of any interest in the shares or debentures of the company.
- (6) For the purposes of subsection (2) "financial interest" includes any interest as member, contributory, creditor, employee, co-adventurer, examiner, lessor, lessee, licensor, licensee, liquidator or receiver either in relation to the company in respect of whose shares or debentures a disclosure order is sought or a related company.
- (7) Where a person authorises any other person ("the agent") to acquire or dispose of, on his behalf, interests in shares comprised in relevant share capital of a company or in debentures of the company in respect of which a disclosure order is made, he shall, for the duration of that order, ensure that the agent notifies him immediately of acquisitions or disposals of interests in shares or debentures so comprised effected by the agent which will or may give rise to any obligation on his part to provide information in accordance with the terms of the order with respect to his interest in that share capital or those debentures.
- 99,-(1) A person intending to apply for the making of a Procedure on disclosure order shall give not less than 10 days' notice of his intention to the company in respect of whose shares or debentures the order is sought and to the person to whom the order is intended to be directed.

application for disclosure order.

(2) The applicant shall also serve on any person specified by the court such notice of the application as the court may direct.

(3) On the hearing of the application every person notified under subsection (1) or (2) may appear and adduce evidence.

Scope of disclosure order.

100.—(1) A disclosure order may require the person to whom it is addressed—

- (a) to give particulars of his own past or present interest in shares comprised in relevant share capital of the company or in debentures of the company held by him at any time during the period mentioned in the order;
- (b) where the interest is a present interest and any other interest in the shares or debentures subsists or, in any case, where another interest in the shares or debentures subsisted during that period at any time when his own interest subsisted, to give so far as lies within his knowledge such particulars with respect to that other interest as may be required by the order;
- (c) where his interest is a past interest, to give so far as lies within his knowledge particulars of the identity of the person who held that interest immediately upon his ceasing to hold it.
- (2) A disclosure order shall specify the information to be supplied to the court under the order in respect of any person, shares or debentures to which it refers and any such information shall be given in writing.
- (3) Sections 68 to 79 shall apply as appropriate for the purposes of construing references in this Chapter to persons interested in shares and debentures and to interests in shares and debentures respectively as they apply in relation to section 67 (disregarding section 78) and any reference in those sections to a "percentage level" shall be disregarded.
- (4) For the purposes of this section any reference in sections 67 to 79 to "shares" shall, where appropriate and unless the contrary is stated, be deemed to include a reference to debentures.
- (5) This section shall apply in relation to a person who has or previously had or is or was entitled to acquire a right to subscribe for shares in or debentures of a company which would on issue be comprised in relevant share capital of that company as it applies in relation to a person who is or was interested in shares

so comprised or in debentures of the company; and references in the preceding provisions of this section to an interest in shares so comprised or an interest in debentures and to shares so comprised or debentures shall be read accordingly in any such case as including references respectively to any such right and to shares which would on issue be so comprised.

- 101.—(1) The court may, on cause shown, rescind or vary a Powers of court. disclosure order.
- (2) A disclosure order may specify a person, group or class of persons to which the order applies.
  - (3) The court may, if it considers-
    - (a) that it would be just and equitable to do so, and
    - (b) that the financial interest of the applicant would not be prejudiced thereby,

exempt in whole or in part from the requirements of a disclosure order-

- (i) any person or class of persons,
- (ii) any interest or class of interest in shares or debentures,
- (iii) any share, group or class of shares,
- (iv) any debenture, group or class of debentures.
- (4) When the court makes a disclosure order it may impose, for a specific period of time, such conditions or restrictions on the rights or obligations attaching to the shares or debentures in respect of which the order is made as it deems fit.
- (5) Any person whose interests are affected by any conditions or restrictions imposed on shares or debentures under subsection (4) may apply to the court for relief from all or any of those conditions and the court may, if it considers it just and equitable to do so, grant such relief in whole or in part and on such terms and conditions as it sees fit.
- 102,-(1) The applicant shall cause notice in the prescribed Notice of form of the making of a disclosure order together with a copy of disclosure order.

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the order to be sent by registered post within 7 days of the making of the order to—

- (a) the company (at its registered office) in respect of whose shares or debentures the order has been made,
- (b) the registrar of companies,
- (c) the registered holder of any shares or debentures in respect of which the disclosure order has been made where it appears to the court that—
  - (i) such holder is not at the date of the making of the order resident in the State, and
  - (ii) such holder should be notified,
- (d) such other person as the court sees fit.
- (2) The applicant shall cause notice of the making of a disclosure order to be published, within 7 days of the making of the order, in at least 2 daily newspapers which circulate in the district in which the registered office of the company, in respect of whose shares or debentures the order has been made, is situate.
  - (3) For the purposes of subsection (1) (a)—
    - (a) the address of the registered office of the company at the date of the making of the disclosure order shall be deemed to be the address of that office which was last delivered to the registrar of companies or otherwise published, as such case may be (in accordance with and in the manner required by the law relating to the company) prior to the date of making the order; and
    - (b) if no address of the registered office has ever been duly delivered to the registrar of companies or if the location of the last delivered address has been destroyed, the requirements of subsection (1) (a) shall be deemed to have been complied with by sending the required notice of the order together with a copy thereof to the registrar of companies.
  - (4) For the purposes of subsection (1) (c)-

- (a) the address of a non-resident registered holder of shares or debentures shall be deemed to be the address of that holder which was last delivered to the registrar of companies or otherwise published, as the case may be (in accordance with and in the manner required by the law relating to the company) prior to the date of making of the order; and
- (b) if no address of the non-resident registered holder has ever been duly delivered to the registrar of companies the requirements of subsection (1) (c) shall be deemed to have been complied with by sending the required notice of the order together with a copy thereof to the registrar of companies.
- (5) Any reference in this section to the registered office of a company shall, in the case of a company not registered under the Companies Acts, be construed as a reference to the principal office of the company.
- 103.—(1) An obligation to provide any information imposed on any person by a disclosure order shall be treated as not being fulfilled unless the notice by means of which it purports to be fulfilled identifies him and gives his current address.
- (2) Where information is given to the court in compliance with the terms of a disclosure order, a prescribed officer of the court High Court for the shall, unless the court otherwise directs, cause such information purposes of this to be furnished (in whole or in part as the court may direct) to the applicant and to the company in respect of whose shares or debentures the order was made.
- (3) In reaching its decision under subsection (2), the court shall have regard to whether the requirements of section 102 have been complied with.
- (4) Where any information is furnished to the applicant or the company in pursuance of subsection (2), the court may impose such restrictions as it sees fit as to the publication of the information by the person to whom it has been furnished.

104.—(1) Where a person—

(a) fails to fulfil, within the proper period, an obligation to provide information required by a disclosure order, or

Information disclosed under

S.I. No.209 of 1991 prescribes the Examiner and Registrars of the

Civil consequences of contravention of disclosure order, (b) in purported fulfilment of any such obligation makes to the court a statement which he knows to be false or recklessly makes to the court a statement which is false.

no right or interest of any kind whatsoever in respect of any shares in or debentures of the company concerned held by him shall be enforceable by him whether directly or indirectly, by action or legal proceeding.

- (2) Where any right or interest is restricted under subsection (1), any person in default under that subsection or any other person affected by such restriction may apply to the court for relief against a disability imposed by or arising out of subsection (1) and the court on being satisfied that the default was accidental, or due to inadvertence, or some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may grant such relief either generally, or as respects any particular right or interest on such terms and conditions as it sees fit.
- (3) Where an applicant for relief under subsection (2) is a person referred to in subsection (1), the court may not grant such relief if it appears that the default has arisen as a result of any deliberate act or omission on the part of the applicant.
- (4) The acquisition by any person of an interest in shares or debentures of a company registered in the State shall be deemed to be a consent by that person to the disclosure by him, his agents or intermediaries of any information required to be disclosed in relation to shares or debentures by the Companies Acts.

#### CHAPTER 4

General provisions about share registers etc.

Power to alter maximum inspection etc. charges. 105.—(1) The Minister may, by order, alter any of the charges referred to in—

- (a) section 60 (5) of this Act or section 92 (1), 119 (1) or 195 (10) (inserted by section 51 of this Act) of the Principal Act, or
- (b) section 60 (8) or 88 (3) of this Act, or section 92 (2), 92 (3), 119 (2) or 146 (2) of the Principal Act.

- (2) The Minister may also, by order, alter the basis of any of the charges referred to in the provisions specified in subsection (1) (b) from the basis referred to in those provisions to some other basis.
- (3) In making any order under this section, the Minister shall take into account the general costs incurred by a company in facilitating the inspection, or providing copies, of the registers or other documents referred to in subsection (1).
- (4) Every order made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and if a resolution annulling the order is passed by either House within the next 21 days on which that House has sat after the order is laid before it, the order shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.
- 106.—(1) Where on the commencement of this section a Transitional person has an interest which, if it was acquired after such provisions. commencement, would be subject to a notification requirement under Chapter 1 or 2 he shall be under an obligation to make to the company the notification with respect to his interest required by the Chapter concerned.

- (2) For the purposes of subsection (1), sections 56 and 71 (1) shall apply as if, for the period of 5 days mentioned in each of those provisions, there were substituted a period of 14 days.
- (3) Section 73 shall apply in relation to an agreement notwithstanding that it was made before the commencement of this section or that any such acquisition of shares as is mentioned in subsection (1) (b) of that section took place before such commencement.

## PART V

### INSIDER DEALING

This part came into operation on 27 December,

107 .- In this Part, except where the context otherwise Interpretation. requires---

Note 5.

"dealing", in relation to securities, means (whether as principal or agent) acquiring, disposing of, subscribing for or underwriting the securities, or making or offering to make, or inducing or

attempting to induce a person to make or to offer to make, an agreement—

- (a) for or relating to acquiring, disposing of, subscribing for or underwriting the securities; or
- (b) the purpose or purported purpose of which is to secure a profit or gain to a person who acquires, disposes of, subscribes for or underwrites the securities or to any of the parties to the agreement in relation to the securities;

"director" includes a shadow director within the meaning of section 27;

"officer", in relation to a company, includes-

- (a) a director, secretary or employee;
- (b) a liquidator;
- (c) any person administering a compromise or arrangement made between the company and its creditors;
- (d) an examiner;
- (e) an auditor; and
- (f) a receiver;

"public office" means an office or employment which is remunerated out of the Central Fund or out of moneys provided by the Oireachtas or money raised by local taxation or charges, or an appointment to or employment under any commission, committee, tribunal, board or body established by the Government or any Minister of the Government or by or under any statutory authority;

"recognised stock exchange" includes, in particular, any exchange prescribed by the Minister which provides facilities for the buying and selling of rights or obligations to acquire stock;

"related company", in relation to a company, means any body corporate which is the company's subsidiary or holding company, or a subsidiary of the company's holding company;

"relevant authority", in relation to a recognised stock exchange, means-

- (i) its board of directors, committee of management or other management body, or
- (ii) its manager, however described;

"securities" means-

- (a) shares, debentures or other debt securities issued or proposed to be issued, whether in the State or otherwise, and for which dealing facilities are, or are to be, provided by a recognised stock exchange;
- (b) any right, option or obligation in respect of any such shares, debentures or other debt securities referred to in paragraph (a);
- (c) any right, option or obligation in respect of any index relating to any such shares, debentures or other debt securities referred to in paragraph (a); or
- (d) such interests as may be prescribed;

"underwrite" includes sub-underwrite.

108.—(1) It shall not be lawful for a person who is, or at any Unlawful dealings time in the preceding 6 months has been, connected with a company to deal in any securities of that company if by reason of his so being, or having been, connected with that company he is s.I. No. 131 of in possession of information that is not generally available, but, if it were, would be likely materially to affect the price of those Dealing) securities.

(2) It shall not be lawful for a person who is, or at any time in the preceding 6 months has been, connected with a company to deal in any securities of any other company if by reason of his so being, or having been, connected with the first-mentioned company he is in possession of information that-

(a) is not generally available but, if it were, would be likely materially to affect the price of those securities, and

in securities by insiders,

Regulations, 1992, states that this section does not apply to dealing outside the State in securities.

- (b) relates to any transaction (actual or contemplated) involving both those companies or involving one of them and securities of the other, or to the fact that any such transaction is no longer contemplated.
- (3) Where a person is in possession of any such information as is mentioned in subsection (1) or (2) that if generally available would be likely materially to affect the price of securities but is not precluded by either of those subsections from dealing in those securities, it shall not be lawful for him to deal in those securities if he has received the information, directly or indirectly, from another person and is aware, or ought reasonably to be aware, of facts or circumstances by virtue of which that other person is then himself precluded by subsection (1) or (2) from dealing in those securities.
- (4) It shall not be lawful for a person at any time when he is precluded by subsection (1), (2) or (3) from dealing in any securities, to cause or procure any other person to deal in those securities.
  - (5) It shall not be lawful for a person, at any time when he is precluded by subsection (1), (2) or (3) from dealing in any securities by reason of his being in possession of any information, to communicate that information to any other person if he knows, or ought reasonably to know, that the other person will make use of the information for the purpose of dealing, or causing or procuring another person to deal, in those securities.
  - (6) Without prejudice to subsection (3), but subject to subsections (7) and (8), it shall not be lawful for a company to deal in any securities at a time when any officer of that company is precluded by subsection (1), (2) or (3) from dealing in those securities.
  - (7) Subsection (6) does not preclude a company from entering into a transaction at any time by reason only of information in the possession of an officer of that company if—
    - (a) the decision to enter into the transaction was taken on its behalf by a person other than the officer;
    - (b) it had in operation at that time written arrangements to ensure that the information was not communicated to that person and that no advice relating to the

transaction was given to him by a person in possession of the information; and

- (c) the information was not so communicated and such advice was not so given.
- (8) Subsection (6) does not preclude a company from dealing in securities of another company at any time by reason only of information in the possession of an officer of the first-mentioned company, being information that was received by the officer in the course of the performance of his duties as an officer of the first-mentioned company and that consists only of the fact that the first-mentioned company proposes to deal in securities of that other company.
- (9) This section does not preclude a person from dealing in securities, or rights or interests in securities, of a company if—
  - (a) he enters into the transaction concerned as agent for another person pursuant to a specified instruction of that other person to effect that transaction; and
  - (b) he has not given any advice to the other person in relation to dealing in securities, or rights or interests in securities, of that company that are included in the same class as the first-mentioned securities.
- (10) This section does not preclude a person from dealing in securities if, while not otherwise taking advantage of his possession of information referred to in subsection (1)—
  - (a) he gives at least 21 days' notice to a relevant authority of the relevant stock exchange of his intention to deal, within the period referred to in paragraph (b), in the securities of the company concerned, and
  - (b) the dealing takes place within a period beginning 7 days after the publication of the company's interim or final results, as the case may be and ending 14 days after such publication, and
  - (c) the notice referred to in paragraph (a) is published by the exchange concerned immediately on its receipt.
  - (11) For the purposes of this section, a person is connected

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with a company if, being a natural person-

- (a) he is an officer of that company or of a related company;
- (b) he is a shareholder in that company or in a related company; or
- (c) he occupies a position (including a public office) that may reasonably be expected to give him access to information of a kind to which subsections (1) and (2) apply by virtue of—
  - (i) any professional, business or other relationship existing between himself (or his employer or a company of which he is an officer) and that company or a related company; or
  - (ii) his being an officer of a substantial shareholder in that company or in a related company.
- (12) For the purposes of subsection (11) "substantial share-holder" means a person who holds shares in a company, the number of which is above the notifiable percentage for the time being in force under section 70.
- (13) The prohibitions in subsections (1), (3), (4) and (5) shall extend to dealings in securities issued by the State as if the references in subsections (1), (9) and (11) (other than paragraphs (a) and (b) of the last mentioned subsection) to a company were references to the State.

Civil liability for unlawful dealing.

- 109.—(1) Where a person deals in or causes or procures another person to deal in securities in a manner declared unlawful by section 108 or communicates information in any such manner, that person shall, without prejudice to any other cause of action which may lie against him, be liable—
  - (a) to compensate any other party to the transaction who was not in possession of the relevant information for any loss sustained by that party by reason of any difference between the price at which the securities were dealt in in that transaction and the price at which they would have been likely to have been dealt in in such a transaction at the time when the first-mentioned trans-

action took place if that information had been generally available; and

- (b) to account to the company that issued or made available those securities for any profit accruing to the first-mentioned person from dealing in those securi-
- (2) The amount of compensation for which a person is liable under subsection (1) or the amount of the profit for which a person is liable to account under that subsection is-
  - (a) subject to paragraph (b), the amount of the loss sustained by the person claiming the compensation or the amount of the profit referred to in subsection (1) (b), as the case may be; or
  - (b) if the person so liable has been found by a court to be liable to pay an amount or amounts to any other person or persons by reason of the same act or transaction, the amount of that loss or profit less the amount or the sum of the amounts for which that person has been found to be liable.
- (3) For the purposes of subsection (2), the onus of proving that the liability of a person to pay an amount to another person arose from the same act or transaction from which another liability arose lies on the person liable to pay the amount.
- (4) An action under this section for recovery of a loss or profit shall not be commenced after the expiration of 2 years after the date of completion of the transaction in which the loss or profit occurred.
- 110.—(1) Nothing in section 108 shall prevent a person Exempt from—

transactions.

- (a) acquiring securities under a will or on the intestacy of another person; or
- (b) acquiring securities in a company pursuant to an employee profit sharing scheme-
  - (i) approved by the Revenue Commissioners for the purposes of the Finance Acts, and

- (ii) the terms of which were approved by the company in general meeting, and
- (iii) under which all permanent employees of the company are offered the opportunity to participate on equal terms relative to specified objective criteria;
- (c) entering in good faith into a transaction to which subsection (2) applies.

Companies Act, 1990 (Insider Dealing) Regulations, 1991 (SJ. No 151 of 1991) modify S110(2)(b).

- (2) This subsection applies to the following kinds of transactions—
  - (a) the obtaining by a director of a share qualification under section 180 of the Principal Act;
  - (b) a transaction entered into by a person in accordance with his obligations under an underwriting agreement;
    - (c) a transaction entered into by a personal representative of a deceased person, a trustee, or liquidator, receiver or examiner in the performance of the functions of his office; or
    - (d) a transaction by way of, or arising out of, a mortgage of or charge on securities or a mortgage, charge, pledge or lien on documents of title to securities.
- (3) This Part shall not apply to transactions entered into in pursuit of monetary, exchange rate, national debt management or foreign exchange reserve policies by any Minister of the Government or the Central Bank, or by any person on their behalf.

Criminal liability for unlawful dealing.

111.—A person who deals in securities in a manner declared unlawful by section 108 shall be guilty of an offence.

Restriction on dealing.

Note 5.

- 112.—(1) Subject to subsection (2), a person convicted of an offence under section 111 or this section shall not deal within the period of 12 months from the date of the conviction.
- (2) Where a person convicted of an offence under subsection (1) has, before the date of his conviction, initiated a transaction under which some element of performance remains to be rendered, subsection (1) shall not prohibit him from completing the

transaction where a relevant authority of a recognised stock exchange has indicated in writing, to the parties to the transaction, its satisfaction that-

- (a) the transaction was initiated but not completed before the date of the conviction, and
- (b) if the transaction were not concluded, the rights of an innocent third party would be prejudiced, and
- (c) the transaction would not be unlawful under any other provision of this Part.
- (3) A person who contravenes this section shall be guilty of an offence.
- 113.—(1) A person shall not deal on behalf of another person Duty of agents in if he has reasonable cause to believe or ought to conclude that relation to the deal would be unlawful, within the meaning of section 108.

unlawful dealing.

- (2) A person who contravenes this section shall be guilty of an offence,
- 114.—A person who commits an offence under this Part shall Penalties for be liable-

offences under

- (a) on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding £1,000 or to both, or
- (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine not exceeding £200,000 or to both.
- 115.—(1) If it appears to a relevant authority of a recognised Duty of stock exchange that any person has committed an offence under this Part, such authority shall forthwith report the matter to the Director of Public Prosecutions and shall furnish to the Director unlawful dealing. of Public Prosecutions such information and give to him such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of such authority and relating to the matter in question, as the Director of Public Prosecutions may require.

recognised stock exchange in

Note 5.

(2) Where it appears to a member of a recognised stock

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exchange that any person has committed an offence under this Part, he shall report the matter forthwith to a relevant authority of the recognised stock exchange concerned, who shall thereupon come under the duty referred to in subsection (1).

- (3) If it appears to a court in any proceedings that any person has committed an offence as aforesaid, and that no report relating to the matter has been made to the Director of Public Prosecutions under subsection (1), that court may, on the application of any person interested in the proceedings concerned or of its own motion, direct a relevant authority of the recognised stock exchange concerned to make such a report, and on a report being made accordingly, this section shall have effect as though the report had been made in pursuance of subsection (1).
- (4) If, where any matter is reported or referred to the Director of Public Prosecutions under this section, he considers that the case is one in which a prosecution ought to be instituted and institutes proceedings accordingly, it shall be the duty of a relevant authority of the recognised stock exchange concerned, and of every officer of the company whose securities are concerned, and of any other person who appears to the Director of Public Prosecutions to have relevant information (other than any defendant in the proceedings) to give all assistance in connection with the prosecution which he or they are reasonably able to give.
- (5) If it appears to the Minister, arising from a complaint to a relevant authority of a recognised stock exchange concerning an alleged offence under this Part, that there are circumstances suggesting that—
  - (a) the relevant authority ought to use its powers under this Part but has not done so, or
  - (b) that a report ought to be made to the Director of Public Prosecutions under subsection (1), but that the relevant authority concerned has not so reported,

he may direct the relevant authority to use such powers or make such a report, and on a report being made accordingly, this section shall have effect as though the report had been made in pursuance of subsection (1).

(6) Where the Minister gives a direction under subsection (5), the relevant authority concerned shall communicate the results of

its investigations, or a copy of its report under subsection (1), as the case may be, to the Minister,

- (7) A relevant authority of a recognised stock exchange shall not be liable in damages in respect of anything done or omitted to be done by the authority in connection with the exercise by it of its functions under this Part unless the act or omission complained of was done or omitted to be done in bad faith.
- 116.—(1) This section applies where a relevant authority of a Co-operation with recognised stock exchange receives a request for information other authorities from a similar authority in another Member State of the European Communities in relation to the exercise by the second- Note 5. named authority of its functions under any enactment of the European Communities relating to unlawful dealing within the meaning of this Part, whether in the State or elsewhere.

outside the State.

- (2) The relevant authority concerned shall, in so far as it is reasonably able to do so, and making use of its powers under this Part where appropriate, obtain the information requested and shall, subject to the following provisions of this section, provide such information accordingly.
- (3) Where a relevant authority of a recognised stock exchange receives a request under subsection (1), it shall advise the Minister who, on being satisfied as to any of the matters referred to in subsection (4), may direct the authority to refuse to provide all or part of the information requested.
  - (4) The matters referred to in subsection (3) are that—
    - (a) communication of the information requested might adversely affect the sovereignty, security or public policy of the State;
    - (b) civil or criminal proceedings in the State have already been commenced against a person in respect of any acts in relation to which a request for information has been received under subsection (1):
    - (c) any person has been convicted in the State of a criminal offence in respect of any such acts.

117.—(1) In this section and sections 118 and 121, "authorised person" means a person approved by the Minister to be an Note 5.

Authorised persons.

authorised person for the purposes of this Part being-

- (a) the manager, however described, of a recognised stock exchange, or
- (b) a person nominated by a relevant authority of a recognised stock exchange.
- (2) Where an alleged offence under this Part is investigated by an authorised person, the relevant authorities of the recognised stock exchange concerned shall be under a general duty to ensure that potential conflicts of interest are avoided, as far as possible, on the part of any such authorised person.
- (3) For the purpose of obtaining any information necessary for the exercise by a relevant authority of such exchange of the function referred to in section 115, an authorised person may, on production of his authorisation if so required, require any person whom he or such relevant authority has reasonable cause to believe to have dealt in securities, or to have any information about such dealings, to give the authorised person any information which he may reasonably require in regard to—
  - (a) the securities concerned,
  - (b) the company which issued the securities,
  - (c) his dealings in such securities, or
  - (d) any other information the authorised person reasonably requires in relation to such securities or such dealings,

and give him such access to and facilities for inspecting and taking copies of any documents relating to the matter as he reasonably requires.

- (4) Every document purporting to be a warrant or authorisation and to be signed or authenticated by or on behalf of a relevant authority shall be received in evidence and shall be deemed to be such warrant or authorisation without further proof until the contrary is shown.
- (5) An authorised person, or any person on whom he has made a requirement under this section, may apply to the court for a declaration under this section.

- (6) The court, having heard such evidence as may be adduced and any representations that may be made by the authorised person and a person referred to in *subsection* (5), may at its discretion declare—
  - (a) that the exigencies of the common good do not warrant the exercise by the authorised person of the powers conferred on him by this section, or
  - (b) that the exigencies of the common good do so warrant.
- (7) Where the court makes a declaration under subsection (6) (a), the authorised person shall, as soon as may be, withdraw the relevant requirement under this section.
- (8) Where the court makes a declaration under subsection (6) (b), the person on whom the requirement was imposed shall, as soon as may be, furnish the required information to the authorised person.
- (9) Where, in contravention of subsection (8), a person refuses, or fails within a reasonable time, to comply with a requirement of an authorised person, the authorised person may certify the refusal under his hand to the court, and the court may, after hearing any statement which may be offered in defence, punish the offender in like manner as if he had been guilty of contempt of court.
- 118.—(1) Information obtained by any of the following persons by virtue of the exercise by a recognised stock exchange of its functions under this Part shall not be disclosed except in accordance with law, namely—

Obligation of professional

Note 5.

- (a) a relevant authority of the exchange,
- (b) an authorised person, or
- (c) any person employed or formerly employed by the exchange.
- (2) Subsection (1) shall not prevent a relevant authority of a recognised stock exchange from disclosing any information to the Minister, whether pursuant to a request under section 115 (5) or otherwise, or to a similar authority in another Member State of the European Communities.

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(3) Any person who contravenes subsection (1) shall be guilty of an offence.

Extension of Council Directive 79/279/EEC.

119.—The provisions of Schedule C.5 (a) of Council Directive 79/279/EEC of 5 March 1979\* coordinating the conditions for the admission of securities to official stock exchange listing, as given effect by the European Communities (Stock Exchange) Regulations, 1984 (S.I. No. 282 of 1984), shall also apply to securities within the meaning of section 107.

Annual report of recognised stock exchange,

Note 5.

- 120.—(1) An annual report shall be presented to the Minister on behalf of every recognised stock exchange on the exercise of the functions of the relevant authorities of the exchange concerned under this Part and, in particular, the report shall include—
  - (a) the number of written complaints received concerning possible contraventions of this Part,
  - (b) the number of reports made to the Director of Public Prosecutions under this Part,
  - (c) the number of instances in which, following the exercise of powers by authorised persons under this Part, reports were not made to the Director of Public Prosecutions, and
  - (d) such other information as may be prescribed.
- (2) A copy of the report referred to in subsection (1) shall, subject to subsection (3), be laid before each House of the Oireachtas.
- (3) If the Minister, after consultation with a relevant authority of the recognised stock exchange concerned, is of the opinion that the disclosure of any information contained in the report referred to in subsection (1) would materially injure or unfairly prejudice the legitimate interests of any person, or that otherwise there is good reason for not divulging any part of such a report, he may lay the report under subsection (2) with that information or that part omitted.

Power of Minister to make supplementary regulations 121.—(1) If, in any respect, any difficulty arises in bringing any provision of this Part into operation or in relation to the oper-OJ No. 166, 16.3,1979, p.21.

ation of any such provision, the Minister may by regulations do anything which appears to him to be necessary or expedient for removing that difficulty, for bringing the provision into operation, or for securing or facilitating its operation, and any such regulations may modify any provision of this Part so far as may be necessary or expedient for carrying such provision into effect for the purposes aforesaid.

- (2) Without prejudice to the generality of subsection (1), where the Minister considers it necessary or expedient to do so for the proper and effective administration of sections 115 and 117, he may make such regulations as he thinks appropriate in relation to—
  - (a) the powers of authorised persons, or
  - (b) the matters in respect of which, or the persons from whom, authorised persons may require information under this Part.
- (3) Every regulation made by the Minister under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

#### PART VI

## WINDING UP AND RELATED MATTERS

This part came into operation on I August 1991.

## Registration of Charges

122.—Section 99 of the Principal Act is hereby amended—

Amendment of section 99 of the Principal Act.

- (a) in subsection (2), by the substitution for paragraph (h) of the following paragraph—
  - "(h) a charge on a ship or aircraft or any share in a ship or aircraft;", and
- (b) by the insertion of the following subsections—
  - "(2A) The Minister may by regulations amend sub-

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# Companies Act, 1990

[GA] Qualifications of secretary of public limited company.

236.—It shall be the duty of the directors of a public limited company to take all reasonable steps to secure that the secretary (or each joint secretary) of the company is a person who appears to them to have the requisite knowledge and experience to discharge the functions of secretary of the company and who—

[GA]

(a) on the commencement of this section held the office of secretary of the company; or

[GA]

(b) for at least three years of the five years immediately preceding his appointment as secretary held the office of secretary of a company; or

[GA]

(c) is a member of a body for the time being recognised for the purposes of this section by the Minister; or

[GA]

(d) is a person who, by virtue of his holding or having held any other position or his being a member of any other body, appears to the directors to be capable of discharging those functions.

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COMPANY NAME:

MARJOVE LIMITED

Registered Number: 229527

Company Type:

PRIVATE LIMITED BY SHARES

Incorporated:

28/02/1995

Company Status:

**DISSOLVED** 

Date Of Designation: 17/08/1996

Date Liquidated:

10/08/1995

Date Dissolved:

17/08/1996

May Trade As:

View Businesses Owned By This Company?

Share Cap. Currency: EURO Authorised Capital:

Next Annual Return

28/08/2002

Date:

Last AR Filed:

Registered Address: FITZWILTON HOUSE,

WILTON PLACE,

DUBLIN 2,

View Other Companies At This Address?

Principal NACE Code: 74.84 OTHER BUSINESS ACTIVITIES N.E.C.

## DIRECTORS AND SECRETARY - AS PER C.R.O. AT 24/11/2008

### **Directors Special Note**

Please note that the information displayed on this printout as to the particulars of the directors and secretary of this company may not be complete or up to date, as there may be unregistered documents which affect the position. Please refer to the list of Documents below, and if necessary, consult the company file or images for full, up-to-date particulars as to the company's officers. If this printout is blank as to officer details, please consult the images of the registered New Company documents.

Name:

DAPHNE TYNAN TEASE Other Directorships?

Title:

SECRETARY

Address:

"KILDRUM", BRIGHTON ROAD,

FOXROCK, DUBLIN 18.

Date of Birth:

22/05/1955

Name:

THOMAS BENEDICT BREEN Other Directorships?

Title:

DIRECTOR

Address:

20, CHERBURY GARDENS,

BOOTERSTOWN, CO. DUBLIN.

Date of Birth:

16/03/1959

Name:

KEVIN MURRAY Other Directorships?

Title:

DIRECTOR AVALON

Address:

8 BELGRAVE ROAD

MONKSTOWN

CO. DUBLIN

Date of Birth:

01/05/1959

Name:

MICHAEL SCHOLEFIELD Other Directorships?

Title:

DIRECTOR

Address:

29, BRIGHTON ROAD,

RATHGAR,

DUBLIN 6.

Date of Birth:

19/12/1959

**View History Of Directors Report?** 

Appointments & Resignations

#### **MORTGAGES AND CHARGES**

## None Registered

Judgements

Would you like us to carry out a Judgement Search?

## DOCUMENTS FILED AT C.R.O.

Please send me any future documents filed by Marjove.

Documents will be sent as soon as they become available and will be charged at the standard document fee.

STATUS	SUBMISSION	EFFECTIVE OR ACCOUNTS TO DATE	RECEIVED	SUB NUM	VIEW	PAGES
REG	E7 FINAL WINDING UP MEETINGS OF MEM AND CREDIT	15/05/1996	17/05/1996	1797820/1	Order Now	
REG	E5 LIQUIDATORS STATEMENT OF ACCOUNT	15/05/1996	17/05/1996	1797819/1 ,	Order Now	
REG	G1 SPECIAL RESOLUTION	15/05/1996	17/05/1996	1797818/1	Order Now	
REG	B7 NOTICE OF CONSOLIDAT, DIVISION, CONVERSION TO		04/09/1995	1995539/1		
REG	B10 CHANGE IN DIRS/SEC .	02/08/1995	18/08/1995	1797817/1	Order Now	
REG	E1 DECLARATION OF SOLVENCY	10/08/1995	10/08/1995	1797816/1	Order Now	
REG	G1 SPECIAL RESOLUTION	10/08/1995	10/08/1995	1797815/1	Order Now	
REG	E2 NOTICE OF APPOINTMENT OF LIQUIDATOR	10/08/1995	10/08/1995	1797814/1	Order Now	
REG	G1 SPECIAL RESOLUTION	19/05/1995	04/07/1995	1797813/1	Order Now	
REG	G1 SPECIAL RESOLUTION	19/05/1995	04/07/1995	1797812/1 ·	Order Now	
REG	G1 SPECIAL RESOLUTION	19/05/1995	04/07/1995	1797811/1	Order Now	
REG .	AMENDED MEMORANDUM AND ARTICLES.	19/05/1995	04/07/1995	1797810/2	Order Now	

REG	G1 ORDINARY RESOLUTION	19/05/1995	04/07/19951797810/1	Order Now	
REG	B5 RETURN OF ALLOTMENTS.	26/05/1995	28/06/19951797809/1	Order Now	
REG	B10 CHANGE IN DIRS/SEC	26/05/1995	20/06/19951797808/1	Order Now	
REG	B2 CHANGE IN SITUATION OF REG OFFICE.	11/05/1995	18/05/19951797806/1	Order Now	
REG	B10 CHANGE IN DIRS/SEC	11/05/1995	18/05/1995 1797807/1	Order Now	
REG	CERTIFICATE		28/02/1995 1797805/2	PDF	1
REG	A1 APPLICATION TO REGISTER AS A NEW COMPANY,		28/02/19951797805/1	PDF	15

## LIQUIDATORS & RECEIVERS

Liquidators

10/08/1995

Appointed:

Receivers

None Registered

Appointed:

[ Data in this report is based on CRO data last updated on: 24/11/2008 at 10.00 am]

## **Director Information**

DIRECTOR INFORMATION FOR MARJOVE LIMITED

Tip: Click on a directors name to see an "Other Directorships" report for that person.

CURRENT DIRECTORS

KOLE	NAME		ADDRESS			DATE OF BIRTH	FROM DATE
Secretary	Daphne Tynan 1	fease	"Kildrum", Brighton I 18.	Road, Foxroci	c, Dublin	22/05/1955	11/05/1995
Director	Michael Scholef	ield	29, Brighton Road, R	lathgar, Dubli	n 6;	19/12/1959	11/05/1995
Director	Thomas Benedic Breen	ct	20, Cherbury Garder Dublin.	s, Booterstov	vn, Co.	16/03/1959	02/08/1995
Director	Kevin Murray		Avalon, 8 Belgrave R Dublin	oad, Monksto	wn, Co.	01/05/1959	02/08/1995
PREVIO	US DIRECTORS	: 6352003190190	<del>in san e 1</del> 241-1517 e personan senerara	ESCENDING A WALLE OF	**************************************	Dates a suprementation of the contract of the	
ROLE	NAME	Abbr	SS - C		DATE OF BIRTH	FROM DATE	TO DATE
Director	Daphne Tynan Tease	"Kildrun Dublin 1	n", Brighton Road, Fo .8.	xrock, 2	22/05/1955	11/05/1995	02/08/1995
Olrector	George Young		11, Woodlands Park, k, Co. Dublin.	1	18/07/1953	26/05/1995	02/08/1995



# Memorandum

To:

DCC International Holdings B.V. file

From:

Ciara Drew

Date:

24 November 2008

Re:

Appointment and resignation of Directors & Secretaries

Director	Appointment	Resignation
Jim Flavin (A)	09.09.1993	14.02.1995
Henri Roskam (B)	09.09.1993	11.09.2006
ING Trust (Netherlands) BV (B)	09.09.1993	31.12.2003
Fergal O'Dwyer (A)	14.02.1995 .	
Gerard Venneboer (B)	07.08.1995	
George Young (A)	25.08.1995	09.06.1997
Daphne Tease (A)	09.06.1997	05.05.1999
Michael Scholefield (A)	17.08.2000	08.12.2000
Gerard Whyte (A)	08.12.2000	
Orangefield Trust (Netherlands) BV (B)	31.12.2003	01.01.2005
Tom Diepenhorst (B)	01.01.2005	
Orangefield Trust (Netherlands) BV (B)	11.09.2006	
CURRENT:		
Fergal O'Dwyer, Gerard Whyte (A)		
Orangefield Trust (Netherlands) BV,		
Gerard Venneboer, Tom Diepenhorst (B)		

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## INTERNAL MEMORANDUM

To: Fergal

Daphne From:

Date: 25-8-94

Flogas - inter-group transfer of shares - notifiable event? Re:

Fergal, Alvin Price has verbally confirmed that an inter-group transfer of shares is not a notifiable event.

## DCC plc

Minutes of a Meeting of Directors held at DCC House, Stillorgan, Blackrock, Co. Dublin on Thursday, 15th September 1994 at 6.00 p.m.

PRESENT:

Mr. J. Flavin (In the Chair)

Mr. M. Crowe

Mr. D. Gavagan

Mrs. D. Tease (Secretary)

<u>IN</u> ATTENDANCE: Mr. F. O'Dwyer (Chief Financial Officer - DCC)

DECLARATION OF INTERESTS: Prior to the passing of the resolutions as set out below it was noted that Mr. Flavin, Mr. Crowe and Mr. Gavagan are all Directors common to DCC plc and DCC Corporate Partners Limited.

RESOLUTION 1:

Transfer of Flogas Shares

It was resolved to effect the transfer of 4,307,104 Flogas plc Share Units for a consideration of IR£3.00 per Share Unit (being a total consideration of IR£12,921,312) from DCC plc to DCC Corporate Partners Limited on Wednesday, 21st September 1994.

RESOLUTION 2:

DCC plc Guarantee - IR£6 million Facility - AIB

Mr. Flavin referred the Directors to the IR£6 million revolving loan facility proposed to be put in place by DCC Corporate Partners Limited with Allied Irish Banks, p.l.c. for the purpose of part financing the acquisition of the Flogas Share Units by DCC Corporate Partners Limited.

It was noted that this facility replaces the IR£6 million revolving loan facility to DCC plc, as set out in the AIB facility letter of 28th June 1993 Ref: cgfacltr.236 and approved at the meeting of Directors held on 29th June 1993.

Mr. Flavin stated that the loan facility was to be made available to DCC Corporate Partners Limited against the security of a guarantee to be executed by DCC plc.

The guarantee was produced to the meeting and it was noted that the guarantee was in respect of the liabilities of DCC Corporate Partners Limited under the terms of the facility letter dated 2nd August 1994, Ref. Ch/corpfac.103.

## DCC CORPORATE PARTNERS LIMITED

Minutes of a Meeting of Directors held at DCC House, Stillorgan, Blackrock, Co. Dublin on Thursday, 15th September 1994 at 6.15 p.m.

PRESENT	:
	-

Mr. J. Flavin	Chairmar
Mr. M. Crowe	Director
Mr. D. Gavagan	Director
Dr. G. Young	Director
Mr. T. Breen	Director
Mr. F. O'Dwyer	Director
Mr. D. Sharpe	Director
Ms. D. Tease	Director
Mr. G. Whyte	Director
,	

## APOLOGIES:

Miss U. Kinane Secretary

## Mr. K. Murray Director Mr. M. Scholefield Director

# DECLARATION OF INTERESTS:

Prior to the passing of resolution 1 as set out below it was noted that Mr. Flavin, Mr. Crowe and Mr. Gavagan are Directors common to DCC plc and DCC Corporate Partners Limited.

#### RESOLUTION 1:

## Purchase of Flogas Share Units

It was resolved to acquire on Wednesday, 21st September 1994, 4,307,104 Flogas plc Share Units from DCC plc for a consideration of IR£3.00 per Share Unit (being a total consideration of IR£12,921,312).

#### **RESOLUTION 2:**

## Formal Acceptance of AIB IR£6 million Loan Facility

Mr. Flavin outlined the 1 year IR£6 million revolving loan facility proposed to be put in place with Allied Irish Banks, p.l.c. for the purpose of part financing the acquisition of the Flogas Share Units by DCC Corporate Partners Limited

It was noted that the loan would be at a rate of DIBOR  $\pm$  0.65% per annum  $\pm$  Reserve Asset Cost (if applicable) and that a commitment fee of 0.20% was also to be payable on all undrawn amounts available under the facility.

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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.

#### Trading 5.

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 I 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.

## 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.

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## DCC plc

Minutes of a Meeting of Directors held at DCC House, Stillorgan, Blackrock, Co. Dublin on Monday, 16th January 1995 at 8,45 a.m.

PRESENT:

Mr. J. Flavin (In the Chair)

Mr. M. Crowe

Mr. P. Gallagher (By telephone)

Mr. D. Gavagan

APOLOGIES:

Apologies were received from Mr. A. Spain and Mr. D. McGuane who were unable to attend.

IN ATTENDANCE

Mr. M. Scholefield.

ITEM 1:

Appointment of Company Secretary

On the recommendation of Mr. Flavin, the Directors appointed Mr. M. Scholefield as Company Secretary to replace Mrs. D. Tease who had indicated her preference to move to a part-time role for the present. Mr. Flavin noted that the position involved a wider role than heretofore including responsibilities in the areas of investor relations and compliance.

ITEM 2:

Appointment of Compliance Officer

On the recommendation of Mr. Flavin, the Directors appointed Mr. M. Scholefield as Compliance Officer for the DCC Group to replace Mr. H.

Keelan.

ITEM 3:

Appointment of Mr. Tony Barry as a Director

Mr. Flavin proposed that Mr. Tony Barry be co-opted as a Director of the He informed the meeting that this proposal had the warm endorsement of Mr. Spain and Mr. McGuane and that Mr. Barry had indicated his willingness to join the Board. Mr. Gallagher also warmly welcomed the proposal and it was unanimously resolved that Mr. Tony Barry be and is hereby co-opted to the Board of Directors of the Company in accordance with the Articles of Association.

**CONCLUSION:** 

There being no further business the meeting concluded.

DATE 14 7 UN 99 CHAIRMAN / Haven

## DCC plc

Minutes of a Meeting of Directors held at DCC House, Stillorgan, Blackrock, Co. Dublin on Monday, 31st July 1995 at 8.30 a.m.

PRESENT:

Mr. A. Spain

(Chairman)

Mr. J. Flavin

Mr. T. Barry

Mr. M. Crowe

Mr. P. Gallagher

Mr. D. Gavagan

Mr. M. Scholefield

(Secretary)

NATTENDANCE:

Mr. F.O'Dwyer

(Chief Financial Officer)

Mr. T. Breen, Mr. K. Murray, Mr. D. Sharpe, Mr. H. Keelan and Mr. B. O'Sullivan joined the meeting for a presentation on the results for the first quarter.

BOARD MINUTES:

The minutes of the Directors' meeting held on 8th May 1995 were approved and signed.

The minutes of the Meeting of a Committee of Directors held on 8th May 1995 were noted. These minutes had previously been signed.

The minutes of the Directors' meeting held on 22nd June 1995 were noted. These minutes had previously been signed.

AUDIT COMMITTEE
MINUTES:

The minutes of the Meeting of the Audit Committee held on 8th May 1995 were approved and signed.

GM MINUTES:

The minutes of the nineteenth Annual General Meeting of the Company held on 23rd June 1995 were approved and signed.

CHIEF EXECUTIVE DEPUTY CHAIRMAN'S REPORT: Mr. Flavin presented his Chief Executive/Deputy Chairman's Report to the Directors.

Mr. Flavin referred the Directors to the Group accounts for the quarter to 30th June 1995 which had been circulated, showing Group profit before goodwill amortisation and tax of IR£3.955 million and adjusted EPS of IR3.22p compared to a budget of IR£3.827 million and IR2.87p respectively.

Presentations were made by Mr. Crowe, Mr. Gavagan, Mr. Breen, Mr. Murray, Mr. O'Dwyer, Mr. Sharpe, Mr Keelan and Mr. O'Sullivan on the results for the quarter and matters relating to management and corporate development in the business sectors for which they have responsibility.

Mr. Flavin then elaborated on his Report and answered various questions raised by the Directors.

Mr. Flavin commented briefly on the Group's acquisition and development activities. In particular he noted the following:

- (i) The purchase on 9th June 1995 of an additional 1,979,707 IR25p ordinary shares in Heiton Holdings plc at a cost of IR£1,484,762 which increased the Group's interest in Heiton Holdings plc from 20.04% to 24.53%. This purchase was made within the parameters approved at the Directors' meeting on 4th April 1995.
- (ii) The increase in the Group's holding in Broderick Holdings Limited from 63.58% to 75.01% at an incremental cost of IR£125,000.
- (iii) The increase in the Group's shareholding in Sharptext Group Limited and Runsole Limited from 83% to 86.53% at an incremental cost of IR£758,000 principally as part of the arrangements with Pat Garvey referred to at the Directors' meeting on 28th September 1994.

Mr. Flavin also commented briefly on the Company's investor relations activities and recent shareholder movements.

FYFFES PLC SHARES
- INTRA-GROUP
TRANSFER OF
BENEFICIAL
OWNERSHIP:

Mr. Flavin advised the Board that for corporate restructuring purposes it was proposed that the Company's beneficial interest in Fyffes plc be transferred to a new subsidiary within the Group.

The Directors concurred with the views expressed by Mr. Alvin Price of William Fry in his letters in relation to Companies Act provisions on the notification of interests and insider dealing which had been circulated.

The proposed transaction was approved and it was agreed that a committee of the Board, made up of Mr. Flavin, Mr. Crowe and Mr. Gavagan (with a quorum of two), be appointed with full authority to do all such things as might seem to the committee to be necessary or expedient in connection with the proposed transfer by the Company of the Fyffes shares.

GROUP BANKING FACILITIES:

Mr. O'Dwyer made a presentation on proposed new banking facilities for the DCC Group amounting to IR£149.5 million to be provided by the following banks: Bank of Ireland, AIB, Ulster Investment Bank, National Westminster Bank, ABN and Irish Intercontinental Bank ("the Facilities").

Mr. Flavin and Mr.O'Dwyer outlined to the meeting the benefits which would

Mr. Flavin and Mr.O'Dwyer outlined to the meeting the benefits which would accrue to the Company and to the DCC Group by reason of the structure of the Facilities and the manner in which they were to be secured by guarantee, emphasizing:

- (i) the borrowing capacity which would become available to the Company and to the DCC Group;
- (ii) the flexibility which the structure of the Facilities would provide to the Company and other Group companies; and
- (iii) the competitive pricing structure which had been negotiated in respect of the Facilities.

Mr. O'Dwyer explained the commercial terms attaching to the Facilities including details of margins and financial covenants. It was noted that the Facilities would be guaranteed by the Company and its wholly owned subsidiaries and that a negative pledge would be provided by certain Group companies.

It was resolved that the proposed Facilities be accepted and that borrowing by the Group pursuant to the Facilities be and is hereby authorised and approved.

It was agreed that a committee of the Board, made up of Mr. Flavin, Mr. Crowe and Mr. Gavagan (with a quorum of two), be appointed with full authority:

- a) to do all such things as might seem to the committee to be necessary or expedient in connection with the finalisation of the proposed new banking facilities; and
- b) to finalise all documents relating to the proposed new banking facilities.

CRIP DIVIDENDS:

Mr. Flavin referred the Directors to a Memorandum on Scrip Dividends from Mr. Scholefield which had been circulated, noting that a query on this issue had been raised at the Annual General Meeting of the Company on 23rd June 1995. After discussion it was agreed that the Company should implement a scrip dividend scheme for the payment of the 1996 final dividend.

CONCLUSION:

There being no further business the meeting concluded.

DATE 14/11/95

CRAIRMAN

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## S&L Investments Limited

## Minutes of a Meeting of Directors held at DCC House, Stillorgan, Blackrock, Co. Dublin on Thursday, 3rd August 1995 at 6.00 p.m.

PRESENT:

Mr. J. Flavin

(In the Chair)

Mr. M. Crowe

Mrs. D. Tease

APOLOGIES:

Mr. D. Gavagan Mr. F. O'Dwyer

DECLARATION OF INTERESTS:

Prior to the passing of the resolution as set out below, it was noted that Ms. D. Tease is a Director common to S & L Investments Limited and Lotus Green Limited.

FYFFES PLC SHARES -INTRA-GROUP TRANSFER OF BENEFICIAL OWNERSHIP:

There was produced to the meeting the draft of a Share Purchase Agreement proposed to be entered into by the Company and Lotus Green Limited, a fellow wholly owned subsidiary of DCC plc.

It was noted that the Agreement provided for the sale by the Company of 7,667,500 Ordinary Shares of IR5p each in the capital of Fyffes plc ("the Fyffes shares") to Lotus Green Limited.

It was noted that the consideration receivable for the Fyffes shares would be calculated on the basis of their market value on the date of payment.

The Directors considered letters from Mr. Alvin Price of William Fry in relation to Companies Act provisions on the notification of interests and insider dealing.

After due consideration, it was resolved that Mr. Jim Flavin and Mr. Fergal O'Dwyer be authorised to agree such amendments to the draft Agreement not being of a substantial nature as they may think fit and that the common seal of S&L Investments Limited be affixed to the Agreement as finally amended in accordance with the Articles of Association.

CONCLUSION:

There being no further business the meeting concluded.

DATE 3 Aug 95

CHAIRMAN / un Have

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# 19- JUNE -95.

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062-0032/1



CAL NAMICE

# memo

To: To DCC file

From: Carl McCann

CĆ;

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. looked at the adjustments between the management accounts and the interim accounts, and he probed the necessity for the various adjustments. 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. Denls 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 walver 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.



# 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) <u>Disclosure</u>, 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.

062-0044/1



Fyfles plc 1 Beresford Street Dublin 7 Ireland Telephone (01) 8730733 Fax (01) 8730546

Date

23 June 1995

Reference

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



Fyffos plc 1 Berosford Street **Dublin 7** Ireland

Telephone (01) 8730733 Fax (01) 8730546

Oate

Mr Jim Flavin Development Capital Corporation Ltd. DCC House Brewery Road

Stillorgan Blackrock

Co. Dublin

23 June 1995

please note

Reference



Dear Jim,

I have spoken to Michael and we have faxed him a copy of a letter of today's date from

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

Directors: NV McCann (Chairman) C7 McCann DV McCann PS McNames RE Genner AJ Ellis DJ Bergin JF Flavon G6 Sciolan Hagistered in Instant Int. 73.142 VAT no. IE 483 1491F Reportment Others: I Reported Street Copins 7 Indians

## 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.



P.O. Box 1283 George's Quay Dublin 2 Telephone (01) 704 8500 608 8700 fax (01) 704 8600

₽DĘ

101

your reference 8229218 A our reference tod/jpk/mom

#### **AUTHORS COPY**

23 January 1997

Collector General Sarsfield House Francis Street Limerick

Dear Sir

#### Lotus Green Limited

We attach a preliminary tax payslip showing nil preliminary tax payable in respect of the above company for the period ended 24 August 1996.

Following various changes in the board of directors the company has been managed and controlled in the Netherlands since 25 August 1995 and is not liable to corporation tax in Ireland in respect of the period to 24 August 1996.

Yours truly

Coopers & Lybrand

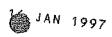
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Coopers & Lybrand is a member firm of Coopers & Lybrand International, a limited Epitity responding incorporated in Switzerland. Authorized by the institute of Charlesed Accountants in Ireland to carry on Investment Sustains in the United Kingdom and Republic of Ireland.

patriess: William P Cunningham Brian D Bairy J Vincent Clancy Nist W Dessy Charles Dowling Francis N Envis J Martin Freyne Gestold H Grillin Desmond P Guilloyfe Teresh Havington Mary E Honohan E Richard Lance David Lawless John L Melson A Robin Mentiles James Multiturey Niet D Morphy Middensh McGad Brian D Neisian Tarry O'Dictocki Anque Pentiony Desmot F Retiny William A Rochs John P Tully Pablick XI Wall Marry Wolfsh John C Bullot James T Margan Patrick F Rochs

directors: James V Borrett Michael Feency Boln Kennety John McGurdh Michael O'Donnett William O'Mordan





in all correspondence quote

8229218A

LOTUS GREEN LTD M/S COOPERS & LYBRAND GEORGE'S QUAY DUBLIN 2

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# NOTICE OF PRELIMINARY TAX-(CORPORATION TAX)

Please read carefully the notes overleaf regarding Preliminary Tax.

To note a that to any american the amount of Preliminary Pax which ought to be to the Accommunity and relation 24/08/96 - 19. Standary Tax is provide mon-before FF 100.00

24 FEB 1997

If the law one of Packinsonics has presided above is too low the company must specify

The cornective may become hable to our interest if a does not pay its Proliminary Tax the the case of which it is the or it the amount it pays is too low.

## CHANGE OF ACCOUNTING DATE

the assembling Period of the company is different from that shown on the notice, the Bank Cheefbeyship may still be used to pay Preliminary Tax but the company stant to Alfa is Insperior of Taxes untroductely of the correct Accounting Period. ISSUED BY:

Inspector of Taxes

K. MC GARRY DUBLIN TAX DISTRICT-CT. DUBLIN 4. PHONE 01-6689400

<sup>э</sup>Т (СТ) 95

5 JAN 1997



in all correspondence quote 23 8229218A

> Race . n. Cashie : Örren s 1911.345

NIL

TOTAL

## (GOEDERATION

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If the charge in make payment direct in the Collector Ceneral. plane in the the Rock Gired's step helps with the payment and

THE COLLECTOR-GENERAL, SARSFIELD HOUSE, FRANCIS STREET, LIMERICK.

AGENT'S COPY.

THE COLLECTOR-GENERAL, SARSFIELD HOUSE, FRANCIS STREET, LIMERICK.

AGENT'S COPY.

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CREDIT TRANSFER	Payslip Revenue F	
To BANK OF IRELAND  COLLEGE GREEN  DUBLIN 2.	90-71-04	For COLLECTOR-GENERAL CORPORATION TAX A/C. NO. 93288436
LOTUS GREEN LTD	•	
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2.5.72° 7. <b>240896</b>	2 menty Technolic 24/08/96	CASH CHEGUES
	:	

Please do not fold this payslip or write or mark below this line.



MS/MD

4 February 2000

Philip Halpenny Esq Secretary Fyffes plc 1 Beresford Street Dublin 2

Section 67 Companies Act 1990

Dear Philip

In compliance with our obligations under the above we hereby notify you on our own behalf as registered holders, and on behalf of Lotus Green Limited. a subsidiary of DCC plc, as beneficial owner, of the reduction in our holding of ordinary shares in Fyffes plc from 23,404,213 ordinary shares to 13,273,796 ordinary shares through the disposal of 10,130,417 ordinary shares on 3 February 2000.

Yours sincerely,

Michael Scholefield

Secretary

## S & L INVESTMENTS LIMITED

DCC House Stillorgan Blackrock Co Dublin

The state of the s

4 February 2000

Philip Halpenny Esq Secretary Fyffes plc 1 Beresford Street Dublin 2

Section 67 Companies Act 1990

Dear Philip,

In compliance with our obligations under the above we hereby notify you on our own behalf as registered holders, and on behalf of Lotus Green Limited. a fellow subsidiary of DCC plc, as beneficial owner, of the disposal on 3 February 2000 of 7.765.280 ordinary shares in Fyffes plc, being the entire holding of ordinary shares in Fyffes plc registered in our name.

Yours sincerely

Michael Scholefield

Secretary



MS/MD

9 February 2000

Philip Halpenny Esq Secretary Fyffes plc 1 Beresford Street Dublin 7

Section 67 Companies Act, 1990

Dear Philip

Following the sale of 8,000,000 ordinary shares in Fyffes plc on 8 February 2000 and in compliance with our obligations under the above we hereby notify you on our own behalf as registered holders, and on behalf of Lotus Green Limited, a subsidiary of DCC plc, as beneficial owner, that we have ceased to hold a notifiable interest in the ordinary share capital of Fyffes plc.

Yours sincerely

Michael Scholefield

Secretary



DCC plc

Placing Sponsored by

AIB Capital Markets-

Corporate Finance Limited and

J O Hambro Magan &

Company Limited

This document does not constitute an offer of securities or invitation to any person to subscribe for or to purchase any securities in DCC plc ("the Company"). Recipients of this document should note that, in connection with all matters described herein, AIB Capital Markets - Corporate Finance Limited, J O Hambro Magan & Company Limited, AIB Capital Markets plc and UBS Limited are acting solely for DCC pic and will not be responsible to any other person for providing protection afforded to customers of AIB Capital Markets - Corporate Finance Limited, J O Hambro Magan & Company Limited, AIB Capital Markets plc or UBS Limited or for providing advice in relation to the subject matter of this document.

Copies of this document, which comprises Listing Particulars relating to the Company in accordance with the European Communities (Stock Exchange) Regulations, 1984 and the European Communities (Transferable Securities and Stock Exchange) Regulations, 1992 of Ireland and with the Listing Rules made under section 142 of the Financial Services Act 1986 of the United Kingdom, have been delivered for registration to the Registrar of Companies in Ireland and the Registrar of Companies in England and Wales, as required by those Regulations and that Act.

Application has been made to The Stock Exchange for the whole of the fully paid ordinary share capital of the Company, issued and to be issued, to be admitted to the Official Lists in Dublin and in London. It is expected that the application for listing will be heard on 18th May 1994 and that dealings in the fully paid Ordinary Shares will commence on 19th May 1994.

The Directors of the Company, whose names appear on page 4 of this document, accept responsibility for the information contained in this document. To the best of the knowledge and belief of the Directors (who have taken all reasonable care to ensure that such is the case) the information contained in this document is in accordance with the facts and does not omit anything likely to affect the import of such information.

## DCC plc

(Incorporated in Ireland under the Companies Act, 1963. Registered Number 54858)

## Placing

3,297,320 Ordinary Shares of IR20p each at IR250p per share

Sponsored by

## AIB Capital Markets - Corporate Finance Limited J O Hambro Magan & Company Limited

### Underwritten by AIB Capital Markets plc and UBS Limited

#### SHARE CAPITAL

Authorised Nominal Value Number of Shares

Ordinary Shares of IR20p each - fully paid partly paid\*

Issued and to be issued Nominal Value

Number of Shares

IR£14,525,876 IR£420,003 72,629,378 2,100,015

IR£30,000,000

150,000,000

Total

IR£14,945,879

74,729,393

The Ordinary Shares which are the subject of the Placing will rank in full for all dividends and other distributions hereafter declared, paid or made on the ordinary share capital of the Company.

#### **INDEBTEDNESS**

At the close of business on 29th April 1994 the Group had outstanding unsecured term loans totalling IR£11,592,304, secured term loans totalling IR£3,508,774, guaranteed term loans totalling IR£19,461,644, overdrafts totalling IR£3,396,792, guaranteed loan notes totalling IR£2,695,699, secured loan notes totalling IR£2,351,999 and finance lease commitments totalling IR£205,876 together with contingent liabilities under guarantees for trading purposes totalling IR£3,85,137, under letters of credit for non-trading purposes totalling IR£3,745,000 and under Government grants totalling IR£3,768,000.

Save as set out above and save for the created but unissued guaranteed variable rate loan notes of Oare pic of IRE2,451,440 referred to on page 60, and apart from intra-Group indebtedness, loan notes and guarantees, the Group did not have at that date any loan capital outstanding or created but unissued, term loans (whether guaranteed, unguaranteed, secured or unsecured) or other borrowings or indebtedness in the nature of borrowing, including bank overdrafts and liabilities under acceptances (other than normal trade bills) or acceptance credits, hire purchase or finance lease commitments, mortgages, charges, guarantees or other contingent liabilities.

On the same date, the Group had credit balances with bankers, bank loan notes receivable and bank guaranteed loan notes receivable amounting to IR£38,912,417.

<sup>\*</sup> The partly paid Ordinary Shares have been IR0.2p partly paid.



#### **DEFINITIONS**

The following definitions apply throughout this document unless the context otherwise requires:-

"DCC" or "Company"

DCC plc

"DCC Group" or "Group"

the Company and its subsidiaries

"Directors" or "Board"

the Board of Directors of the Company

"Listing"

the admission to the Official Lists of The Stock Exchange in Dublin and London of the fully paid ordinary share capital of the Company, issued

and to be issued

"Ordinary Shares"

ordinary shares of IR20p each in the capital of the Company

"Placing"

the placing by AIB Capital Markets plc and UBS Limited of 3,279,320 Ordinary Shares as described in paragraph 12 of Part 3 of this document

"Placing Price"

IR250p per Ordinary Share the subject of the Placing

"Group Sectoral Earnings"

profit for the financial year attributable to DCC shareholders before central costs. Central costs, which are stated after attributable taxation and minority interests, comprise unallocated Group costs and interest, goodwill amortisation and profit on disposal of financial assets, net of

provisions

"Sectoral Earnings"

that part of Group Sectoral Earnings arising in a particular sector for the

financial year attributable to DCC shareholders

"The Stock Exchange"

The International Stock Exchange of the United Kingdom and the

Republic of Ireland Limited

"DCC Corporate Finance"

DCC Corporate Finance Limited, a subsidiary of DCC incorporated in

the Republic of Ireland

"Emo Oil"

Emo Oil Limited and, where relevant, its subsidiaries

"Fannin"

Fannin Limited and, where relevant, its subsidiaries

"Flogas"

Flogas plc and, where relevant, its subsidiaries

"Flogas Unit"

one ordinary share of IR10p each in Flogas together with one associated A ordinary share of Stg0.001p in Flogas U.K. plc, created under a twin

share scheme

"Fyffes"

Fyffes plc'and, where relevant, its subsidiaries

"GU Manufacturing"

The Genito-Urinary Manufacturing Company Limited, a subsidiary of

Fannin

"Greenway"

Greenway Holdings Plc and, where relevant, its subsidiaries

"Healthilife"

Healthilife (Holdings) Limited

"Kelkin"

Kelkin Naturproducts Limited

"Micro P"

Micro Peripherals Limited, the principal subsidiary of Sharptext Group

in Britain

"Printech"

Printech International plc and, where relevant, its subsidiaries

"Sharptext"

Sharptext Limited, the principal subsidiary of Sharptext Group in Ireland

"Sharptext Group"
"United Biscuits"

Sharptext Group Limited and, where relevant, its subsidiaries

"Wardell"

United Biscuits plc and, where relevant, its subsidiaries

ITD CL #

Wardell Roberts Limited and, where relevant, its subsidiaries

"IR£/p"

Irish pounds/pence

"Stg£/p"

Sterling pounds/pence

"%"

per cent.



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#### DIRECTORS AND ADVISERS

Directors:

Alex Jerome Spain (B.Comm.,F.C.A.)

Non-Executive Chairman

James Francis Flavin (B.Comm., D.P.A., F.C.A.)

Chief Executive and Deputy Chairman

Morgan John Crowe (Dip.Eng.,M.B.A.)

**Executive Director** 

Patrick Gallagher (B.L., D.P.A.) David Myles Gavagan (B.Comm.,F.C.A.) Non-Executive Director Executive Director

Michael Desmond McGuane (M.A., B.Comm., F.C.A)

Non-Executive Director

all of DCC House, Stillorgan, Blackrock, Co. Dublin.

Company Secretary:

Daphne Tease, B.A., F.C.A.

Chief Financial Officer:

Fergal O'Dwyer, F.C.A.

Registered Office:

DCC House, Stillorgan, Blackrock, Co. Dublin.

Sponsors:

AIB Capital Markets - Corporate Finance Limited,

Bankcentre, Ballsbridge,

Dublin 4.

J O Hambro Magan & Company Limited,

32 Queen Anne's Gate, London SW1H 9AB.

Underwriters:

AIB Capital Markets plc,

UBS Limited,

AIB International Centre,

100 Liverpool Street, London EC2M 2RH.

International Financial Services Centre,

Dublin 1.

Stockbrokers:

Davy Stockbrokers,

UBS Limited,

49 Dawson Street,

100 Liverpool Street, London EC2M 2RH.

Dublin 2.

Auditors and

Reporting Accountants:

Coopers & Lybrand, Chartered Accountants,

Fitzwilton House, Wilton Place, Dublin 2.

Solicitors to

the Company:

William Fry,

Fitzwilton House, Wilton Place, Dublin 2.

Solicitors to

the Placing:

McCann FitzGerald,

2 Harbourmaster Place,

Custom House Dock, Dublin 1.

Principal Bankers:

AIB Bank,

Bank of Ireland,

Bankcentre, Ballsbridge,

Lower Baggot Street, Dublin 2.

Dublin 4.

Registrars and

AIB Bank,

Transfer Office:

Registrars' and New Issue Department,

Bankcentre, PO Box 954, -∕Ballsbridge, Dublin 4.

Paying Agent in the

AIB Bank,

United Kingdom:

Registrars' and New Issue Department,

12 Old Jewry, London BC2R 8DP.



#### PLACING STATISTICS

Placing Price	IR250p
Number of fully paid Ordinary Shares being placed	3,297,320
Number of fully paid Ordinary Shares in issue following the Placing	72,629,378
Market capitalisation at the Placing Price	IR£181.6 million
Estimated proceeds of the Placing to the Company (net of expenses)	IR£6.0 million
Earnings per share for the year ended 31st March 1994 (note 1)	IR19.56p
Price earnings multiple at the Placing Price (note 2)	12.8 times
Notional net dividend per fully paid Ordinary Share in respect of the year ended 31st March 1994 (note 3)	IR5.6p
Notional gross dividend yield at the Placing Price (note 4)	2.8%
Notional dividend cover for the year ended 31st March 1994 (note 5)	3.5 times

#### Notes:

- 1. Earnings per share for the year ended 31st March 1994 are based on profit after taxation and minority interests for the year and on the weighted average number of fully paid Ordinary Shares and the proportionate weighted average number of partly paid Ordinary Shares in issue and ranking for dividend during the year and has been extracted from the Accountants' Report in Part 2 of this document.
- 2. The price earnings multiple is calculated by dividing the Placing Price by the earnings per share for the year ended 31st March 1994.
- 3. The notional net dividend for the year ended 31st March 1994 is explained in paragraph 5 of Part 1.
- 4. The notional gross dividend yield at the Placing Price is calculated by expressing the notional gross dividend per fully paid Ordinary Share for the year ended 31st March 1994, as a percentage of the Placing Price.
- The notional dividend cover for the year ended 31st March 1994 is calculated by dividing the earnings
  per share for the year ended 31st March 1994 by the notional net dividend per fully paid Ordinary
  Share.



#### KEY INFORMATION

The following information should be read in conjunction with the full text of this document from which it is derived.

#### INTRODUCTION

DCC is a leading Irish industrial holding company, primarily focused on five industrial sectors operating in Ireland and Britain. Turnover, including share of associated companies' turnover, in the year ended 31st March 1994 was IR£335.6 million, pre-tax profit was IR£22.2 million and profit attributable to DCC shareholders was IR£13.2 million. At the Placing Price, the DCC Group will have a market capitalisation of IR£181.6 million.

#### FOUNDING OF DCC

The Company was founded in 1976 as a venture capital business by Jim Flavin, Chief Executive and Deputy Chairman, with the support of a number of Irish and British institutional investors. The Company adopted a pro-active, hands-on style in its investment approach, seeking to complement the operating and industry expertise of the managements of its investee companies with its strengths in strategic planning, business development and financial control.

In 1985 and 1987, DCC acquired the Irish venture capital operations of Bank of Ireland and of 3i Group plc respectively, and both Bank of Ireland and 3i Group plc became shareholders in the Company. In the period from 1976 to 1989, institutional shareholders subscribed in excess of IRE60 million share capital. In the 14 years to 1990, the period of DCC's role as a venture capital company, DCC generated a compound annual return on investment of 23%, based on audited net asset values, after accounting for disposals and write-offs and assuming reinvestment of gross dividends.

#### DCC AS AN INDUSTRIAL HOLDING COMPANY

In 1990, DCC decided to focus on a small number of core activities, primarily through companies in which DCC would hold controlling interests. This decision led to the development of DCC as an industrial holding company. As part of this development, recommended cash offers for Printech in December 1992 and for Wardell in January 1993 and a recommended partial cash offer for Flogas in August 1993 followed, as a result of which all of these companies, previously associated companies of DCC, became its subsidiaries.

In the three years to March 1994, an acquisition programme of IR£76.8 million was undertaken by the Group, without recourse to shareholders during the same period, in making the above and other acquisitions. In approximately the same period, Group companies undertook capital investment of IR£37.1 million, also without recourse to shareholders, representing total expenditure of IR£113.9 million. Following this the Group's borrowings, less cash and cash equivalents, at 31st March 1994 were IR£1.5 million.

#### **BUSINESS APPROACH**

The success of DCC, the Directors believe, is based upon an entrepreneurial partnership between the DCC central management team and the executives managing the subsidiary companies. Working closely with its investee companies over many years, the DCC central management team has gained a depth of knowledge and experience in its chosen industrial sectors and extensive experience in the origination, negotiation and execution of business transactions. Senior executives of the operating companies have retained a high degree of responsibility for their businesses and are incentivised by significant equity participation in the companies.

#### BUSINESS ACTIVITIES

The Directors believe that Group businesses should:-

- Operate in industry and market sectors which constitute an integral part of continuing economic activity.
- Hold significant positions within their markets, or the potential for such.
- Be sufficiently cash generative to facilitate the financing of new investment opportunities.
- Be in areas which offer identifiable opportunities for growth.



The Group's activities are focused upon five industrial sectors and are located principally in Ireland and Britain.

Food The Group is a distributor and processor of branded food products and is a

manufacturer of snackfoods and healthfoods in the Republic of Ireland and of vitamins and food supplements in Britain. Fyffes, an 11% owned associated

company of DCC, is an international fresh produce company.

Energy The Group is a distributor of branded energy products to industrial and

domestic consumers in Ireland and Britain.

Print and Publishing The Group is a specialist supplier of printed computer documentation,

principally user manuals, and related services to leading computer hardware and

software companies servicing the European market.

Computer Products Distribution The Group is a distributor of computer products in Britain and Ireland.

Healthcare The Group is a distributor of surgical supplies and medical equipment to hospitals in Ireland. It also has interests in specialist manufacturing and service

healthcare businesses in Ireland, Britain and the USA.

The Board has sought to limit risk by focusing on the chosen spread of activities within a prudent financial structure. This approach remains a key feature of the Group's future growth strategy.

### SUMMARY TRADING RECORD

The financial information set out below has been extracted from the Accountants' Report set out in Part 2 of this document:-

•	Year to 31st March		
	1994 IR£000	1993 IR£000	1992 IR£000
Turnover, including share of associated companies' turnover	335,572	245,498	187,174
Profit on ordinary activities before exceptional items, interest and taxation	22,260	10,566	8,951
Profit before taxation	22,179	<b>14,87</b> 3	14,798
Profit after taxation	17,799	12,016	11,226
Profit for the financial year attributable to DCC shareholders	13,248	11,353	10,806
Earnings per Ordinary Share	IR19.56p	IR16.82p	IR16.11p
Adjusted earnings per Ordinary Share	IR19.56p	IR15.65p	IR14.04p

The adjusted earnings per Ordinary Share calculation removes the impact of non-recurring items (profit on disposal of financial assets, net of provisions) and goodwill amortisation, as permitted by FRS 3.

#### PLACING

The Company is raising approximately IR£6.0 million (net of expenses) through the Placing to eliminate net indebtedness and provide financial resources for further development.

The executive Directors are together selling 297,320 Ordinary Shares in the Placing, representing 0.4% of the Company's enlarged issued share capital following the Placing. The interests of the Directors (including those of the executive Directors) in the ordinary share capital in issue and under option following the Placing are detailed in paragraph 3 of Part 3 of this document.

#### FUTURE PROSPECTS

DCC's businesses operate principally within Ireland and Britain. The Directors believe that the outlook for these economies is positive and that this will benefit the DCC businesses. In particular, in the Republic of Ireland inflation, interest rates and the Exchequer Borrowing Requirement are at low levels and the predicted growth rate in GNP is 4.3% for 1994 and 4.9% per annum on average for the period 1995 to 2000.

Given the entrepreneurial skills and business development experience of DCC's central management team, the operating skills of the subsidiaries' management teams and the access to capital which is potentially available to DCC as a listed company, the Directors believe that the Group has attractive prospects for profitable growth.



## SHAREHOLDER PROFILE

The following is a profile of DCC shareholders at the date of this document, based on registered holdings and interests notified to DCC:

SHAREHOLDER	%
Irish Life Assurance plc	11.90
IBI Nominees Limited	11.37
Norwich Union Life Insurance Society	9.63
3i International Holdings	6.58
Friends Provident Life Assurance Company Limited	6.01
Standard Life Assurance Company	6.00
Guinness Ireland Pension Scheme	5.83
University of Dublin Trinity College, Pension Fund	4.33
University College Dublin Pension Fund	4.17
Phildrew Nominees Limited	3.49
Irish Airlines Pensions Limited	3.18
Ulster Investment Bank (Nominees) Limited	2.64
Mr. Jim Flavin	2.60
Group Executives (Other than Executive Directors)	2.50
AIB Capital Markets plc	2.09
The Scottish Provident Institution	1.57
UBS Nominees Limited	1.49
ESB Superannuation Fund	1.15
The Life Association of Scotland Limited	1.05
Roadstone Pension Trust Limited	1.05
Discretionary Clients of Mercury Asset Management	1.05
Mulroy Securities	0.95
Clients of Gartmore Investment Limited	0.87
Mr. Morgan Crowe	0.78
ICI Pension Fund	0.75
New Ireland Assurance Company plc	0.70
Royal Liver Friendly Society	0.70
Hibernian Holdings Limited	0. <i>7</i> 0
Mr. David Gavagan	0.62
Royal Liver Friendly Superannuation Pension Fund	0.60
Private Investors	0.60
CIE Pension Fund	0.49
Royal Life Insurance Limited	0.41
Lifetime Assurance Company Limited	0.35
London & Strathclyde Trust plc	0.35
Arnotts Staff Pension Fund	0.30
Zeneca Pension Fund	0.22
Caledonian Insurance Company	0.17
English & Caledonian Investment plc	0.17
Hibernian Investment Managers Limited	0.17
ABN AMRO Investments (Ireland) Limited	0.13
Davy Charities Fund	0.11
Combili Insurance plc	0.08
AIB Custodial Nominees Limited	0.07
Mr. Alex Spain	0.01
UDT Pension Fund	0.03
Mr. Desmond McGuane	0.01
Total	100.00

#### INFORMATION ON DCC

#### 1. INTRODUCTION AND HISTORICAL DEVELOPMENT

DCC is a leading Irish industrial holding company, primarily focused on five industrial sectors operating in Ireland and Britain. Turnover, including share of associated companies' turnover, in the year ended 31st March 1994 was IR£335.6 million, pre-tax profit was IR£22.2 million and profit attributable to DCC shareholders was IR£13.2 million. At the Placing Price DCC will have a market capitalisation of IR£181.6 million.

#### FOUNDING OF DCC

The Company was founded in 1976 as a venture capital business by Jim Flavin, Chief Executive and Deputy Chairman, with the support of a number of Irish and British institutional investors. The Company adopted a pro-active, hands-on style in its investment approach, seeking to complement the operating and industry expertise of the managements in the companies in which it invested with its strengths in strategic planning, business development and financial control.

This approach distinguished DCC from its competitors and proved to be successful. The Irish venture capital operations of Bank of Ireland and 3i Group plc were acquired in 1985 and 1987 respectively, and both Bank of Ireland and 3i Group plc became shareholders in the Company. DCC retained the support of a wide range of institutional shareholders who in the period from 1976 to 1989 subscribed in excess of IR£60 million in a number of share capital issues. In the 14 years to 1990, the period of DCC's role as a venture capital company, DCC generated a compound annual return on investment of 23%, based on audited net asset values, after accounting for disposals and write-offs and assuming reinvestment of gross dividends.

#### BUSINESS DEVELOPMENT APPROACH

DCC supported the growth of its investee companies' businesses through the provision of capital and by participation in the business development process, including the formulation of strategy, engagement in acquisition search and the negotiation and execution of transactions.

Instances of strategic and business development initiatives undertaken, with the active support of DCC, by companies in which it had invested, are as follows:-

- the acquisition by Wardell of Kelkin in 1987 and of Healthilife in 1990 which extended Wardell's food
  interests into the healthfood market in the Republic of Ireland and the vitamins and food supplements
  market in Britain respectively, which, the Directors believe, are growing markets;
- the acquisition of Fyffes Group Limited in 1986 by FII plc (since renamed Fyffes plc). This was a
  substantial earnings enhancing acquisition on which DCC Corporate Finance acted as a financial
  adviser;
- the acquisition by Flogas of Portagas Limited in Britain in 1984, the subsequent establishment by
  Flogas of a national liquefied petroleum gas distribution network in Britain and the acquisition by
  Flogas of Ergas Limited and Ergas (N.I.) Limited in 1989, which substantially increased the business of
  Flogas in Ireland;
- the investment by Printech between January 1988 and March 1994 of IR£21.6 million (Source: audited
  accounts of Printech), in advanced print and communications facilities, which has established Printech as a
  significant supplier in the European computer print services industry;
- the acquisition by Sharptext Group in 1989 of Micro P, one of the leading distributors of computer products in Britain;
- the acquisition through DCC's subsidiary, Fannin, of interests in niche healthcare businesses.



#### DCC AS AN INDUSTRIAL HOLDING COMPANY

By 1990, DCC had emerged as the leading venture and development capital company in Ireland. In 1990, DCC conducted a fundamental review of its role and future strategy against the background of an increasingly competitive venture capital market and fewer attractive venture and development capital investment opportunities. DCC therefore decided to pursue the opportunities available in sectors in which DCC's management team had a depth of knowledge and experience and to focus on a small number of core activities, primarily in companies in which DCC would take a controlling interest.

The execution of this strategy involved:-

- obtaining the agreement of the executive directors in the operating companies to enter into a new working arrangement in which DCC would move from a minority to a controlling shareholder position;
- structuring takeover offers which, in the case of listed companies, would be recommended by their independent directors and their advisers and subsequently accepted by their outside shareholders;
- ensuring that, whilst meeting the requirements of the operating company managements and outside shareholders, the transactions would create value for DCC shareholders.

Controlling interests in a number of its investee companies were acquired as follows:-

May 1992 Acquisition of shares in Sharptext Group, the holding company for DCC's computer products distribution subsidiaries, increasing DCC's voting interest from 45.3% to 72.7% at a cost to DCC of IR£1.9 million.

December 1992 Takeover offer for Printech, DCC's subsidiary in the print and publishing sector, bringing DCC's ownership from 46.5% to 75% at a net cost to DCC of IR£10.9 million.

January 1993 Takeover offer for Wardell, now a holding company for a number of DCC's food interests, bringing DCC's ownership from 29.9% to 80% at a net cost to DCC of IR£12.1 million.

April 1993 Acquisition of shares in Emo Oil, DCC's oil distribution and waste oil recycling subsidiary, increasing DCC's voting interest from 49.4% to 75% at a cost to DCC of IR£0.7 million.

August 1993 Partial offer for Flogas, DCC's liquefied petroleum gas business, increasing the Group controlled interest from 29.9% to 60.3% at a cost to DCC of IR£25.2 million.

In the three years to 31st March 1994, an acquisition programme of IR£76.8 million was completed by the Group. Substantially all of this amount was expended on the acquisitions outlined above, earlier purchases of shares in Printech, Wardell, Flogas and Emo Oil, the purchase of shares in Fyffes which cost IR£10.5 million and on interests in Sharptext Group, Greenway, HealthDrive Corporation and M. Casey Limited. In approximately the same period (allowing for different year ends), Group companies invested approximately IR£37.1 million in capital expenditure (Source: audited accounts of Group companies). Following this acquisition and capital expenditure programme, totalling IR£113.9 million, which was undertaken without recourse to shareholders during the period, DCC Group's borrowings, less cash and cash equivalents, at 31st March 1994 were IR£1.5 million.

Over the four years to 31st March 1994, rationalisation of the Group's remaining venture capital portfolio was undertaken and approximately IR£25.4 million was realised through the disposal of some 18 investments.

#### BUSINESS ACTIVITIES /

In building core businesses, DCC seeks to identify companies which possess the following characteristics:-

Industry Sectors
 The businesses should be in industry and market sectors which constitute an integral part of continuing economic activity so as to offer the prospect of longer term resilience and profit growth.



#### Market Position

Within their markets the businesses should hold significant positions or demonstrate the potential, with appropriate investment and development, to develop such positions.

#### Cash Profile

The businesses should possess a level of underlying profitability such that cash flows arising would be sufficient to fund not only the normal financing needs of their operations but also the development of related businesses and new investment opportunities.

#### Growth Opportunities

The businesses should be based in areas of activity sufficiently dynamic to offer an acceptable range of growth opportunities which, with the financial resources available, could be profitably exploited by the Group's entrepreneurial management.

The Directors believe that the development of core businesses having the characteristics outlined above, together with the combination of DCC's strategic input and the operating skills of the subsidiaries' management teams, should provide a sound basis for profitable growth.

The Board has sought to limit risk by focusing on the chosen spread of activities within a prudent financial structure. This remains a key feature of the Group's future growth strategy.

#### SHAREHOLDER BASE

The DCC shareholder profile at the date of this document is shown on page 8. In the context of DCC ceasing to be a venture capital company and becoming an industrial holding company intending to secure a Stock Exchange listing, a 20% holding in DCC held by the Bank of Ireland as a venture capital investment was placed in December 1993 with a number of institutional investors, including clients of Gartmore Investment Limited, IBI Nominees Limited, discretionary clients of Mercury Asset Management and Phildrew Nominees Limited.

#### 2. GROUP ACTIVITIES BY SECTOR

The DCC Group's results for the year ended 31st March 1994 show turnover, including share of associated companies' turnover, of IR£335.6 million and Group Sectoral Earnings of IR£14.4 million as set out in the Accountants' Report in Part 2 of this document. Group Sectoral Earnings is the aggregate of profit for the financial year attributable to DCC shareholders arising in each of the Group's sectors (including other DCC interests). The Group Sectoral Earnings figure is equal to the total profit for the financial year attributable to DCC shareholders, before central costs. Central costs are stated after attributable taxation and minority interests and comprise unallocated Group costs and interest, goodwill amortisation and profit on disposal of financial assets, net of provisions. Turnover, including share of associated companies' turnover, and profit attributable to DCC shareholders may be analysed as follows:-

	Turnover		Profit attributable to DCC shareholders	
	IR£′000	%	IR£′000	%
Food	117,130	34.9	4,639	32.2
Energy	89,223	26.6	4,797	33.3
Print and Publishing	28,804	8.6	2,633	18.3
Computer Products Distribution	69,356	20.7	1 <b>,44</b> 3	10.0
Healthcare	18,627	5.5	433	3.0
Other	12,432	3.7	466	3.2
Turnover	335,572	100.0		
Group Sectoral Earnings			14,411	100.0
Group unallocated costs and interest (net) Goodwill amortisation Profit on disposal of financial assets, net of provisi	ons		(1,163) (140) 140	
Profit attributable to DCC shareholders			13,248	



#### FOOD SECTOR

Description of Businesses

Through its food subsidiary and associated companies, which accounted for IR£4.6 million or 32.2% of Group Sectoral Earnings in the year ended 31st March 1994, the Group is a distributor and processor of branded food products and is a manufacturer of snackfoods and healthfoods in the Republic of Ireland and of vitamins and food supplements in Britain.

#### DCC's interests in the food sector are:-

- an 80% holding in Oare plc, a holding company formed to undertake the acquisition of Wardell and now the holding company of the subsidiary company businesses listed below;
- an 11% interest in Fyffes, the international fresh produce business;
- a 26% interest in Allied Foods Limited, a frozen and chilled foods marketing and distribution company.

The subsidiaries accounted for 41% of Sectoral Earnings in the Group's food sector in the year ended 31st March 1994. Fyffes' audited accounts for the year ended 31st October 1993 showed a pre-tax profit of IR£31.8 million generated from turnover of IR£611 million and DCC's share of these results accounted for IR£2.3 million or 49% of DCC's Sectoral Earnings from the food sector for the year ended 31st March 1994.

Subsidiary Company Businesses

- Kelkin The marketing and distribution of a range of healthfood and food supplement products in the Republic of Ireland.
- Healthilife The packing, marketing and distribution of a range of specialised vitamins and food supplements under the Healthilife brand name to a range of customers throughout Britain and in export markets.
- Snackfoods Distribution The marketing and distribution of the KP branded products of United Biscuits, which hold an estimated 31% of the non-crisp savoury snackfood market in the Republic of Ireland (Source: Independent market research).
- Snackfoods Manufacturing The manufacture of KP branded products for the Republic of Ireland market through KP (Ireland) Limited, a 50:50 joint venture with United Biscuits.
- Beverages The blending, marketing and distribution of the Robt. Roberts brands of tea and coffee within the retail and catering markets in the Republic of Ireland.
- Agency Distribution The marketing and distribution of a range of wine and confectionery brands to
  the retail and catering trade in the Republic of Ireland, and of a range of chilled and ambient
  temperature products in Northern Ireland.

Associated Companies

- Fyffes DCC has an 11% interest in Fyffes, which is listed on The Stock Exchange in Dublin and London
  with a market capitalisation of approximately IR£359 million. Fyffes imports and distributes fresh
  produce throughout Ireland and Britain and is a major supplier in the European banana market.
- Allied Foods Limited a 26% owned company which is a distributor of frozen and chilled foods in the Republic of Ireland. .

Highlights of Development

In 1979, DCC acquired a 27% interest in Wardell. In 1986, DCC Corporate Finance sponsored the flotation of Wardell on the Unlisted Securities Market in Dublin, following which DCC had a 25.9% shareholding.

Over the course of the next five years a number of acquisitions were made, at a total cost of IR£8.3 million, taking the company into the healthfood markets in the Republic of Ireland (Kelkin, in 1987) and Britain (Healthilife, in 1990), which, the Directors believe, are growing markets, and extending the range of Wardell's distribution business. In 1991, a joint venture operation was set up by Wardell and a subsidiary of United Biscuits to manufacture a range of KP products in the Republic of Ireland.



DCC Corporate Finance arranged the listing of Wardell on The Stock Exchange in 1991.

By 1993, DCC had increased its shareholding in Wardell to 29.9%. As a result of a recommended cash offer by Oare plc in January 1993, Wardell became an 80% owned subsidiary of DCC.

#### **Fyffes**

In 1981, DCC acquired a 9% interest in FII Limited, the Irish fruit importation and distribution business. In 1981, DCC advised FII on its flotation on the Unlisted Securities Market in Dublin and London.

In 1986, FII acquired Fyffes Group Limited, the British based fruit importation and distribution business, in an acquisition which doubled the size of FII. DCC Corporate Finance advised FII on this transaction. FII was later renamed Fyffes plc. DCC Corporate Finance arranged the listing of Fyffes on The Stock Exchange in 1987.

DCC subsequently increased its shareholding in Fyffes to 11% and DCC Corporate Finance continues to be Fyffes' principal financial adviser. DCC is represented on the board of Fyffes by Jim Flavin and is one of Fyffes' largest shareholders. DCC also holds 8% of the IR8.25p (net) Convertible Cumulative Preference Shares. If all of these preference shares were converted, the Group's interest in Fyffes would reduce to 10.4%.

In recent years Fyffes has undertaken a major programme of capital expenditure to replace its banana ripening depots in Britain. It has also developed its banana business into continental Europe through trading and shareholding relationships and has recently commenced importing and selling bananas in the USA. Fyffes procures its bananas from a wide variety of sources including countries in the Caribbean, Central America and Latin America.

#### **Allied Foods**

In 1989, DCC acquired a 25% interest in Allied Foods, a frozen and chilled food marketing and distribution business, supporting a management buyout from Musgrave Limited. In 1992, DCC raised its shareholding to 26%.

#### **Key Characteristics of Businesses**

- The subsidiary company activities in the food sector generate positive cash flow, and in a number of businesses (vitamins and food supplements, snackfoods and healthfoods) operate in growth sectors.
- The food distribution sector in the Republic of Ireland is a competitive market in which Robt. Roberts
  Limited is a well established operator with the volume throughput and cash flows required to develop
  further its distribution network and other areas of its business.
- The Group's most important branded product range in the snackfood sector in the Republic of Ireland
  is the KP range of United Biscuits. DCC's interest in this brand is underpinned by a long term
  distribution agreement and by the Group's 50:50 joint venture manufacturing operation with United
  Biscuits.
- The healthfood market in the Republic of Ireland and the vitamins and food supplements market in
  Britain have enjoyed steady growth in recent years. DCC's subsidiaries in these sectors, Kelkin and
  Healthilife, are focusing on the development of their proprietary branded products.
- Fyffes has a long established brand in the banana business and the company has a highly integrated
  operation involving procurement, shipping, importing, ripening and distribution of bananas.

#### Opportunities and Future Stratégies

The Directors believe that the infrastructure is in place from which DCC's food interests can achieve growth, supported by cash flows from existing operations. In particular, DCC intends to concentrate its resources on expanding its distribution networks, seeking new agency agreements for selected branded products, developing its proprietary brands and launching new products. The Directors believe that there are development opportunities for all its operations in the food sector.



#### ENERGY SECTOR

#### **Description of Businesses**

Through its energy subsidiaries and associated company, which accounted for IR£4.8 million or 33.3% of Group Sectoral Earnings in the year ended 31st March 1994, the Group is a distributor of branded energy products to industrial and domestic consumers in Ireland and Britain, is engaged in the recycling of waste oil in Ireland and Britain and has a developing involvement in natural gas marketing in Britain. The DCC Group is not engaged in exploration for or refining of fuel products.

#### DCC's interests are:-

- a Group controlled interest of 60.3% in Flogas, a manufacturer and distributor of liquefied petroleum gas ("LPG") in Ireland and Britain;
- a 75% interest in Emo Oil, a distributor of oil products and the largest recycler of waste oil in Ireland;
- a 29.7% interest held by Emo Oil in Greenway which is the leading company in Britain in the recycling
  of waste oil.

Flogas is DCC's main profit generator in the energy sector contributing 82% of Sectoral Earnings arising from this sector for the year ended 31st March 1994.

The Group controlled interest in Flogas comprises 29.7% held by DCC and 30.6% held by Powerimpact plc, an acquisition vehicle formed to undertake a partial cash offer to acquire this interest in August 1993. DCC has an 80% interest in Powerimpact plc and Flogas management holds the balance.

#### Highlights of Development

#### Flogas

In 1978, DCC was a founding shareholder in Flogas with an initial shareholding of 36%. Over the next 5 years Flogas established itself in the LPG market in Ireland and in 1983, DCC acted as joint sponsor on the flotation of the company on the Unlisted Securities Market in Dublin and London. In 1989, Flogas purchased Ergas Limited and Ergas (N.I.) Limited from Royal Dutch Shell Group which substantially increased the company's sales in Ireland.

Flogas entered the LPG market in Britain with the acquisition in 1984 of Fortagas Limited, a small LPG distributor. Flogas' sales in Britain have grown more than sixfold since 1985 and are now of similar size to those in Ireland.

Since the foundation of Flogas, substantial capital investment, amounting to over IR£70 million and largely funded by internal cash flows, has been made to install national distribution networks in both Ireland and Britain. Flogas now has three marine terminals in Ireland and seven land terminals in Britain.

DCC Corporate Finance arranged the listing of Flogas on The Stock Exchange in 1990. As a result of a recommended partial cash offer in August 1993 by an 80% owned subsidiary, the Group controlled interest in Flogas increased from 29.9% to 60.3%.

#### Emo Oil

In 1987, DCC acquired a 20% interest in Emo Oil, an independent Irish importer of fuel oils and distillates, which is also engaged in waste oil collection and recycling. DCC increased its shareholding to 75% through additional investments made between 1988 and 1993.

In 1989, Emo Oil entered the British waste oil market through the acquisition of Braybrooke Chemical Services Limited ("BCS"). BCS was not profitable and in June 1993 was exchanged for shares in Greenway, a company listed on The Stock Exchange in London. This has resulted in the Group holding a 29.7% stake in the leading waste oil recycler in Britain.



## Key Characteristics of Businesses

#### LPG

- The LPG markets in Britain and Ireland are stable but competitive markets in which Calor Group plc is the major marketer and distributor holding approximately half of each market.
- Flogas is number two in size in the market in Ireland holding a substantial market share.
- The LPG market in Britain is more fragmented than the market in Ireland. Flogas is the second largest independent LPG supplier in Britain, behind Calor and after a number of the oil majors, with an estimated 5% market share.
- LPG distribution is a capital intensive business requiring relatively substantial investment in terminals, storage capacity and cylinders, and it is subject to rigorous safety regulation. Flogas has substantial capital investment in place and its operations are cash generative.

Other Energy Interests

- The introduction of competition into the natural gas market in Britain provided Flogas with an opportunity to enter that market and expand the product range it offers to customers in Britain.
- Within the fragmented oil distribution market in Ireland, Emo Oil is an established independent oil
  importer and distributor and the Directors believe it to be the leading operator in Ireland in waste oil
  recycling.
- The waste oil recycling market sector is expected to grow as a result of increasing environmental regulation and awareness.

Opportunities and Future Strategies

The Directors believe that the Irish and British LPG operations will continue to generate a resilient cash flow stream. Such cash flows will be available to further increase Flogas' growing market share in LPG and its developing natural gas business in Britain, by way of both organic growth and acquisition where opportunities arise. Emo Oil may participate in any consolidation of the Irish oil distribution market if attractive opportunities for investment arise.

#### PRINT AND PUBLISHING SECTOR

Description of Businesses

Through its print and publishing subsidiary and associated company, which accounted for IR£2.6 million or 18.3% of Group Sectoral Earnings in the year ended 31st March 1994, DCC's predominant activity is the printing of computer documentation, principally user manuals, for the computer software and hardware industries and the provision of related manufacturing services.

DCC holds a 75% interest in Printech, a computer documentation company, which contributed substantially all of the Group's profits from this sector for the year ended 31st March 1994.

DCC has a 27% interest in John Hinde International Limited, a publisher of postcards, calendars and tourist products for sale in Ireland, Britain and the USA.

Printech was founded in 1978. In the mid 1980s, when the Industrial Development Authority was attracting computer software and hardware multinationals to the Republic of Ireland, Printech identified an opportunity to expand substantially its business by supplying such companies. The Directors believe that Printech is now a leading supplier of computer documentation in Europe. Customers include Apple, Borland, Claris, DEC, Dell, IBM, Intel and Lotus.

Printech also offers a full turńkey service to its customers, which involves the production and delivery of complete software product packages including disks as well as printed user manuals.

Printech has been awarded "ship to stock" status by a number of its multinational customers, whereby it is authorised to supply directly to their own customers – an acknowledgement of Printech's product and service quality.



#### Highlights of Development

In 1986, DCC acquired a 20% interest in Printech and at the time of the flotation of the company on the Unlisted Securities Market in Dublin in 1987, increased its interest to 30.4%. In 1990, DCC increased its shareholding in Printech to 44.6%.

Since DCC became a shareholder, Printech has undertaken substantial investment in advanced technology and facilities. In 1988, a web rotary press (continuous paper printer) was installed in an enlarged premises. In 1991, Printech installed laser "direct to plate" technology, which eliminates a number of costly and time consuming intermediate processes. This was followed by the installation of a second web press. In 1993, Printech opened a turnkey facility in Scotland, from which product is supplied to the customer in accordance with the customer's production schedule, to service the requirements of IBM and other customers in Britain. Between January 1988 and March 1994, total capital expenditure of IR£21.6 million was undertaken by Printech (Source: nudited accounts of Printech).

In 1993, Printech entered into an agreement with Kao Infosystems, a large Japanese manufacturer of magnetic media and CD ROM (disks), whereby the two companies engage in the joint marketing of turnkey services.

DCC Corporate Finance arranged the listing of Printech on The Stock Exchange in 1991.

In December 1992, DCC's subsidiary Ochil plc made a recommended cash offer as a result of which it acquired a 91.6% interest in Printech. This interest was subsequently increased to 100%.

#### **Key Characteristics of Business**

- The production of computer documentation has progressively become a more specialised sector of the printing industry.
- There has been a trend towards consolidation within the industry, with major customers reducing the number of their suppliers.
- Printech's business is concentrated amongst a relatively low number of key customers, principally
  multinational computer companies based in the Republic of Ireland who export most of their products
  to European markets.
- Whilst recent market trends have indicated a reduction in the volume and specification of printed material provided with computer products, Printech has broadened its customer base and the range of manufacturing services it provides.
- Following a period of investment in technology and facilities, Printech is generating substantial cash flows.

#### Opportunities and Future Strategies

The Directors believe that the business infrastructure which has been created by Printech in recent years provides a firm platform for future growth. The primary element of the strategy for Printech's continued development is to increase its European market penetration in computer documentation and related services.

#### COMPUTER PRODUCTS DISTRIBUTION SECTOR

#### Description of Businesses

DCC, through its 83% interest in Sharptext Group, which accounted for approximately IR£1.4 million or 10.0% of Group Sectoral Earnings in the year ended 31st March 1994, is a distributor of computer products in Britain and Ireland.

Sharptext Group's principal operating companies are:-

- Micro P, a major distributor of computer products in Britain;
- Sharptext, a major distributor of computer and office products in the Republic of Ireland.



Micro P is a leading nationwide distributor in Britain of computers and related products such as printers, monitors, modems and network hubs and cards. Micro P's customers are provided with a next day delivery service from the company's main distribution centre near Manchester. Telesales teams at this location and at premises in Basingstoke market products from leading companies such as Canon, Epson, Olivetti and Panasonic directly to retailers, computer dealers, system houses and mail order companies. Despite a period of economic recession in Britain, Micro P has generated pre-tax profit growth in each year since its acquisition by Sharptext in 1989, recording substantial growth over the period.

Sharptext has a well established, substantial share of the market for the distribution of photocopiers, fax machines and computer related products in the Republic of Ireland. The company has been expanding its computer products distribution activities and is now a leading distributor of computer and networking products in the Republic of Ireland.

#### Highlights of Development

Sharptext Group was founded in 1980 and DCC acquired a 20% holding in 1988. DCC then worked with the management of Sharptext Group to identify and acquire a computer products distributor in Britain. In 1989, Sharptext Group acquired Micro P with funding provided by DCC, which thereby increased its holding of ordinary and preference shares to 60%. In 1992, DCC increased its shareholding to 83%.

#### Key Characteristics of Business

- The personal computer and related products market has been growing in recent years.
- Leading computer distributors have also experienced strong growth as hardware and software manufacturers have sought to market their products through third party distribution networks.
- As margins in the distribution market have declined, profitability in this business has become
  increasingly dependent on the distributor's ability to manage larger sales volumes with increased
  efficiency and cost effectiveness in logistics, administration, sales and credit control functions.

#### Opportunities and Future Strategies

The core business of Sharptext Group is the distribution of computers and related products. The strategic objective is to focus on the further profitable growth of the business in Britain and Ireland by adding new product lines, increasing market share and processing more volume through the current distribution infrastructure. Profitable expansion through acquisition in existing geographical markets and in continental Europe also forms part of the Group's strategy.

#### HEALTHCARE SECTOR

#### Description of Businesses

Through DCC's subsidiaries and associated companies, the healthcare sector which accounted for IR£0.4 million or 3.0% of Group Sectoral Earnings in the year ended 31st March 1994. The Directors believe the Group is a leading independent supplier to the medical and surgical supplies market in Ireland and a participant in niche international healthcare manufacturing and service businesses.

#### DCC's interests in this sector are:-

- an 83.7% interest in Fannin, which the Directors believe is a leading medical and surgical supply and distribution business in Ireland, with senior management holding the balance of the equity;
- M. Casey Limited (a 51% subsidiary of Fannin), a manufacturer of a range of pneumatic healthcare products (acute care mattresses, splints, tourniquets) for export markets, principally the USA;
- GU Manufacturing (a wholly-owned subsidiary of Fannin), a London based manufacturer and distributor of specialist surgical instruments and equipment, including minimally invasive ("keyhole") surgery equipment, principally under the GU brand;
- a 47.5% interest in HealthDrive Corporation, a provider of mobile dental, eyecare and other specialised healthcare services to residents of nursing homes in a number of the north eastern states of the USA.



The primary source of Group profits in this sector to date has been the Fannin supply and distribution business. Fannin is a leading independent distributor of a broad range of non-drug medical consumables and medical equipment in Ireland. The product range includes incontinence products, dressing systems, anaesthetic tubing, swabs, syringes, scalpel blades, orthopaedic implants, operating tables, sterilising equipment, clean air theatre equipment and hospital furniture.

Fannin distributes products for such suppliers as Becton Dickinson, Mölnlycke and Smiths Industries. A substantial portion of its sales are effected through annual contracts with hospitals and health boards in the Republic of Ireland and with health boards in Northern Ireland. It also operates its own retail units in Dublin and Cork. Sales in Northern Ireland are dependent on supply arrangements with one supplier.

M. Casey, GU Manufacturing and HealthDrive are developing companies which together are expected to make a substantially increased profit contribution in the future in this sector.

Highlights of Development

In 1982, DCC acquired a 25% interest in Fannin, then named Hospital Enterprises Limited ("HEL"), and three years later, as a result of the acquisition of Bank of Ireland's venture capital subsidiary, DCC increased its holding to 50%.

In 1985, DCC subscribed for equity in HEL, thereby increasing its shareholding to 69.8%, to fund the acquisition of the hospital supply business of Fannin & Co Limited. This transaction more than doubled the sales of HEL. In 1986, the company acquired the retail healthcare product business of Fannin & Co Limited and HEL subsequently changed its name to Fannin. In the same year, DCC increased its shareholding to 76.9%.

On the basis of its knowledge of the healthcare business, DCC has acquired interests in niche healthcare companies. In 1989, DCC backed the start up of HealthDrive Corporation which, having established its business in Massachusetts, subsequently expanded into Connecticut, Rhode Island and New Hampshire and is now planning to enter Florida. DCC now holds 47.5% of HealthDrive. In 1989, Fannin acquired GU Manufacturing and in 1993 it acquired a 25% holding in M. Casey Limited, which has recently been increased to 51%.

#### Key Characteristics of Businesses

- The Directors believe that the market in healthcare products will continue to grow as the population in its market areas ages and as the demand for healthcare increases.
- Fannin has established a leading market position as an independent distributor in the medical and surgical product distribution business in Ireland. Its management have an in-depth knowledge of the market's requirements and have built a portfolio of quality suppliers.
- In recent years pressure on the budgets of health boards and hospitals in Ireland has eroded margins.
   The Directors believe that, despite continuing pressure, margins will stabilise at current levels.
- M. Casey is a developing export manufacturing business which meets the specialist product requirements of major international healthcare companies.
- GU Manufacturing is engaged in the growing "keyhole" surgery marketplace.
- HealthDrive is a fast growing young company which provides an innovative new service and has recently become profitable.

Opportunities and Future Strategies

Fannin's extensive product range within the medical and surgical supplies sector and its extensive market knowledge provide the Group with a base from which to identify new opportunities. DCC's niche healthcare manufacturing and service businesses are at a development stage and are expected to generate more substantial profits in the future. DCC intends to continue to extend the distribution activities of Fannin in Ireland and also to utilise cash flows arising to invest in attractive niche markets.



#### OTHER DCC INTERESTS

DCC has a number of other interests, including associated companies and some investments, outside its core business sectors described above, which represented approximately 3.2% of Group Sectoral Earnings for the year ended 31st March 1994 and approximately 2.2% of Group net assets at that date. The associated companies are:-

		DCC's
Name	Business	Shareholding
Manor Park Homebuilders Limited	The largest residential house building company	34.3%
	in the Republic of Ireland	
Capco Holdings Limited	Building products distributor in Ireland and Britain	n 18.0%
	and contractor in the Republic of Ireland	
Broderick Holdings Limited	Equipment supplier to the food manufacturing	41.2%
0	and catering industries in Ireland	

Investments held by the Group include a 7.8% shareholding in Heiton Holdings plc and a 13.6% shareholding in Reflex Group plc.

### 3. DIRECTORS, SENIOR MANAGEMENT AND EMPLOYEES

The DCC Group management structure reflects the DCC business approach, which is one of an entrepreneurial partnership between the DCC central management team and the executives directing the operations. The Directors consider that the key features of this structure are as follows:-

- The central management team of DCC has an in-depth knowledge of the Group's business sectors and
  considerable skills in business development, the formulation of strategy and the execution of strategic
  initiatives.
- The executive directors of the principal operating companies, most of whom are part owners of those companies, specialise within their sectors and have managed those companies for many years.
- The structure facilitates the combination of DCC's business development skills with the drive of
  operating company executives with a view to developing larger businesses from smaller companies.

This group structure allows the managements of the operating companies direct access to the central management resource base, whilst the central management team is also actively involved in the development of the operating companies. The Directors believe that this structure is suited to the fostering of an entrepreneurial approach throughout the Group.

#### SPECIALIST UNITS

DCC maintains the following specialist units at head office level:-

#### Financial Control and Treasury

DCC's Financial Control and Treasury Unit is based at its head office in Dublin. This unit is responsible for Group financial reporting and control, including budgeting, tax planning and the overall co-ordination of DCC's and its subsidiaries' treasury positions. The unit liaises closely with the finance directors of DCC's subsidiaries in all aspects of financial planning and control. Tight reporting and budgetary disciplines are maintained throughout the Group.

#### Planning and Research

The Planning and Research Unit in DCC provides support to the Chief Executive in the area of planning and research. The unit works with DCC's operating companies in the area of industry research. This includes work related to acquisition identification and analysis of markets, customers and suppliers.

#### Corporate Finance

DCC Corporate Finance has extensive experience in undertaking acquisitions in association with the Group's operating companies and in executing Stock Exchange advisory work on behalf of companies connected with DCC. DCC Corporate Finance Limited, a UK registered company which is a sister company of DCC Corporate Finance, is a member of The Stock Exchange and of The Securities and Futures Authority.



#### BOARD

The Company's Board consists of three executive directors and three non-executive directors. Brief biographies of the Directors are set out below:-

#### **Executive Directors**

Jim Flavin, B.Comm., D.P.A., F.C.A. (aged 51), was the founder Director of DCC in 1976 and is Chief Executive and Deputy Chairman. He has extensive experience in the areas of business development and corporate acquisitions. Prior to founding DCC, he worked as head of the Allied Irish Investment Bank venture capital unit. Mr. Flavin is Chairman of Flogas, Greenway, Printech, Wardell and Fannin, and is a director of Fyffes.

Morgan Crowe, Dip.Eng., M.B.A. (aged 49), joined DCC in 1976, having previously worked with the Boeing Company in Seattle and with IBM in Dublin. He is a director of Group companies operating in the healthcare sector and also of certain Group companies operating in the food sector. He joined the Board in 1979.

David Gavagan, B.Comm., F.C.A. (aged 43), joined DCC in 1980. Prior to joining DCC, he had worked as a finance manager within the Royal Dutch Shell Group. He is a director of Group companies operating in the print and publishing sector and of certain other Group companies. He joined the Board in 1984.

#### Non-Executive Directors

Alex Spain, B. Comm., F.C.A. (aged 61), is Chairman of DCC. Mr. Spain is also Chairman of National Irish Bank and is a director of a number of other companies. From 1977 to 1984 he was Managing Partner of KPMG Stokes Kennedy Crowley, the largest accounting firm in Ireland. He is a former President of the Institute of Chartered Accountants in Ireland and a former Chairman of the Financial Services Industry Association in Ireland. Mr. Spain has been Chairman of DCC since 1976.

Patrick Gallagher, B.L., D.P.A. (aged 54), is Head of Legal and Pensions Administration at Guinness Ireland Limited. He previously worked with Aer Lingus, the Irish national airline, and is a former Chairman of the Irish Association of Pension Funds. Mr. Gallagher has been a Director since 1976.

Desmond McGuane, M.A., B.Comm., F.C.A. (aged 70), is Chairman of National Toll Roads Limited and is a non-executive director of Fitzwilton plc and Hardwicke Limited. He was General Manager (Investments) and Secretary of Irish Life Assurance Limited until his retirement from that company in 1986. Mr. McGuane has been a Director since 1976.

#### SENIOR HEAD OFFICE MANAGEMENT

Fergal O'Dwyer, F.C.A. (aged 34), is the Chief Financial Officer of DCC. He qualified as a Chartered Accountant with Price Waterhouse in 1982, following which he worked for two years with KPMG in Johannesburg. He then spent four years with Price Waterhouse Corporate Finance in Dublin, where he was a senior Manager, prior to joining DCC in 1989.

Daphne Tease, B.A., F.C.A. (aged 38), is the Company Secretary. She was previously employed by Pannell Kerr Forster, Chartered Accountants, and joined DCC in 1987.

A particular feature of DCC's senior management structure is the extensive experience in corporate development and strategic planning of the head office team of executives. These executives participate actively on the boards of Group operating companies and liaise closely with the chief executives of these companies. They also carry out assignments for DCC Corporate Finance. Together with DCC's executive directors, the principal members of this team are:-



Name	Age	Principal Area of Responsibility	Years experience with DCC
Thomas Breen, B.Sc. (Econ.), A.C.A.	35	Computer Products Distribution	9
Kevin Murray, B.E., A.C.A.	35	Energy	6
David Sharpe, B.Comm., M.B.A.	35	Food, Print and Publishing	5
Brian O'Sullivan, B.E., M.B.A.	30	Food, Healthcare	4
Michael Scholefield, B. Comm., A.C.A.	34	DCC Corporate Finance	8
Hugh Keelan, B.A. (Leg. Sc.), A.C.A.	31	DCC Corporate Finance	5
George Young, B.E., Ph.D., M.B.A.	40	Planning and Research	11

DCC's executive directors and senior head office management participate in an executive partly paid share scheme and an employee share option scheme, details of which are set out in paragraph 5 of Part 3 of this document. These executives hold 2,100,015 partly paid Ordinary Shares and hold options over a further 2,848,230 Ordinary Shares, representing in aggregate 6.6% of the Company's enlarged fully paid and partly paid issued share capital following the placing.

#### SENIOR MANAGEMENT - SUBSIDIARIES

DCC's subsidiaries are managed by executive teams who have extensive experience in and knowledge of their industries and business sectors. In many cases, these teams are led by the original founders of the business who have extensive experience in their industries, possess strong operating management skills and retain a significant shareholding in their respective companies.

These executives include:

		j	Years
		•	experience
•		íı	n respective
Name	Age	Title	sectors
Jim Coffey	47	Joint Managing Director, Fannin	23
Geoff Donnelly	52	Founder and Joint Managing Director, Fannin	23
Pat Garvey, M.Sc., A.M.I.E.E.	48	Founder and Chief Executive, Sharptext Group	p 22
Tom Kirrane, B.Comm., F.C.A.	42	Managing Director, Emo Oil	18
Ken Peare, B.B.S.	51	Chief Executive, Wardell	28
Eugene Quigley, F.M.I.I., M.C.I.M.	59	Founder and Chief Executive, Flogas	30
Brian Stokes	45	Founder and Managing Director, Printech	26

Senior operating management in DCC's principal subsidiaries have significant shareholdings in their companies as follows:-

	<i>‡</i>		Management
	•		and family
Sector	Subsidiary	Description	shareholding
Food	Oare plc	Acquisition vehicle for Wardell	20%
Energy	Powerimpact plc	Acquisition vehicle for 30.1% of Flogas	3 20%
	Emo Oil	Holding and trading company	25%
Print and Publishing	Ochil plc	Acquisition vehicle for Printech	19%
Computer Products	Sharptext Group	Holding company	14%
Distribution			
Healthcare	Fannin	Holding company	16%

The management shareholdings in Oare plc, Powerimpact plc and Emo Oil are subject to put and call options exercisable between 1996 and 1998 as described in paragraph 11 of Part 3 of this document. The option exercise prices are based on open market valuations of those shareholdings at the date of exercise. Various put and call option arrangements exist between the minority shareholders in Ochil plc and the Company in relation to their minority shareholdings.

Oare plc, Ochil plc and Powerimpact plc are the acquisition vehicles formed to acquire Wardell, Printech and 30.1% of Flogas respectively. In each of these cases the acquisition vehicle was funded substantially by interest bearing loan stock, amounting to IR£44.6 million in total. DCC provided all the loan stock funding, except for IR£2.4 million in the case of Ochil, which has been subscribed for by a Printech director and his family and an institutional shareholder.



Some of DCC's subsidiaries operate employee share schemes. Details of these schemes and, in the case of share option schemes, the number of shares comprised in outstanding options under these schemes are set out in paragraphs 5(c) and 2(c) respectively of Part 3 of this document.

#### **EMPLOYEES**

The Group employs approximately 1,500 people, of whom approximately 1,000 are based in the Republic of Ireland and 500 in the UK.

A total of 24 people are employed by DCC at holding company level, including executive directors, senior head office management and support staff.

DCC Group companies enjoy excellent employee relations and have no history of industrial disputes.

#### CORPORATE GOVERNANCE

As a listed company DCC intends to comply with the provisions of the Code of Best Practice published by the Committee on the Financial Aspects of Corporate Governance. Remuneration and Audit Committees have been established with formally delegated duties and responsibilities. The Audit Committee comprises the non-executive Directors and the Remuneration Committee comprises the non-executive Directors and the Chief Executive. The Chief Executive does not participate in any decisions of the Remuneration Committee concerning himself.

#### PENSIONS

DCC operates a defined benefit pension scheme for its Directors and head office employees. Its subsidiaries operate a number of other schemes for their employees. Further details are set out in note 28 of the Accountants' Report in Part 2 of this document.

#### 4. FINANCIAL INFORMATION

Summary financial information on the DCC Group for the three years ended 31st March 1994, which has been extracted from the Accountants' Report set out in Part 2 of this document, is set out below:-

	Year to 31st March		
	1994 IR£'000	1993 IR£'000	199 <b>2</b> IR£'000
Turnover	335,572	245,498	187,174
Deduct: Share of turnover of associated undertakings ,	(97,185)	(166,552)	(171,077)
Group turnover	238,387	78,946	16,097
Profit on ordinary activities before exceptional items, interest			
and taxation	22,260	10,566	8,951
Interest (net)	(637)	3,721	3,853
	21,623	14,287	12,804
Profit on disposal of financial assets, net of provisions	556	586	1,994
Profit before taxation .	22,179	14,873	14,798
Taxation	(4,380)	(2,857)	(3,572)
Profit after taxation	17,799	12,016	11,226
Minority interests	(4,551)	(663)	(420)
Profit for the financial year attributable to DCC shareholders	13,248	11,353	10,806
Earnings per Ordinary Share	IR19.56p	IR16.82p	IR16.11p
Adjusted earnings per Ordinary Share	IR19.56p	IR15.65p	IR14.04p
Dividend per Ordinary Share	m IR5.0p	IR2.3p	IR2.0p

The adjusted earnings per Ordinary Share calculation removes the impact of non-recurring items (profit on disposal of financial assets, net of provisions) and goodwill amortisation, as permitted by FRS 3.



#### COMMENTARY ON FINANCIAL RECORD

#### 1993/94

Trading and Profit before Tax

Turnover and profit on ordinary activities before exceptional items, interest and tax increased by 36.7% and 110.7%, respectively, in the year ended 31st March 1994. This result was due to a better operating performance from most of the Group's subsidiaries and associated companies, a full year impact of earnings enhancing acquisitions in the previous year and benefits which accrued from the acquisitions of controlling interests in Flogas and Emo Oil during the year.

Approximately 44% of the Group's pre-tax profits arising from subsidiaries before the Group's share of profit from associated companies, unallocated Group costs, interest, goodwill amortisation and profit on disposal of financial assets net of provisions, as set out in note 1(b)(i) of the Accountants' Report in Part 2 of this document, derive from its operations in the UK with substantially all of the balance coming from its Irish based operations. DCC subsidiaries with significant UK earnings include Flogas (liquefied petroleum gas), Micro P (computer products distribution) and Healthilife (vitamin and food supplements). In addition, Fyffes, an 11% associated company of DCC, operates a substantial element of its business in the UK.

The Group's food sector profits were well ahead of the previous year, primarily as a result of an improved sales performance. Group profits in the energy sector benefited from the strong winter trading period in the second half of the financial year. Tight control of margins and operating costs resulted in a further improvement in the Group's print and publishing sector profits. Trading and profits in the computer products distribution sector benefited from improved economic conditions in Britain and increased operating efficiencies. Sales shortfalls in Britain resulted in a reduced profit contribution from the Group's interests in the healthcare sector.

Primarily as a result of the interest costs on the additional borrowings taken on to part finance the acquisitions in the latter half of the previous financial year and those completed during the year ended 31st March 1994, the Group incurred a net interest charge of IR£0.6 million compared to net interest income of IR£3.7 million in the previous financial year.

Pre-tax profits of IR£21.6 million (before a net exceptional credit of IR£0.6 million) were 51.3% higher than IR£14.3 million (before a net exceptional credit of IR£0.6 million) in the previous financial year.

Taxation, Minority Interests and Earnings per Ordinary Share

The effective tax rate of the Group in the year ended 31st March 1994 was 19.7% as compared with 19.2% in the previous year.

The minority interest charge increased significantly in the year ended 31st March 1994, reflecting the minorities' share of the after tax profits of the subsidiaries acquired in that year (i.e. Flogas and Emo) and a full year impact in respect of subsidiaries acquired in the previous financial year (i.e. Wardell, Printech and Sharptext Group).

Earnings per Ordinary Share for the year ended 31st March 1994 of IR19.56p were 16.3% higher than the previous financial year and adjusted earnings per Ordinary Share (i.e. before the impact of goodwill amortisation and the net exceptional credit) were 25.0% higher than the previous financial year. These figures reflect both continuing organic growth and the impact of earnings enhancing acquisition activity.

#### 1992/93

Trading and Profit before Tax

Turnover and profit on ordinary activities before exceptional items, interest and taxation increased by 31.2% and 18.0% respectively in the year ended 31st March 1993, reflecting what the Directors regarded as a good performance by the Group's subsidiaries and associated companies in the difficult economic conditions prevailing at that time. These results also reflect the inclusion of Sharptext Group as a subsidiary for 11 months of the year and Wardell and Printech for 7 weeks of the year. These companies were previously accounted for as associated companies. As associated companies, DCC's share of the results of these companies was included in its pre-tax profits. From the date of acquisition of controlling interests, 100% of



their turnover and profits was included in DCC's pre-tax results, with a consequent adjustment being made in the profit and loss account for the minorities' share of the results of those companies. In addition, the year ended 31st March 1993 included extended accounting periods ranging from 15 to 17 months for certain associated companies. The impact of the inclusion of the additional pre-tax profit contribution, less an adjustment to the pre-tax profit contribution from another associated company, was IR£0.7 million.

Net interest income was IR£3.7 million compared to IR£3.9 million in the previous financial year and reflects the relatively higher interest rates on the Group's surplus cash balances which prevailed for the latter half of that year offset by the additional interest costs arising on borrowings taken out to fund the acquisitions referred to above.

Pre-tax profits of IR£14.3 million (before a net exceptional credit of IR£0.6 million) were 11.6% higher than IR£12.8 million (before a net exceptional credit of IR£2.0 million) in the previous financial year. The net exceptional credit in these years relates to the profit on disposal of non-core investments, net of provisions.

#### Taxation, Minority Interests and Earnings per Ordinary Share

The effective tax rate for the Group in the year ended 31st March 1993 was 19.2% as against 24.1% for the previous year and this primarily reflects the mix of the Group's taxable profits between the UK and the Republic of Ireland where a portion of the Group's profits are taxed at the lower rate of 10% manufacturing tax. The minority interest charge increased to IR£0.7 million reflecting the minorities' share of the after tax profit in respect of subsidiaries.

Earnings per Ordinary Share for the year ended 31st March 1993 of IR16.82p were 4.4% higher than the previous financial year. Adjusted earnings per share (i.e. before the impact of goodwill amortisation and the net exceptional credit) of IR15.65p were 11.5% higher than the previous financial year.

#### General Information

The weighting of the Group's profit between the first and second halves of the financial year is influenced by the seasonal weather and buying patterns which prevail in certain of its industry sectors. Having regard to the Group's energy interests in particular, where consumer demand is concentrated heavily in the winter months, the Group's profits are weighted substantially towards the second half of the financial year.

Further financial information on DCC and its subsidiaries is set out in the Accountants' Report in Part 2 of this document.

#### 5. DIVIDENDS

DCC paid an interim dividend equivalent to IR1.104p per fully paid Ordinary Share in November 1993. The Company has paid a second interim dividend in respect of the year ended 31st March 1994 of IR3.896p per fully paid Ordinary Share, making a total dividend for the year of IR5.0p – a 117% increase on the previous year. The tax credit attaching to the dividend for the year ended 31st March 1994 was IR1.16p. It is the Directors' intention not to recommend any final dividend for the year ended 31st March 1994.

If the Company's fully paid Ordinary Shares had been listed on The Stock Exchange for the whole of the year ended 31st March 1994, the Directors would have recommended a net dividend of IR5.6p per fully paid Ordinary Share in respect of that year and the tax credit attaching to the dividend would have been IR1.28p. This would represent a notional gross dividend yield of 2.8% at the Placing Price and would have been covered 3.5 times by profit attributable to DCC shareholders for the year ended 31st March 1994.

The Directors intend that in the future an interim dividend will be paid in November/December and a final dividend in June/July of each year.

#### 6. DETAILS OF AND REASONS FOR THE PLACING

DCC has reached a stage in its development at which the Directors believe a listing for its shares on The Stock Exchange in Dublin and London is now appropriate for the following reasons:-



- the Directors believe that a listing will raise the status and profile of the Group, which will be of
  assistance in pursuing future growth and acquisition opportunities;
- the acquisitions made by DCC as a private company in the three years to 31st March 1994 have each
  been made on the basis of cash offers. The Directors believe that the listing will facilitate the issue by
  DCC of its shares as consideration for acquisitions in the future;
- the listing will provide additional marketability for DCC's shares.

New Ordinary Shares, valued at IR£7.5 million at the Placing Price, are being issued by the Company to raise approximately IR£6.0 million (net of expenses), to eliminate net indebtedness and provide financial resources for further development.

The executive Directors are together selling 297,320 Ordinary Shares in the Placing, representing 0.4% of the Company's enlarged issued share capital following the Placing. The interests of the Directors (including those of the executive Directors) in the ordinary share capital in issue and under option following the Placing are detailed in paragraph 3 of Part 3 of this document.

The Placing has been underwritten jointly by AIB Capital Markets plc and UBS Limited. Details of the Placing arrangements are summarised in paragraph 12 of Part 3 of this document.

## 7. CURRENT TRADING AND FUTURE PROSPECTS

It is too early to comment on trading in the current financial year. However the performance of the Group in the last quarter of the year ended 31st March 1994 allows the Board to start the current year with confidence.

The Directors believe that development opportunities and better economic conditions generally in Ireland and Britain will provide a firm basis for future growth and that the combination of financial and corporate development skills of the DCC central management team with the industry expertise at operating level will continue to be a key factor in the success and development of the Group.

DCC's businesses operate principally within Ireland and Britain. The Directors believe that the outlook for both economies is positive and that this will benefit the DCC businesses. In particular, in the Republic of Ireland inflation, interest rates and the Exchequer Borrowing Requirement are at low levels and the predicted growth rate in GNP is 4.3% for 1994 and 4.9% per annum on average for the period 1995 to 2000 (Source: Economic and Social Research Institute Limited).

Given the entrepreneurial skills and business development experience of DCC's central management team, the operating skills of the subsidiaries' management teams and the access to capital which is potentially available to DCC as a listed company, the Directors believe that the Group has attractive prospects for profitable growth.



## PART 2

# ACCOUNTANTS' REPORT

Coopers & Lybrand chartered accountants

P.O. Box 1283 Fitzwillon House Wilton Place Dublin 2 telephone (01) 6610333, 6682222, 6760306

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DDE 101

The Directors, DCC plc, DCC House, Stillorgan, Blackrock, Co Dublin.

The Directors,
AIB Capital Markets – Corporate Finance Limited,
Bankcentre,
Ballsbridge,
Dublin 4.

The Directors, J O Hambro Magan & Company Limited, 32 Queen Anne's Gate, London SW1H 9AB.

12 May 1994

Ladies and Gentlemen,

DCC plc ("the Company") was re-registered as a public limited company on 19 March 1994.

We have examined the audited financial statements of the Company and its subsidiaries ("the Group") for the three years ended 31 March 1994. Our work was carried out in accordance with the Auditing Guideline: "Prospectuses and the Reporting Accountant".

We have acted as auditors to the Group and have reported without qualification throughout the period covered by the report.

Audited financial statements have not been prepared by the Group in respect of any period subsequent to 31 March 1994.

The financial information set out below is based on the audited financial statements of the Group, after making such adjustments as we considered necessary.

In our opinion, the financial information set out below gives, for the purposes of the Listing Particulars dated 12 May 1994 issued by DCC plc, a true and fair view of the state of affairs of the Group as at 31 March 1994, 31 March 1993 and 31 March 1992 and of the consolidated profits and cash flow of the Group for each of the years then ended.

#### ACCOUNTING POLICIES

(a) Accounting Convention

The financial statements have been prepared under the historical cost convention and in accordance with applicable accounting standards. The currency used in these financial statements is the Irish pound, denoted by the symbol IR£.

(b) Basis of Consolidation

The consolidated financial statements include the Company and all its subsidiaries.

The results of subsidiaries and associated undertakings acquired or disposed of during the period are included in the consolidated profit and loss account from the date of their acquisition or up to the date of their disposal.

In the year ended 31 March 1993 Printech International plc, Sharptext Group Limited and Emo Oil Limited changed their accounting year end date so as to have a year end date coterminous with that of the Company. As a consequence the results of these companies included in Group results for the year ended 31 March 1993 relate to accounting periods ranging from fifteen to seventeen months. The impact of the inclusion of the additional profit contribution, less an adjustment to the profit contribution of another associated undertaking, on the profit before taxation was IR£732,000.

(c) Goodwill

Goodwill comprises the excess of consideration paid to acquire new businesses over the fair value of the net tangible assets acquired.

Goodwill arising on consolidation of subsidiaries is eliminated from the balance sheet through reserves in the year in which it arises. In the case of associated undertakings, goodwill is capitalised as part of their carrying value and amortised over its expected useful economic life of 50 years, commencing in the year following acquisition.



(d) Associated Undertakings

Associated undertakings are companies, other than subsidiaries, in which the Group holds, on a long term basis an interest in the voting equity share capital, is represented on the board of directors and is in a position to exercise significant influence.

The appropriate share of results of associated undertakings is included in the consolidated profit and loss account. Associated undertakings are stated in the consolidated balance sheet at cost plus the attributable portion of their retained reserves from the date of acquisition. Provision is made where appropriate where the Directors consider there has been a permanent diminution in value.

Group Turnover

Group turnover comprises the invoiced value including excise duty and excluding value added tax, of goods supplied and services rendered.

Stocks

Stocks are valued at the lower of cost and net realisable value.

Cost is determined on a first in first out basis and in the case of raw materials, bought-in goods and expense stocks comprise purchase price plus transport and handling costs less trade discounts and subsidies.

Cost in the case of products manufactured by the Group consists of direct material and labour costs together with the relevant production overheads based on normal levels of activity.

Net realisable value represents the estimated selling price less costs to completion and appropriate selling and distribution costs. Provision is made where necessary for obsolete, slow moving and defective stocks.

Current Asset Investments

Current asset investments are stated at the lower of cost and net realisable value.

Tangible Fixed Assets

- Fixed assets are stated at cost less accumulated depreciation.
- Depreciation is provided on a straight line basis at the rates stated below, which are estimated to reduce the assets to their net realisable values by the end of their expected working lives:

	Annual Rate
Freehold Buildings	2%
Plant and Machinery	5 – 331/%
Cylinders	6%%
Motor Vehicles	20 – 331/1%
Office Furniture & Equipment	10-20%

Capital Grants

Capital grants received and receivable by the Group are credited to capital grants accounts, and are amortised to the profit and loss account on a straight line basis over the expected useful lives of the assets to which they relate.

Leased Assets

Tangible fixed assets, acquired under a lease which transfers substantially all of the risks and rewards of ownership to the Group, are capitalised as fixed assets. Amounts payable under such leases (finance leases), net of finance charges, are shown as short or medium term lease obligations, as appropriate. Finance charges on finance leases are charged to the profit and loss account over the term of the lease on an actuarial basis.

The annual rentals under operating leases are charged to the profit and loss account as incurred.

(k) Deferred Taxation

Full provision under the liability method is made for deferred taxation on timing differences to the extent that, in the opinion of the Directors, it is probable that a liability will crystallise in the foresceable future.

Timing differences are temporary differences between profit as computed for taxation purposes and profit as stated in the financial statements which arise because certain items of income and expenditure in the financial statements are dealt with in different periods for taxation purposes.

Foreign Currencies

Assets and liabilities denominated in foreign currencies are translated into Irish pounds at the exchange rates ruling at the balance sheet date or at contracted rates where appropriate.

Profits and losses arising on transactions in foreign currencies during the year are included in the profit and loss account at the exchange rate ruling on the date of the transactions.

Exchange differences arising from a retranslation of the opening net investment in subsidiary and associated undertakings are recorded as movements in reservés.

(m) Pension Costs

Pension costs are accounted for on the basis of charging the expected cost of providing pensions over the period during which the Group benefits from the employees' services. The effect of variations from regular cost are spread over the expected average remaining service lives of the members in the schemes. The bases of contributions are determined on the advice of independent qualified actuaries.



# CONSOLIDATED PROFIT AND LOSS ACCOUNT

### Year to 31 March

				1993		1992	
	Notes	199 IR£000	94 TR£000	1996 1R£000	IR£000	133.	IR£000
-	1	335,572		245,498		187,174	
Turnover Deduct: share of turnover of associated	1					-	
undertakings	1	(97,185)		(166,552)		(171,077)	
Group turnover			238,387		78,946		16,097
Group turnover		157 100		14,889		16,097	
Continuing operations Acquisitions		157,132 81,255	•	64,057			
T.		238,387		78,946		16,097	
Cost of sales	2		(177,860)		(60,811)		(11,144)
o ver			60,527		18,135		4,953
Gross profit Net operating costs	2		(43,631)		(16,160)		(4,780)
Operating profit	2		16,896		1,975		173
Continuing operations Acquisitions		7,804 9,092		(696) 2,671		173	
		16,896	}	1,975		173	
Goodwill amortisation			(140)		(220)	•	(181)
Income from interests in associated undertakings	1		5,504		8,811		8,959
Profit on ordinary activities before			20.070		10 500		8,951
exceptional items, interest and taxation Continuing operations		16,271	22,260	9,269	10,566	8,951	0,551
Acquisitions	3	5,989	•	1,297			
		22,260	• .	10,566		8,951	
Profit on disposal of financial assets, net			•				
of provisions	6		556	,	586		1,994
Interest receivable and similar income	. 7		2,699		4,591		3,990
Interest payable and similar charges	. 8		(3,336)		(870)		(137)
Profit before taxation	9		22,179		14,873		14,798
Taxation	10		(4,380)		(2,857)		(3,572)
Profit after taxation			17,799		12,016		11,226
Minority interests	11		(4,551)		(663)		(420)
Profit for the financial year attributable to							10.004
DCC shareholders	12 13		13,248 (3,438)		11,353 (1,558)		10,806 (1,348)
Dividends	1.5						9,458
Profit retained for the year			9,810		9,795		
Earnings per ordinary share	14		IR19.56p		JR16.82p		IR16.11p
Adjusted earnings per ordinary share	14•		IR19.56p		IR15.65p		IR14.04p



# STATEMENT OF TOTAL RECOGNISED GAINS AND LOSSES

		Year to 31 March			
	1994 IR£000	1993 IR£000	1992 IR <i>£</i> 000		
Profit retained for the year Exchange adjustments	· 9,810 129	9,795 (211)	· 9,458 26		
Movement on other reserves of associated undertakings Other movements	5 <del>69</del> (321)	(1,880)	. (625)		
Total recognised gains and losses relating to the year	10,187	7,672	8,859		

# HISTORICAL COST PROFITS AND LOSSES

	j	Year to 31 March		
	1994 IR£000	1993 IR£000	1992 IR£090	
Reported profit before taxation	22,179	14,873	14,798	
Historical cost profit before taxation	22,179	14,873	14,798	
Historical cost profit for the year retained after taxation, minority interests and dividends	9,810	9,795	9,458 =====	



# CONSOLIDATED BALANCE SHEET

		At 31 March				
	Notes	1994 IR£000	1993 IR£000	1992 IR£000		
Fixed Assets	10	<b>10 500</b>	0/ 010	1 454		
Tangible assets	15	68,708	26,012	1,474		
Financial assets Associated undertakings	16	34,647	45,316	53,703		
- Other investments			<del>_</del>	1,945		
	v	103,355	71,328	57,122		
Current Assets						
Investments	17	2,154	3,149	<del>-</del>		
Stocks	18	15,711	12,539	2,497		
Debtors	19	40,205	25,441	5,322		
Cash and short-term deposits	21	38,742	41,393	37,614		
		96,812	82,432	45,433		
Creditors:				<del></del>		
Amounts falling due within one year	22	(65,083)	(46,244)	(3,644)		
Proposed dividend	)	(2,689)	(1,558)	(1,348)		
<b>_</b> .		(67,772)	(47,802)	(4,992)		
Net Current Assets		29,040	34,630	40,441		
Total assets less current liabilities		132,395	105,958	97,563		
Creditors: Amounts falling due after more than one year	23	(26,602)	(11,077)	(725)		
Provisions for liabilities and charges	26	(2,828)	(1,307)	(672)		
Capital grants	29	(2,123)	(2,003)	(43)		
		100,842	91,571	96,123		
Capital and Reserves	G.P.	10.000	50 24	#a #^^		
Called up share capital	30	13,739	13,544	13,439		
Share premium account	31	56,379	56,080	55,763		
Reserves	32	11,824	20,004	25,825		
Sharcholders' funds		81,942	89,628	95,027		
Minority interests	34	18,900	1,943	1,096		
		100,842	91,571	96,123		



# CONSOLIDATED CASH FLOW STATEMENT

Year	ŧσ	31	Ma	rch
1 Cal	EO	21	TYE	13 (3)

•		1994	1993	1992
	Notes	TR£000	IR£000	IR£000
Operating Activities Net Cash Inflow from Operating Activities	37	24,157	8,385	362
Returns on Investments and Servicing of Finance				
Interest received		2,640	4,421	3,594
Interest paid		(3,360)	(706)	(132)
Interest element of finance lease payments		(20)	(24)	(5) 4,857
Dividends received from associated undertakings		ì,330 59	1,788 170	396
Dividends received from other investments		(2,307)	(1,348)	(1,204)
Dividends paid		(1,052)	(232)	(23)
Dividends paid to minorities				
Net Cash (Outflow)/Inflow from Returns on Investments and Servicing of Finance		(2,710)	4,069	7,483
Taxation		(4,121)	(1,134)	(1,090)
Corporation tax paid				
Investing Activities			(0 PP I)	(10.045)
Purchase of financial fixed assets	•	) ——	(9,774)	(10,245)
Sale of financial fixed assets		<del></del>	2,649 329	6,348
Sale of investments		(6,732)	(521)	(386)
Purchase of tangible fixed assets		(6,7 <i>52)</i> 806	91	15
Sale of tangible fixed assets		(29,071)	(24,039)	
Purchase of subsidiary (not of cash acquired)		(2,000)	(274,037)	_
Purchase of minority interests		442		
Sale of subsidiary (net of costs)				
Net Cash Outflow from Investing Activities		(36,555)	(31,265)	(4,268)
Net Cash (Outflow)/Inflow before Financing		(19,229)	(19,945)	2,487
Financing		*	1 400	4 174
Issue of ordinary share capital	38	494	422	171
Issue of loan notes	38	61	4,978	_
Capital grants received		61	311	(120)
Bank loans received/(repaid)	: 38	16,431	17,276	(120)
Deferred creditor paid	0.0	(14)	(12)	(14) (26)
Capital element of finance lease payments	38	(56) ———	(191)	(20)
Net Cash Inflow from Financing		16,977	22,784	11
		(2,252)	2,839	2,498
Represented by the Following:		(77 5 4 4)	(ፈኃ ፫ዕረነ	(E 023)
(Decrease) in short term deposits	80	(7,144)	(13,526)	(5,923)
Increase in cash and cash equivalents	39	4,892	16,365	8,421
Net (Decrease)/Increase in Cash,				
Cash Equivalents and Short Term Deposits		(2,252)	2,839	2,498
.,				*****



# NOTES TO THE FINANCIAL STATEMENTS

# 1. Segmental Analysis

(a) Segmental Analysis by Class of Business
An analysis by class of business of the Group's turnover, profit before taxation, and net assets is set out below:

(i) Summary	1994			1993			1 <del>9</del> 92		
	Turnover* by origin IR£000	Profit before Taxation IR£000	Net Assets IR£000	Turnover* by origin IR£000		Net Assets IR£000	Turnover* by origin IR£000		Net Assets IR£000
Food Energy Print and Publishing	117,130 89,223 28,804	6,575 9,691 4,207	32,761 43,325 13,930	72,592 46,413 24,348	3,935 2,149 2,847	29,534 17,311 14,548	69,532 33,893 12,748	2,478 1,936 1,403	20,271 14,306 9,709
Computer Products Distribution Healthcare Other	69,356 18,627 12,432	2,526 862 754	3,943 5,019 2,183	77,105 15,429 9,611	2,234 1,012 317	3,064 4,981 1,753	39,553 16,373 15,075	637 1,290 2,500	6,015 3,988 3,061
Less: share of associated undertaking turnover	335,572 (97,185)	24,615	101,161	245,498 (166,552)	12,494	71,191	187,174 (171,077)	10,244	57,350
Group turnover	238,387			78,946			16,097		
Group unallocated costs (no Interest (net) Goodwill amortisation		· (2,215) (637) (140)		J	(1,708) 3,721 (220)			(1,112) 3,853 (181)	
Profit on disposal of financi assets, net of provisions Net (debt)/cash Group unallocated net asse		556	(1,509) 1,190		586	17,269 3,111		1,994	36,756 2,017
		22,179	100,842		14,873	91,571		14,798	96,123

<sup>\*</sup> Comprises turnover of subsidiary and associated underlakings.

(ii)	Turnoyer	1994			1993			1992		
		Turnover* IR£900	Associated Under- takings IR£000	l Group Turnover IR£000	Turnover* IR£000	Associated Under- takings IR£000	Group Turnover IR£000	Turnover* IR£000	Associated Under- takings IR£000	Group Tumover IR£000
	Food Energy Print and Publishing	117,130 89,223 28,804	(73,369) (7,968) (1,312)	43,761 81,255 27,492	72,592 46,413 24,348	(66,264) (46,413) (20,502)	6,328  3,846	69,532 33,893 12,748	(69,532) (33,893) (12,748)	_ _ _
	Computer Products Distribution Healthcare Other	69,356 18,627 12,432 ————————————————————————————————————	(2,104) (12,432) (97,185)	69,356 16,523 — 238,387	77,105 15,429 9,611 245,498	(23,222) (540) (9,611) (166,552)	53,883 14,889 — 78,946	39,553 16,373 15,075 ————————————————————————————————————	(39,553) (276) (15,075) ——— (171,077)	16,097
		<del></del>			<del></del>	***		<del>2</del>		

st Comprises turnover of subsidiary and associated undertakings.



Profit before Taxation	1994			1993			1992		
	Group Under- takings IR£000	Associated Under- takings IR£000	Total IR£000	Group Under- takings IR£000	Associated Under- takings IR£000	Total IR <i>£</i> 000	Group Under- takings IR£000	Associated Undex- takings IR£000	Total IR£000
Food	2,614	3,961	6,575	456	3,479	3,935	_	2,478	2,478
Energy	9,092	599	9,691		2,149	2,149	_	1,936	1,936
Print and Publishing	4,134	73	4,207	615	2,232	2,847	_	1,403	1,403
Computer Products									
Distribution	2,526		2,526	1,600	634	2,234	_	637	637
Healthcare	745	117	. 862	1,012	_	1,012	1,285	5	1,290
Other	_	754	754	_	317	317		2,500	2,500
	19,111	5,504	24,615	3,683	8,811	12,494	1,285	8,959	10,244
Group unallocated costs (nct)	(2,215)	_	(2,215)	(1,708)		(1,708)	(1,112)	*******	(1,112)
Interest (net)	(637)		(637)	3,721		3,721	3,853		3,853
Goodwill amortisation	`_	(140)	(140)	-	(220)	(220)	_	(181)	(181)
Profit on disposal of financial assets, net of provisions	556		556	586		586	1,994		1,994
Profit before Taxation	16,815	5,364	22,179	6,282	8,591	14,873	6,020	8,778	14,798

(iv) Net Assets		1994			1993			1992	
	Group Under- takings IR£000	Associated Under- takings IR£000	Total IR£000	Group Under- takings IR£000	Associated Under- takings IR£000	Total IR£000	Group Under- takings IR£000	Associated Under- takings TR£000	Total IR£000
Food	7,127	25,634	32,761	5,902	23,632	29,534	_	20,271	20,271
Energy	39,195	4,130	43,325	_	17,311	17,311	_	14,306	14,306
Print and Publishing	12,839	1,091	13,930	13,478	1,070	14,548 '	_	9,709	9,709
Computer Products									
Distribution	3,943	_	3,943	3,064	_	3,064	_	6,015	6,015
Healthcare	3,410	1,609	5,019	3,431	1,550	4,981	3,647	341	3,988
Other		2,183	2,183	-	1,753	1,753		3,061	3,061
	66,514	34,647	101,161	25,875	45,316	71,191	3,647	53,703	57,350
Net (debt)/cash	(1,509)	_	(1,509)	17,269		17,269	36,756		36,756
Group unallocated net assets	1,190		1,190	3,111		3,111	2,017		2,017
	66,195	34,647	100,842	46,255	45,316	91,571	42,420	53,703	96,123
	<del></del>	<del>*************************************</del>	<del></del>	LIEU.		<del></del> .			100



(b) Segmental Analysis by Geographical Area
An analysis by geographical area of the Group's turnover, profit before taxation and net assets is set out below:

(i)	Summary		1994		-	1993			1992	
		Turnover by origin IR£000	Profit before Taxation IR£000	Net Assets IR£000	Turnover by origin IR£000	Profit before Taxation IR£000	Net Assets IR£000	Turnover by origin IR£000	Profit before Taxation IR£000	Net Assets IR£000
	Ireland United Kingdom	121,858 116,529	10,757 8,354	27,595 38,919	29,370 49,576	1,624 2,059	18,987 6,888	10,871 5,226	695 590	1,496 2,151
	Associated undertakings	238,387 97,185	19,111 5,504	66,514 34,647	78,946 166,552	3,683 8,811	25,875 45,316	16,097 171,077	1,285	3,647 53,703
	Turnover	335,572	24,615	101,161	245,498	12,494	71,191	187,174	10,244	57,350
	Group unallocated costs (net) Interest (net) Goodwill amortisation		(2,215) (637) (140)			(1,708) 3,721 (220)			(1,112) 3,853 (181)	
	Profit on disposal of financial assets, net of provisions Net (debt)/cash Group unallocated net assets		556	(1,509) 1,190		586	17,269 3,111		1,994	36,756 2,017
			22,179	100,842	;	14,873	91,571		14,798	96,123
(ii	Turnover by Destination					1994		1993		1992
	Ireland United Kingdom					IR£000 113,532 119,200		TR£000 29,074 48,666		IR£000 10,871 4,853
	Rest of Europe USA Other			•		5,239 43 373	٠,	689 73 444		148 26 199
	Associated undertakings			•		97,185 ——— 335,572		166,552 ———— 245,498		171,077 ———————————————————————————————————



2. I ost of Sales and Ivel Obelautie Costs	2.	Cost of Sales at	nd Net Operating Costs	
--	----	------------------	------------------------	--

Z. Cost of Suics and Mile	Perming cost	1994			1993			1992	
	Continuing Operations IR£000	Acquis- itions 1R£000	Total IR£000	Continuing Operations IR£000	Acquis- itions TR£000	Total IR£000	Continuing Operations IR£000	Acquis- itions IR£000	Total IR£000
Cost of Sales	120,845	57,015	177,860	9,971	50,840	60,811	11,144		11,144
Gross Profit	36,287	24,240	60,527	4, <del>9</del> 18	13,217	18,135	4,953		4,953
Operating Costs Distribution Administration Other operating expenses	(11,999) (17,055) (72) (29,126)	(9,855) (5,297) (11) —————————————————————————————————	(21,854) (22,352) (83)  (44,289)	(2,381) (4,147) — — (6,528)	(4,428) (5,710) (454) (10,592)	(6,809) (9,857) (454) (17,120)	(1,665) (4,674) — — (6,339)	——————————————————————————————————————	(1,665) (4,674) — — (6,339)
Other operating income	643	15	658	914	46	960	1,559		1,559
Net Operating Costs	(28,483)	(15,148)	(43,631)	(5,614)	(10,546)	(16,160)	(4,780)	<del>-</del>	(4,780)
Operating Profit	7,804	9,092	16,896	(696)	2,671	1,975	173 		173

# 3. Profit on Ordinary Activities before Exceptional Items, Interest and Taxation - Acquisitions

The profit on ordinary activities before exceptional items, interest and taxation arising from acquisitions—represents the net incremental profit resulting from certain associated undertakings becoming subsidiaries in the period following the increased shareholding acquired by the Group in those companies.

# 4. Employee Information

The average weekly number of persons (including executive directors) employed by the Group during the period analysed by class of business was:

248 403	34	
504	67	
2 <del>4</del> 1	216	
132	136	146
23	27	31
1,551	480	177
IR£000	IR£000	IR£000
24,037	8,536	3,403
2,405	743	279
1,241	448	315
27,683	9,727	3,997
	504 241 132 23 1,551 IR£000 24,037 2,405 1,241	504 67 241 216 132 136 23 27  1,551 480  IRE000 IRE000  24,037 8,536 2,405 743 1,241 448



#### Directors' Emoluments

Included in total staff costs are the following amounts relating to directors' emoluments:

	1994	1993	1992
	TR£000	IR£000	IR£000
Fees for services as a director Other emoluments for management Pension costs	59	. 55	50
	382	369	499
	75	75	106
	516	499	655

Other emoluments for management comprises all of the salaries and other benefits (other than pension costs) in respect of directors.

The Remuneration Committee comprises the non-executive directors and the Chief Executive. The Chief Executive does not participate in any decisions of the Remuneration Committee concerning himself.

# 6. Profit on Disposal of Financial Assets, net of Provisions

A consequence of the Company's transition to becoming an industrial holding company was the decision to dispose of non-core investments. The net profit arising on the disposal of certain of these investments, net of provisions, was:-

	j	1994. TR£000	1993 IR£900	1992 IR£000
Profit on disposal of subsidiary undertaking (note 36) Profit on disposal of associated undertakings Provision against investment in subsidiary undertaking Provision against carrying value of associated undertakings Provision against carrying value of investments Write back of provisions no longer required Other		1,551 ——————————————————————————————————	1,442 (1,631) — (456) 1,159 72 — 586	4,974 (671) (2,276) (178) 33 112 1,994

### Interest Receivable and Similar Income

Interest receivable and similar income of the Company and its subsidiaries comprise:

•	1994	1993	1992
	IR£000	IR£000	IR£000
Interest on cash and short term deposits Other interest receivable Income from current asset investments Other income	2,639	4,126	3,527
	1	295	67
	59	102	98
		68	298
	2,699	4,591	3,990

Income from current asset investments includes IR£ 59,000 (1993: IR£59,000; 1992: IR£59,000) from listed investments.



8.	Interest Payable and Similar Charges
	Interest payable and similar charges of the Company and its subsidiaries comprise:

	1994 IR£00 <del>0</del>	1993 TR£000	1992 TR£000
On Bank Loans, Overdrafts and Other Loans			
Repayable within 5 years, not by instalments	2,074	400	132
Repayable within 5 years, by instalments	546	86	
Repayable wholly or partly in more than 5 years	233	17	and the same of th
On Loan Notes	***	<b>DD</b>	
Repayable within 5 years, not by instalments	50	22	
Repayable within 5 years, by instalments			
Repayable wholly or partly in more than 5 years	413	321	
•	3,316	846	132
On finance leases	20	24	5
	3,336	870	137
	<del></del>		



Profit on Ordinary Activities Before Taxation
 Profit on ordinary activities before taxation is stated after charging/(crediting):

	1994	1993	1992
	IR£000	IR£000	IR£000
}			
Auditors' remuneration	302	142	54
	(101)	(6)	<b>—</b>
Revenue grants received Amortisation of capital grants	(403)	(14)	(1)
Operating leases — land and buildings	498	297	59
plant and machinery	12		45
— motor vehicles	222	100	***
Depreciation — owned assets	7,033	1,075	287
— leased assets	84	17	15
Research and development costs	55	55	_
*		*****	<del></del>

### 10.

). Taxation	1994	1993	199 <b>2</b>
	IR£000	IR£000	IR <i>E</i> 000
Irish Corporation Tax at 40% Current Deferred Less: manufacturing relief *	5,057	897	613
	(156)	(136)	(96)
	(3,637)	(338)	(49)
United Kingdom Corporation Tax at 33% Current Deferred	1,772 (60)	726 67	238 11
United States Corporation Tax at 40%	_	86	_
Tax credits on franked investment income	56	29	92
Capital gains tax	—	(422)	422
(Over)/under provision in respect of prior years	(64)	2	4
Associated undertakings	2,968	911	1,235
	1,412	1,946	2,337
	4,380	2,857	3,572

<sup>\*</sup> Manufacturing relief is scheduled to expire in the year 2010.



11. Minority Interests	1994	1993	1992
	IR£000	IR£000	IR£000
Group undertakings	4,384	444	191
Associated undertakings	167	219	229
	4,551	663	420

# 12. Profit for the Financial Year attributable to DCC shareholders

The profit for the financial year attributable to DCC shareholders can be analysed by class of business as follows:

,	1994	1993	1992
·	IR£000	TR£000	IR£000
Food	4,639	2,596	1,567
	4,797	1,714	1,464
Energy Print and Publishing	2,633	2,154	1,175
Computer Products Distribution	1,443	1,305	428
Healthcare	433	480	647
Other	466	193	1,754
Once			-
Group sectoral earnings	14,411	8, <del>44</del> 2	7,035
Group unallocated costs and interest (net)	(1,163)	2,123	2,380
Goodwill amortisation	(140)	(220)	(181)
Profit on disposal of financial assets, net of provisions	140	1,008	1,572
That on disposit of manetal assets, feet of provincin			
	13,248	11,353	10,806

The share of profits retained by associated undertakings for the year amounted to IR£2,595,000 (1993: IR£4,861,900; 1992: IR£1,537,000)

13. Dividends	1994 TR£000	1993 IR£000	1992 IR£000
The Confliction Character of Character	•		
Per Ordinary Share	1 749		_
First interim dividend paid (IR1.104p per fully paid ordinary share, 1993: Nil, 1992: Nil	.) /x/		
Second interim dividend paid (IR3.896p per fully paid ordinary share, 1993: Nil, 1992:	Nil) 2,689	_	_
Final proposed dividend (Nil per fully paid ordinary share, 1993: IR2.3p, 1992: IR2.0p)	_	1,558	1,348

On 19 March 1994 the Company's ordinary shares of IR£1 each were subdivided into five ordinary shares of IR20p each. The dividends per share noted above are stated as if the share split had occurred prior to 1 April 1991.

1,558

3,438

1,348

14.	Earnings Per Share		1994 IR£000	1993 IR£000	1992 IR£000
	Profit after taxation and minority interests Goodwill amortisation Profit on disposal of financial assets, net of provisions Taxation attributable to profit on disposal of financial assets, net of provisions		13,248 140 (140) —	11,353 220 (586) (422)	10,806 181 (1,994) 422
	Adjusted profit after taxation and minority interests		13,248	10,565	9,415
	Weighted average number of shares in issue during the year ("000)	(a)	67,732	67,515	67,035

	·			$\overline{\mathrm{DCC}}$
Earnings per share (pence) Adjustment for goodwill amortisation Adjustment for profit on disposal of financial assets, net of provisions	(a)	1994 IRp 19.56 0.21 (0.21)	1993 IRp 16.82 0.33 (0.87)	1992 IRp 16.11 0.27 (2.97)
Adjustment for taxation attributable to profit on disposal of financial assets, net of provisions		_	(0.63)	0.63
Adjusted earnings per share (pence)	(b)	IR19.56p	IR15.65p	IR14.04p

<sup>(</sup>a) On 19 March 1994 the Company's ordinary shares of IR£1 each were subdivided into five ordinary shares of IR20p each. The earnings per share has been calculated throughout the period as if this share split had occurred prior to 1 April 1991.

<sup>(</sup>b) The adjusted figure for earnings per share is intended to demonstrate the results of the Group after eliminating the impact of goodwill amortisation and certain exceptional items arising in the period which are not expected to recur regularly.

Tangible Fixed Assets			1994					1993		
	Freehold & long term leaschold Land and Buildings IR£000	Plant & Machinery & Cylinders IR£000	Fixtures, Fittings & Office Equipment IR£000	Motor Vehicles IR£000	Total IR£000	Freehold & long term leasehold Land and Buildings IR£000	Plant & Machinery & Cylinders IR£000	Fixtures, Fittings & Office Equipment IR£000	Motor Vehicles IR£000	Total IR£000
Cost	** ***	40.541	E 0/E	2.440	38,708	807	116	938	625	2,486
At 1 April	11,150	19,744	5,365 1,789	2,449 8,180	78,626 j	10,303	18,321	4,301	1,747	34,672
Acquisitions (note 35(a))	6,456 212	62,201	1,769	1,503	8,140	44	1,313	237	322	1,916
Additions		5,271 (3,529)	(448)	(2,176)	(6,445)	_	(2)	(100)	(236)	(338)
Disposals Exchange adjustments	(292) (31)	(5,529) (767)	4	(42)	(836)	(4)	(4)	(11)	(9)	(28)
At 31 March	17,495	82,920	7,864	9,914	118,193	11,150	19,744	5,365	2,449	38,708
Depreciation										
At 1 April	1,065	7,377	3,198	1,056	12,696	150	43	496	323	1,012
Acquisitions (note 35(a))	898	26,939	1,121	4,735	33,693	829	6,883	2,443	682	10,837
Charge for year	414	4,538	988	1,177	7,117	87	453	318	234	1,092
Disposals	(61)	(1,724)	(363)	(1,565)			(1)	(55)	(176)	(232)
Exchange adjustments	1	(283)		(26)	(308)	(1)	(1),	(4)	(7)	(13)
At 31 March	2,317	36,847	4,944	5,377	49,485	1,065	7,377	3,198	1,056	12,696
Net Book Value			;			40.005	43 P/H	D 160	1000	0.6 810
At 31 March	15,178	46,073	2,920	4,537	68,708	10,085	12,367	2,167	1,393	26,012

The cost of tangible fixed assets includes an amount of IR£480,000, (1993: IR£390,000) in respect of assets held under finance leases, with a net book value IR£243,000 (1993: IR£289,000).

16. Financial Assets - Associated Undertakings	1994 IR£000	1993 IR£000
Acquisitions	45,316	53,703
At 1 April	20,030	466
Acquisitions (note 35(a))	3,670	9,774
Additions (note 35(b))	5,0,0	(2,838)
Disposals Retained profits less dividends	2,595	4,861
Other movements in reserves	569	(1.880)
Amortisation of goodwill	(140)	(220)
Reclassified as subsidiaries (note 35(a))	(17,363)	(17,792)
Reclassified as current asset investments (note 17)		(758)
At 31 March	34,647	45,316
	120 A	



The interest in associated undertakings is comprised as follows:		
The interest in associated undertakings is comprised as rollows.	1994	1993
	IR£000	IR£900
The second second	16,650	24,875
Interest in net assets	8,633	9,750
Goodwill (net of amortisation) Share of post acquisition reserves	9,364	10,691
Share of post acquisition reserves		
	34,647	45,316
The movement in goodwill of associated undertakings is as follows:  Cost At 1 April Additions (note 35(b)) Reclassification as a subsidiary Other	1994 1R£000 10,404 2,470 (3,472) (30)	1993 IR£000 10,906 3,464 (3,966)
At 31 March	9,372	10,404
·		
Amortisation		
At 1 April	654	581
Amortisation for the year	140	220
Reclassification as a subsidiary in the year	(55)	(147)
At 31 March	739	654
Net Book Value At 31 March	8,633	9,750

Included in the above are amounts of IR£ 28,005,000 (1993: IR£36,035,000) in respect of listed associated undertakings which have a market value of IR£41,059,000 (1993: IR£51,250,000).

The principal subsidiary and associated undertakings of the Group are outlined in Note 40.

In the year ended 31 March 1993, as a result of a restructuring of shareholdings in Reflex Group plc, the Group's shareholding and board participation in that company reduced significantly and as a result this company ceased to be an associate of the Group from that time. The Group's investment in Reflex Group plc was transferred to Current Asset Investments during the year ended 31 March 1993.

#### 17. Current Asset - Investments

	1994	1993
	1R£000	IR£000
At 1 April	3,149	_
Reclassification from financial assets – other investments	_	1,945
Reclassified from financial assets – associated undertakings (note 16)	_	758
Disposals	_	(248)
(Increase)/decrease in provisions for permanent diminution in value	(995)	694
At 31 March	2,154	3,149
•		

Included in the above are amounts of IR£1,458,000 (1993; IR£2,243,000) in respect of listed investments which have a market value of IR£3,192,000 (1993; IR£2,350,000).



#### 18. Stocks 1993 1994 1R£000 IR£000 1,722 2,219 Raw materials and consumables 312 632 Work in progress 13,677 9,688 Finished goods and goods for resale 15,711 12,539

The replacement cost of stocks is not considered to be materially different from the amounts shown above.

#### 19. Debtors

		1994	1993
		IR£000	IR£000
Amounts falling due within one year			
Trade debtors		36,000	22,558
Corporation tax recoverable		205	1 <del>66</del>
Value added tax recoverable		330	468
Prepayments and accrued income		2,961	1,841
Other debtors (note 20)		409	. 165
		39,905	25,198
Amounts falling due after more than one year			
Other debtors (note 20)		300	243
<del></del>	j	······································	
		40,205	25,441

#### 20. Directors' Loan Accounts

Other debtors include IR£173,000 (1993: IR£182,000) in respect of house loans to executive directors as follows:

•	J Flavin	M Crowe	D Gavagan	Total
	IR£000	IR£000	IR£000	IR£000
Balance at 1 April 1993	66	43	73	182
Interest	'3	2,	4	9
Repayments	(5)	(5)	(8)	(18)
Balance at 31 March 1994	<u></u>	<u>40</u>	69 	173
Maximum amount outstanding during year	66	<u>43</u>	73 ———	182

Interest was charged at rates varying from 3% to Prime Rate per annum. No provision is considered necessary in respect of any of the above loans.

#### 21. Cash and Short-Term Deposits

	IR£000
8,015 30,727	15,159 26,144
38,742	41,303
	30,727

Short-term deposits comprise cash on deposit, commercial paper and other liquid investments, which had greater than three months to maturity when acquired.

For the purpose of the consolidated cash flow statements, cash and cash equivalents comprise cash on demand, short-term deposits and other highly liquid investments which were within three months of maturity when acquired, less bank overdrafts. The movement in cash and cash equivalents is set out in note 39.



22. Creditors: Amounts falling due within one year

				12,563		10,080
				691		1,000
Short-term bank-loans (note 24)				308		1,848
Bank overdrafts (note 24)				123		79
Loan notes (note 24)				29,877		19,068
Obligations under finance leases (note 25)				25,077 1,215		246
Trade creditors						6,239
Other creditors				8,310		2,770
Accruals				3,411		676
Corporation tax				89		
PAYE & PRSI				2,22		808
Value added tax				40		231
Capital grants (note 29)	1			9	6	140
Interest payable				2,45		1,132
Amounts due in respect of fixed assets				1,14	15	<b>44</b> 5
Amounts due to associate undertakings				1,37		1,482
Amounts due to associate undertained						
Acquisition provisions				65,0	83	46,244
				<del></del>		<del></del>
3. Creditors: Amounts falling due after more than one yea	nr,			199	)4	1993
3. Cremiois: Anouna America				TRE	300	IR£000
					757	7,809
				21,5		3,130
Bank loans (note 24)	ı			4,5	731	
Loop notes (note 24)					78	88
Obligations under finance leases (note 25)					36	50
Deferred income						
Deletter areas				26,	.602	11,077
					4100E	
24. Bank and Other Loans		1994			1993	
24. Bank and Other Loans				Rank		
4. Bank and Other Loans	Bank	Loan		Bank	Loan	Total
4. Bank and Other Loans			Total	Loans and		Total
24. Bank and Other Loans	Bank Loans and Overdrafts	Loan	•	Loans and Overdraffs	Loan Notes	
4. Bank and Other Loans	Loans and	Loan	Total IR£000	Loans and	Loan	Total
	Loans and Overdrafts	Loan Notes	•	Loans and Overdrafts IR£000	Loan Notes IR£000	IR£000
	Loans and Overdrafts IR£000	Loan Notes IR£000	TR£000	Loans and Overdraffs	Loan Notes	1R£000
Repayable as follows;	Loans and Overdrafts IR£000	Loan Notes IR£000	IR£000	Loans and Overdraffs IR£000	Loan Notes IR£000	IR£000
Repayable as follows; In one year or less	Loans and Overdrafts IR£000 13,254 1,530	Loan Notes IR£000	IR£000 13,562 1,530	Loans and Overdrafts IR£000	Loan Notes IR£000	12,928 7,809
Repayable as follows; In one year or less Between one and two years	Loans and Overdrafts IR£000 13,254 1,530 2,082	Loan Notes IR£000	IR£000  13,562 1,530 2,082	Loans and Overdraffs IR£000	Loan Notes IR£000	12,928 7,809
Repayable as follows; In one year or less Between one and two years Between two and five years	Loans and Overdrafts IR£000 13,254 1,530	Loan Notes IR£000	IR£000 13,562 1,530	Loans and Overdraffs IR£000	Loan Notes IR£000	12,928 7,809
Repayable as follows; In one year or less Between one and two years	Loans and Overdrafts IR£000 13,254 1,530 2,082 18,145	Loan Notes IR£000 308 	13,562 1,530 2,082 22,876	Loans and Overdrafts IR£000 11,080 7,809	Loan Notes IR£000	12,928 7,809 - 3,139
Repayable as follows; In one year or less Between one and two years Between two and five years	Loans and Overdrafts IR£000 13,254 1,530 2,082 18,145 35,011	Loan Notes IR£000 308  4,731  5,039	13,562 1,530 2,082 22,876 40,050	Loans and Overdraffs IR£000	Loan Notes IR£000 1,848 — — 3,130	12,928 7,809 - 3,134
Repayable as follows; In one year or less Between one and two years Between two and five years	Loans and Overdrafts IR£000 13,254 1,530 2,082 18,145 35,011	Loan Notes IR£000 308  4,731 5,039	13,562 1,530 2,082 22,876 40,050	Loans and Overdrafts IR£000  11,080 7,809	Loan Notes IR£000 1,848 — 3,130 4,978	12,928 7,809 3,139 23,86
Repayable as follows; In one year or less Between one and two years Between two and five years In five years or more  Certain bank loans and overdrafts are secured by floa	Loans and Overdrafts IR£000  13,254 1,530 2,082 18,145 35,011  ating charges of	Loan Notes IR£000  308  4,731  5,039  wer the asse	13,562 1,530 2,082 22,876 40,050	Loans and Overdrafts IR£000  11,080 7,809	Loan Notes IR£000 1,848 3,130 4,978	12,928 7,809 3,139 23,86
Repayable as follows; In one year or less Between one and two years Between two and five years In five years or more  Certain bank loans and overdrafts are secured by floa	Loans and Overdrafts IR£000  13,254 1,530 2,082 18,145 35,011  ating charges of	Loan Notes IR£000  308  4,731  5,039  wer the asse	13,562 1,530 2,082 22,876 40,050	Loans and Overdrafts IR-£000  11,080 7,809	Loan Notes IR£000 1,848 3,130 4,978 ings (note	12,928 7,809 3,139 23,86  43).
Repayable as follows; In one year or less Between one and two years Between two and five years In five years or more  Certain bank loans and overdrafts are secured by float  5. Finance Leases The net finance lease obligations to which the Group	Loans and Overdrafts IR£000  13,254 1,530 2,082 18,145 35,011  ating charges of	Loan Notes IR£000  308  4,731  5,039  wer the asse	13,562 1,530 2,082 22,876 40,050	Loans and Overdrafts IR-£000  11,080 7,809	Loan Notes IR£000 1,848 3,130 4,978 ings (note	12,928 7,809 3,139 23,86 43).
Repayable as follows; In one year or less Between one and two years Between two and five years In five years or more  Certain bank loans and overdrafts are secured by floa	Loans and Overdrafts IR£000  13,254 1,530 2,082 18,145 35,011  ating charges of	Loan Notes IR£000  308  4,731  5,039  wer the asse	13,562 1,530 2,082 22,876 40,050	Loans and Overdrafts IR-£000  11,080 7,809	Loan Notes IR£000  1,848  3,130  4,978  ings (note  1994 IR£000  123	12,928 7,809 3,139 23,86  43).
Repayable as follows; In one year or less Between one and two years Between two and five years In five years or more  Certain bank loans and overdrafts are secured by float  5. Finance Leases The net finance lease obligations to which the Group	Loans and Overdrafts IR£000  13,254 1,530 2,082 18,145 35,011  ating charges of	Loan Notes IR£000  308  4,731  5,039  wer the asse	13,562 1,530 2,082 22,876 40,050	Loans and Overdrafts IR-£000  11,080 7,809	Loan Notes IR£000 1,848 3,130 4,978 ings (note	12,928 7,809 3,139 23,86  43).
Repayable as follows; In one year or less Between one and two years Between two and five years In five years or more  Certain bank loans and overdrafts are secured by float  25. Finance Leases The net finance lease obligations to which the Group  In one year or less  Between one and two years	Loans and Overdrafts IR£000  13,254 1,530 2,082 18,145 35,011  ating charges of	Loan Notes IR£000  308  4,731  5,039  wer the asse	13,562 1,530 2,082 22,876 40,050	Loans and Overdrafts IR-£000  11,080 7,809	Loan Notes IR£000 1,848 	12,928 7,809 3,139 23,86  43).
Repayable as follows; In one year or less Between one and two years Between two and five years In five years or more  Certain bank loans and overdrafts are secured by float  25. Finance Leases The net finance lease obligations to which the Group  In one year or less  Between one and two years  Between two and five years	Loans and Overdrafts IR£000  13,254 1,530 2,082 18,145 35,011  ating charges of	Loan Notes IR£000  308  4,731  5,039  wer the asse	13,562 1,530 2,082 22,876 40,050	Loans and Overdrafts IR-£000  11,080 7,809	Loan Notes IR£000  1,848  3,130  4,978  ings (note  1994 IR£000  123	12,928 7,809 3,139 23,86  43).
Repayable as follows; In one year or less Between one and two years Between two and five years In five years or more  Certain bank loans and overdrafts are secured by float  25. Finance Leases The net finance lease obligations to which the Group  In one year or less  Between one and two years Between two and five years	Loans and Overdrafts IR£000  13,254 1,530 2,082 18,145 35,011  ating charges of	Loan Notes IR£000  308  4,731  5,039  wer the asse	13,562 1,530 2,082 22,876 40,050	Loans and Overdrafts IR-£000  11,080 7,809	Loan Notes IR£000  1,848  3,130  4,978  ings (note  1994 IR£000  123  78  —	12,928 7,809 3,139 23,86  43).
Repayable as follows; In one year or less Between one and two years Between two and five years In five years or more  Certain bank loans and overdrafts are secured by float  25. Finance Leases The net finance lease obligations to which the Group In one year or less  Between one and two years	Loans and Overdrafts IR£000  13,254 1,530 2,082 18,145 35,011  ating charges of	Loan Notes IR£000  308  4,731  5,039  wer the asse	13,562 1,530 2,082 22,876 40,050	Loans and Overdrafts IR-£000  11,080 7,809	Loan Notes IR£000 1,848 	12,928 7,809 3,139 23,86 43).
Repayable as follows; In one year or less Between one and two years Between two and five years In five years or more  Certain bank loans and overdrafts are secured by float  25. Finance Leases The net finance lease obligations to which the Group In one year or less Between one and two years Between two and five years	Loans and Overdrafts IR£000  13,254 1,530 2,082 18,145 35,011  ating charges of	Loan Notes IR£000  308  4,731  5,039  wer the asse	13,562 1,530 2,082 22,876 40,050	Loans and Overdrafts IR-£000  11,080 7,809	Loan Notes IR£000  1,848  3,130  4,978  4,978  Ings (note  1994 IR£000  123  78  78	12,928 7,809 3,139 23,86 43).
Repayable as follows; In one year or less Between one and two years Between two and five years In five years or more  Certain bank loans and overdrafts are secured by flow  The net finance lease obligations to which the Group  In one year or less  Between one and two years Between two and five years	Loans and Overdrafts IR£000  13,254 1,530 2,082 18,145 35,011  ating charges of	Loan Notes IR£000  308  4,731  5,039  wer the asse	13,562 1,530 2,082 22,876 40,050	Loans and Overdrafts IR-£000  11,080 7,809	Loan Notes IR£000  1,848  3,130  4,978  ings (note  1994 IR£000  123  78  —	12,928 7,809 3,139 23,86 43).
Repayable as follows; In one year or less Between one and two years Between two and five years In five years or more  Certain bank loans and overdrafts are secured by float  25. Finance Leases The net finance lease obligations to which the Group In one year or less Between one and two years Between two and five years	Loans and Overdrafts IR£000  13,254 1,530 2,082 18,145 35,011  ating charges of	Loan Notes IR£000  308  4,731  5,039  wer the asse	13,562 1,530 2,082 22,876 40,050	Loans and Overdrafts IR-£000  11,080 7,809	Loan Notes IR£000  1,848  3,130  4,978  4,978  Ings (note  1994 IR£000  123  78  78	12,928 7,809 3,139 23,86 43).
Repayable as follows; In one year or less Between one and two years Between two and five years In five years or more  Certain bank loans and overdrafts are secured by float  25. Finance Leases The net finance lease obligations to which the Group In one year or less Between one and two years Between two and five years	Loans and Overdrafts IR£000  13,254 1,530 2,082 18,145 35,011  ating charges of	Loan Notes IR£000  308  4,731  5,039  wer the asse	13,562 1,530 2,082 22,876 40,050	Loans and Overdrafts IR-£000  11,080 7,809	Loan Notes IR£000  1,848  3,130  4,978  4,978  1000  123  78  78  78  201	12,928 7,809 3,139 23,86  43).

1993 IR£000

1994 IR£000



## 26. Provisions for Liabilities and Charges

	1 <del>994</del>			1993			
	Deferred taxation (note 27) IR£000	obligations	Total IR£000		Pensions and similar obligations (note 28) IR£000	Total IR£000	
At 1 April Acquisitions (note 35(a))	1,234 1,756	73 —- (20)	1,307 1,756 (244)	672 1,053 (491)	73 —	672 1,126 (491)	
(Credited) to profit and loss account Exchange adjustment	(214) , 9	(30)	9	(±)1)			
At 31 March	2,785	431	2,828	1,234	73 ———	1,307	

### 27. Deferred Taxation Deferred taxation provided in the financial statements, and the amount unprovided of the total potential liability, is as follows:

	Amount provided		Full Potenti	ntial Liability	
·	1994 IR£000	1993 IR£000	1994 TR£000	1993 TR£080	
Tax effect of timing differences due to: Excess of accelerated capital tax allowances over depreciation Other short term timing differences	) 2,744 41	1,122 112	6,374 41	1,694 68	
	2,785	1,234	6,415	1,762	
	<u></u>		***************************************		

No provision is made for potential taxation liabilities amounting to IR£3,630,000 (1993: IR£528,000) arising from accelerated capital allowances as it is considered that the related taxation will not become payable in the foreseeable future.

No provision is made for taxation liabilities which would arise on the distribution of profits retained by overseas subsidiaries as there is no intention in the foreseeable future to remit such profits.

#### 28. Pension and Similar Obligations

The Group operates defined benefit and/or defined contribution schemes in all operating subsidiaries. Scheme assets are held in separate trust administered funds.

Total pension costs for the year amounted to IR£1,241,000 (1993: IR£448,000, 1992: IR£315,000) of which IR£326,000 (1993: IR£153,000, 1992: IR£117,000) was paid in respect of defined contribution schemes.

The pension costs relating to the Group's defined benefit schemes are assessed in accordance with the advice of independent qualified actuaries. Either the attained age or accrued benefits method are used to assess pension costs. The most recent actuarial valuations range from 1 April 1992 to 1 April 1994.

The assumptions which have the most significant effect on the results of the actuarial valuations are those relating to the rates of return on investments and the rates of increase in remuneration and pensions. It was assumed that the rates of return on investments would, on average, exceed annual remuneration increases by 2% and pension increases by 4% per annum.

At the dates of the most recent actuarial valuations, the market value of the assets of the Group's defined benefit schemes totalled IR£6,849,000.

After allowing for expected future increases in earnings and pension payments, the actuarial value of total scheme assets was sufficient to cover between 78% and 108% (Group weighted average cover: 91%) of the benefits that had accrued to the members of the individual schemes. The actuarial deficit is being spread over the average remaining service lives of current employees.

At the year end, IR£116,000 (1993: IR£5,000) was included in creditors in respect of pension liabilities and IR£1,000 (1993: IR£1,000) was included in debtors in respect of pension prepayments.

In general actuarial valuations are not available for public inspection; however, the results of valuations are advised to the members of the various schemes.



29. Capital Grants			1994 TR£000	1993 IR£000
			2,234	43
At 1 April			631	1,894
Acquisitions (note 35(a))			61	311
Received in year			(403)	(14)
Amortisation in year			2	`'
Exchange adjustments				
to make a state of			2,525	2,234
At 31 March			(402)	(231)
Disclosed as due within one year (note 22)				
			2,123	2,003
	•		<del></del>	
30. Called Up Share Capital	199	4	199	3
	No.'000	IR£000	No.'000	TR£000
Authorised	18,000	18,000	18,000	18,000
At 1 April - ordinary shares of IRE1 each		X0,000		
Subdivision of ordinary shares of IR£1 each into ordinary shares of IR£0.20 each lncrease in authorised share capital - ordinary shares of IR£0.20 each	60,000	12,000	_	
At 31 March – ordinary shares of IR£0.20 each (1993: IR£1 each)	150,000	30,000	18,000	18,000
Issued (a) Fully paid				
At 1 April	13,543	13,543	13,438 95	13,438 95
Issue of ordinary shares of IR£1 each			,,,	
Subdivision of ordinary shares of IR£1 each into five ordinary shares	54,174	_		
of IREO.20 each	920	184	-	
Issue of ordinary shares of IR£0.20 each	39	8	10	10
Partly paid shares fully paid up	<del></del>			
At 31 March	68,676	13,735	13,543	13,543
(b) Partly Paid	07	. 1	107	]
At 1 April	97 331	3	107	
Issue of ordinary shares of IR£1 each, IR£0.01 paid	231			
	428	4	107	1
Subdivision of ordinary shares of IR£1 each into five ordinary shares				
of IREO.20 each	1,711			_
Partly paid shares fully paid up	(39)	-	(10)	_
,,				-
At 31 March	2,100	4	97	
(c) Total	40.740	40 E44	13,545	13,43
At 1 April	13,640	13,544		Lorso
Issue of partly paid shares	331 55 995	3		_
Subdivision of shares	55,885	184		9
Issue of fully paid shares	920	184		1
Partly paid shares fully paid up			·	
At 31 March	70,776	13,739	13,640	13,54
			. <u> </u>	

On 19 March 1994 a five for one share split took place. The impact of this split is noted above.

Under the DCC Executive Share Option Scheme approved by the Directors on 23 October 1986, and previous option schemes, employees hold options to subscribe for up to 2,848,230 ordinary IR20p shares (1993: 4,306,130 ordinary IR20p shares) at prices between IR62p and IR200p per share, exercisable between 1995 and 2001.

Under the DCC Employee Partly Paid Share Scheme approved by the Directors on 22 June 1993 and previous schemes, employees hold 2,100,015 (1993: 486,005) partly paid shares details of which are outlined in paragraphs 1(f) and 5(a) of Part 3 of this document.



31. Share Premium Account				1994 IR£000	1993 [R£000
At 1 April	•			56,080	55,763
Premium on issue of shares				347 (48)	321 (4)
Share issue expenses				(40)	
At 31 March	-			56,379 ———	56,080 ———
32. Reserves			•		
		Goodwill			
	Profit	arising on	Associated		
	and loss	acquisition	undertaking	Other	TT- 1-1
	account	of subsidiaries	reserves	reserves IR£000	Total IR€000
	IR£00D	IR£000	IR£000	IKEUUU	IKEOOO
2.400	9,345	(396)	7,630	387	16,966
At 1 April 1991	7,921		1,537		9,458
Profit retained for the year	(866)	_	866	_	
Reclassification of reserves	(555)				
Movement on other reserves -			(625)	—	(625)
associated undertakings	20		_	6	26
Exchange adjustments Other movements	_		_		_
Office movements		<del></del>			
At 31 March 1992	16,420	. (396)	9,408	393	25,825
Profit retained for the year	4,934	_	4,861	_	9,795
Reclassification of reserves	1,698	<i>i</i> —	(1,698)	_	
Movement on other reserves –					(4.000)
associated undertakings		_	(1,880)	_	(1,880)
Goodwill arising on					
subsidiaries acquired					da 400)
in year (note 35(a))	_ <del></del>	(13,493)	-	(0.11)	(13,493)
Exchange adjustments	_	_	-	(211)	(211) (32)
Other movements	_	· .		(32)	(32)
	23,052	(13,889)	10,691	150	20,004
At 31 March 1993	7,215		2,595	_	9,810
Profit retained for the year	. 4,491	_	(4,491)	_	. —
Reclassification of reserves	29.272		,		
Movement on other reserves -	_	•	569	_	569
associated undertakings					
Goodwill arising on subsidiaries acquired					
in year (note 35(a))	; —	(18,367)	-	_	(18,367)
In year (Note 35(a)) Exchange adjustments	· -	· —		129	129
Other movements		_	_	(321)	(321)
			0.264	(42)	11,824
At 31 March 1994	34,758	(32,256)	9,364	(42)	LAGUET



33. Reconciliation of movements in Shareholders' Funds	- 1994	1993	1992
	IR£000	IR£090	IR£000
Profit for the financial year	13,248	11,353	10,806
Dividends	(3,438)	(1,558)	(1,348)
Movement on associated undertaking reserves Other reserve movements New share capital issued Expenses of share issue Goodwill on acquisitions during the year Exchange adjustments	9,810 569 (321) 542 (48) (18,367) 129	9,795 (1,880) (32) 426 (4) (13,493) (211)	9,458 (625) ————————————————————————————————————
Net movement in shareholders' funds	` (7,686)	(5,399)	9,030
Opening shareholders' funds	89,628	95,027	85,997
Closing shareholders' funds	81,942	89,628	95,027

#### 34. Minority Interests 1994 1993 TR£000 TR£000 1,096 1,943 At 1 April 15,418 628 Acquisitions (note 35 (a)) (1,858)Acquisition of minority interests in subsidiary undertakings (note 35(a)) 444 4,384 Share of profit for the financial year (note 11) (1,052)(232)Share of subsidiary dividends (127)(24)Exchange adjustments 31 192 Other movements 1,943 18,900 At 31 March

#### 35. Acquisitions

(a) Subsidiary Undertakings

(i) On 9 February 1993 a Public Offer by Ochil plc, which was an 80% subsidiary, was declared unconditional in all respects and it acquired 91.6% of the issued share capital of Printech International plc ("Printech"). Prior to this transaction the Group was the beneficial owner of 46.5% of the issued share capital of Printech. In January 1994, Ochil plc acquired the remaining 8.4% of the issued share capital of Printech and DCC's shareholding in Ochil plc reduced to 75% at that time.

Summary financial information extracted from the audited accounts of Printech for the period from 1 January 1991 to 31 March

1994, as amended for FRS 3, is as follows:	12 months to 31 March 1994 IR£000	15 months to 31 March 1993 IR£000	12 months to 31 December 1991 IRE000
Turnover	27,492	37,299	20,018
Operating profit Interest (net) Exceptional item	4,331 264 —	4,385 223 —	2,619 (83) (362)
Profit before taxation	4,595	4,608	2,174
Shareholders' funds at end of period	22,204	18,133	14,300

The exceptional item in the 12 months ended 31 December 1991 relates to the write off of the investment in relation to an associated undertaking which was disposed of for nil consideration.



(ii) On 9 February 1993 a Public Offer by Oare plc, an 80% subsidiary, was declared unconditional in all respects and it acquired 100% of the issued share capital of Wardell Roberts PLC ("Wardell"). Prior to this transaction the Group was the beneficial owner of 29.9% of the issued share capital of Wardell.

Summary financial information extracted from the audited accounts of Oare plc and Wardell for the period from 1 April 1991 to 31 March 1994, as amended for FRS 3, is as follows:

	Year to 31 March 1994 IR£000	Year to 31 March 1993 IR£000	Year to 31 March 1992 IR£000	
Turnover	43,761	39,493	45,072 ———	
Operating profit including share of profit of associated undertaking	3,058	2,454	2,764	
Interest (net)	(185)	(331)	(344)	
Exceptional items		246	(2,588)	
Profit before taxation	2,873	2,369 	(168)	
Shareholders' funds at end of period	10,104	8,411	6,767 ———	

The exceptional items for the year to 31 March 1992 are made up of IR£2,501,000 in relation to the closure of the company's poultry business and other exceptional costs of IR£87,000.

(iii) On 4 May 1992 the Group acquired a majority ordinary shareholding of 72.7% in Sharptext Group Limited ("Sharptext"). Prior to this transaction the Group was the beneficial owner of 45.34% of the issued ordinary share capital and 100% of the issued preference share capital of Sharptext. The Group further increased its ordinary shareholding to 76.8% and its total equity shareholding to 83% in the year to 31 March 1993.

Summary financial information extracted from the audited accounts of Sharptext for the period from 1 November 1990 to 31 March 1994, as amended for FRS 3, is as follows:

,	12 months to 31 March 1994 IR£000	17 months to 27 March 1993 IR£000	12 months to 1 November 1991 IR£000
Turnover	69,356	*83,274	57,487
Operating profit	2,526	2,474	1,725
Interest (net)	(17)		(206)
Profit before taxation	2,509	2,503	1,519
Shareholders' funds at end of period	6,870	5,855	5,020

(iv) On 20 April 1993 the Group converted its existing preference shares in Emo Oil Limited ("Emo") into ordinary share capital and together with a combination of a subscription of new equity and a purchase of existing equity at a total cost of IRE724,000 increased the Group's equity shareholding in Emo from 68.1% to 75.0%.



Summary financial information extracted from the audited accounts of Emo for the period from I January 1991 to 31 March 1994, as amended for FRS 3, is as follows:

	12 months to 31 March 1994 IR£900	15 months to 31 March 1993 IR£000	12 months to 31 December 1991 IR£000
Turnover	41,083	49,051 ———	36,845
Operating profit including share of profit of associated undertaking	1,659	893	1,131
Interest (net)	(97)	(605)	(574)
Profit on disposal of subsidiary	1,849	-	
Profit before taxation	3,411	288	557
Shareholders' funds at end of period	8,356 	4,729	5,233

<sup>(</sup>v) On 5 August 1993 the Group made a Partial Cash Offer for shares in Flogas plc and associated shares in Flogas U.K. plc. The offer was declared unconditional on 3 September and the Group's total interest in Flogas plc increased to 60.3%.

Summary financial information extracted from the audited accounts of Flogas for the period from 1 May 1991 to 31 March 1994, as amended for FRS 3, is as follows:

	9 months to 31 March 1994 IR£000	12 months to 30 June 1993 IR£000	13 months to 30 June 1992 IR£000
Turnover	45,948	48,100	48,122
Operating profit	7,340	7,161	7,938
Interest (net)	(218)	(641)	(782)
Profit before taxation	7,122	, 6,520 ———	7,156 ————
Shareholders' funds at end of period	39,931	35,952	33,431



The fair value of assets and liabilities acquired is set out below:

	1994			1993				
	Flogas IR£000	Emo IR£000	Total IR£000	Printech IR£000	Wardell IR£000	Sharptext IR£000,	Total IR£000	
Tangible fixed assets	39,667	5,266	44,933	16,555	5,467	1,813	23,835	
Financial fixed assets	_				466	_	466	
Stock	1,541	1,831	3,372	2,903	4,073	3,505	10,481	
Debtors	6,732	5,085	11,817	3,362	8,002	11,041	22,405	
Net cash/(debt)	(2,366)	(787)	(3,153)	2,577	(2,464)	1,063	1,176	
Creditors	(7,897)	(5,561)	(13,458)	(4,58 <del>9</del> )	(7,736)	(11,826)	(24,151)	
Provisions for liabilities and charges	(1,381)	(375)	(1,756)	(955)	(171)	_	(1,126)	
Capital grants	(441)	(190)	(631)	(1,894)			(1,894)	
	35,855	5,269	41,124	17,959	7,637	5,596	31,192	
Acquisition provisions	(250)	(400)	(650)	(250)	(800)		(1,050)	
	35,605	4,869	40,474	17,709	6,837	5,596	30,142	
Minority interests	(14,135)	(1,283)	(15,418)	(1,235)	1,575	(968)	(628)	
	21,470	3,586	25,056	16,474	8,412	4,628	29,514	
Goodwill	17,542	683	18,225	4,042	6,343	3,108	13,493	
Cost	39,012	4,269	43,281	20,516	14,755	7,736	43,007	
Less: Cumulative cost of shareholding as an associated undertaking	(8,752)	(4,206)	(12,958)	(7,001)	(2,860)	(5,994)	(15,855)	
Share of post acquisition reserves previously held by Group	(5,066)	661	(4,405)	(2,584)	187	460	(1,937)	
Carrying value at date of acquisition	(13,818)	(3,545)	(17,363)	(9,585)	(2,673)	(5,534)	(17,792)	
Subsidiary investment	25,194	724	25,918	10,931	12,082	2,202	25,215	
Satisfied by:				- 000	p desc	D 000	10 500	
Cash	23,686	724	24,410	2,398 8,533	8,170 3,912	2,202	12,770 12,445	
Acquisition debt	1,508		1,508	<i>ددد</i> ره	کلا <i>در</i> د ———		12,730	
	25,194	724	25,918	10,931	12,082	2,202	25,215	
			<del></del>	. =========				

In addition to the above during the year to 31 March 1994 the Group acquired the outstanding minority interests in Printech International plc and The Genito-Urinary Manufacturing Company Limited for a combined consideration of IR£2,000,000 and giving rise to goodwill of IR£142,000.

As required by FRS 2 goodwill has been calculated by reference to each individual investment made by the Group in each of the above companies in order to provide a true and fair view. It is recognised by FRS 2 that this treatment does not strictly accord with Regulation 19 of the EC (Companies: Group Accounts) Regulations 1992, which requires goodwill to be calculated by reference to net assets at the date control is acquired by the investing company. Had goodwill been calculated only by reference to net assets at the date control was acquired by the Group the impact would have been to increase the reserve in respect of goodwill arising on the acquisition of subsidiaries and reduce post acquisition reserves by IR£6,336,000 (1993: IR£1,937,000). There would be no impact on consolidated shareholders' funds.



(b) Acquisitions - Associated Undertakings The Group acquired a 29.9% interest in Greenway Holdings plc on 1 June 1993.

The Group acquired a 25% interest in M. Casey Limited on 16 March 1993. In addition, the Group made further investments in Fyffes plc, Flogas plc, HealthDrive Corporation and other associated undertakings in 1993. The fair value of the assets and liabilities acquired are set out below:

acquir	ed are set out below:	1994	1993		93	
		Greenway IR£000	Fyffes IR£000	Flogas IR£000	Other IR£000	Total IR£000
Net as Good	ssets acquired will	1,200 2,470	3,889 1,144	1,594 1,241	827 1,079	6,310 3,464
Cost		3,670	5,033	2,835	1,906	9,774
(c) Analy	ysis of the Net Outflow of Cash and Cash Equiv	alents in respect o	f the Acquisitic	m of Subsidiary	Undertakings	
., ,					1994 IR£000	1993 IR£000
	consideration and cash equivalents acquired				25,918 	25,215 (3,640)
Bank	overdrafts of acquired subsidiary undertakings				3,153	2,464
Net o	outflow of cash and cash equivalents				29,071	24,039
36. Disp Duri	osals ng the year ended 31 March 1994 the Group dis	posed of its 100% i	) nterest in Emo	Oil (UK) Limited	1.	1994 YR£000
Fixed Stock Debi Cred Net	tors litors	Hop off to vectories				1,904 239 1,128 (946) (793) 236
	dwill and exchange adjustments previously wri	(ICI) OII to ICSCLVES	•			1,768 351
	fit on disposal					2,119 1,551
	nsideration–satisfied by shares in Greenway H	oldings plc				3,670
	h flow impact of disposal:					
Ban	sh consideration k overdrafts disposed posal costs			•		793 (351)
Net	t inflow of cash and cash equivalents	-				442
37. Re	conciliation of Group Operating Profit to Net (	Cash Inflow from	Operating Acti	1974	1993	1992
	.•	,		IR£000	IR£000	TR£000 173
De	perating profits preciation of tangible fixed assets			16,896 7,117 22	1,975 1,092 15	302 (1)
(In	ss/(profit) on sale of tangible fixed assets crease)/decrease in stocks			(39) (4,036)	439 2,268	(76) (222)
	crease)/decrease in debtors // crease in creditors			4,421	2,831	147
Aı	nortisation of capital grants			(403) 179	(14) (221)	(1) 40
	change adjustments et Cash Inflow from Operating Activities			24,157	8,385	362
N	et Casu turnom nom Oberarnik verrances					



## 38. Analysis of changes in financing during the period

		1994			1993			1992				
	Share Capital & Premium	Bank Loans	Loan Notes		Share Capital & Premium	Bank Loans	Loan Notes		Share Capital & Premium	Bank Loans	Loan Notes	Finance Leases
	1R£099	JR£000	IR£900	IR€000	JR£000	IR£000	IR£000	IR£000	IR£000	IR£000	FR£000	TR£000
At 1 April	69,624	17,889	4,978	167	69,202	613	_	95	69,031	733	_	121
Shares issued for cash	494		_		422	—	_	_	171		-	_
Bank loans received/(repaid)		16,431	-	_	_	17,276	_			(120)	_	_
Loan notes issued for cash			61	_	_	****	4,978			_	_	_
Inception of finance leases	_	_	_	90	_			263	.—	_	_	
Capital element of finance lease pay	ments —	_		(56)	_	_		(191)	_	_	_	(26)
						<del></del>						
At 31 March	70,118	34,320	5,039	201	69,624	17,889	4,978	167	69,202	613		95

### 39. Analysis of changes in Cash and Cash Equivalents

	1994 IR£000	1993 IR£000	1992 IR€000
At 1 April	25,144	8,779	358
Increase in cash and cash equivalents Decrease/(increase) in bank overdrafts	4,583 309	17,215 (850)	8,064 357
Net cash inflow	4,892	16,365	8,421
At 31 March	30,036	25,144	8,779
Represented by:			
Cash and cash equivalents Bank overdrafts	30,727 (691)	26,144 (1,000)	8,929 (150)
	30,036	25,144	8,779

40. Principal subsidiary and associated undertakings

The principal subsidiary and associated undertakings of the Group as at 31 March 1994 were as follows:

Company Holding Companies - Subsidiaries	Principal Activity	Country of Incorporation	% Holding
DCC Corporate Partners Limited	Investment holding company	Republic of Ireland	100.00
S & L Investments Limited	Investment holding company	Republic of Ireland	100.00
Vencap Investors Limited	Investment holding company	Republic of Ircland	100.00
DCC Holdings (UK) Limited	Holding company	England and Wales	100.00
DCC International Holdings B.V.	Investment holding company	The Netherlands	100.00



Сотрану	Principal Activity	Country of Incorporation	% Holding
•	Companies - Subsidiaries		
Corporate Advisory and Investment (	Corporate advisory services	Republic of Ireland	100.00
DCC Corporate Pinance Limited		England and Wales	100.00
DCC Corporate Finance Limited	Corporate advisory services	_	
DCC Limited	Investment company	Isle of Man	100.00
Food - Subsidiaries and Associated L	Indertakings		
Subsidiaries		D : AU (Yusland	80.00
Oare plc	Investment holding company .	Republic of Ireland	50.00
Kelkin Naturproducts Limited	Marketing and distribution of branded health food products	Republic of Ireland	80.00
Robt. Roberts Limited	Marketing and distribution of branded food and beverage products	Republic of Ireland	80.00
Wardell Robexts Limited	Holding company	Republic of Ireland	80.00
Healthilife (Holdings) Limited	Marketing and distribution of vitamins and food supplements	England and Wales	80.00
Associated Undertakings			.* .
Allied Foods Limited	Distribution of frozen and chilled foods	Republic of Ireland	26.32
F	Distribution of fresh produce	Republic of Ireland	10.91*
Fyffes plc  * In addition the Company holds 8.14% (	of the IR8.25p (net) Convertible Cumulative Preference	re Shares in Fyffes plc.	
ICD G -1 1\ I imited	Manufacture of snackfoods www.wardell Roberts Limited, a subsidiary of the Compa	Republic of Ireland	40.00** d interest of 50%.
Energy - Subsidiaries and Associat	ed Hndertakinos	•	
Subsidiaries			
	Fuel oil distribution	Republic of Ireland	75.00
Emo Oil Limited		,	
Emo Oil Limited	Waste oil recycling Investment holding company	England and Wales	80.08
Emo Oil Limited  Powerimpact plc	Waste oil recycling	,	54.16*
Emo Oil Limited	Waste oil recycling Investment holding company	England and Wales	54.16* 54.16*
Emo Oil Limited  Powerimpact plc  Flogas plc	Waste oil recycling Investment holding company Holding company Marketing and distribution of	England and Wales Republic of Ireland Republic of Ireland Northern Ireland	54.16*
Emo Oil Limited  Powerimpact plc Flogas plc Flogas Ireland Limited  Flogas (NI) Limited  Flogas U.K. plc	Waste oil recycling Investment holding company Holding company Marketing and distribution of liquefied petroleum gas Marketing and distribution of liquefied petroleum gas Marketing and distribution of	England and Wales Republic of Ireland Republic of Ireland Northern Ireland England and Wales	54.16* 54.16* 54.16* 54.16*
Emo Cil Limited  Powerimpact plc Flogas plc Flogas Ireland Limited  Flogas (NI) Limited  Flogas U.K. plc	Waste oil recycling Investment holding company Holding company Marketing and distribution of liquefied petroleum gas Marketing and distribution of liquefied petroleum gas Marketing and distribution of liquefied petroleum gas ic is held as to 29.7% by the Company and two of its resulting in a Group-controlled interest of 60.3%. Flices of Flogas plc.	England and Wales Republic of Ireland Republic of Ireland Northern Ireland England and Wales	54.16* 54.16* 54.16* 54.16*
Emo Cil Limited  Powerimpact plc Flogas plc Flogas Ireland Limited  Flogas (NI) Limited  Flogas U.K. plc  * The Company's interest in Flogas pl	Waste oil recycling Investment holding company Holding company Marketing and distribution of liquefied petroleum gas Marketing and distribution of liquefied petroleum gas Marketing and distribution of liquefied petroleum gas ic is held as to 29.7% by the Company and two of its resulting in a Group-controlled interest of 60.3%. Fi	England and Wales Republic of Ireland Republic of Ireland Northern Ireland England and Wales	54.16* 54.16* 54.16* 54.16*



Сотрапу	Principal Activity	Country of Incorporation	% Holding
Print and Publishing - Subsidiaries and	Associated Undertakings		
Subsidiaries		D 11: 47 1 1	trt 00
Ochil plc	Investment holding company	Republic of Ireland	75.02
Printech International plc	Holding company	Republic of Ireland	75.02
Printech Ireland Limited	Computer documentation printing	Republic of Ireland	75.02
Associated Undertakings		D 11 /T 1 1	D ( 07
John Hinde International Limited	Publishing and printing of view cards	Republic of Ireland	26.81
Computer Products Distribution - Subs			
Sharptext Group Limited -	Holding company	Republic of Ireland	83.00*
Sharptext Limited	Computer and office products distribution	Republic of Ireland	83.00*
Micro Peripherals Limited	Computer products distribution	England and Wales	83.00*
<ul> <li>The Company's holding in Sharptext Grou cumulative convertible preference shares shares.</li> </ul>	, which if fully converted into ordinary shares w	ould result in a holding of 83	% of the ordinary
cumulative convertible preference shares	, which if fully converted into ordinary shares w	ould result in a holding of 83°	% of the ordinary
cumulative convertible preference shares, shares.	, which if fully converted into ordinary shares w	ould result in a holding of 83°	% of the ordinary
cumulative convertible preference shares shares.  Healthcare - Subsidiaries and Associate	, which if fully converted into ordinary shares v	vould result in a holding of 83° Republic of Ireland	% of the ordinary  76.86*
cumulative convertible preference shares, shares.  Healthcare - Subsidiaries and Associate Subsidiaries	, which if fully converted into ordinary shares w i ed Undertakings Manufacture and	vould result in a holding of 83°	% of the ordinary
cumulative convertible preference shares shares.  Healthcare - Subsidiaries and Associat Subsidiaries  Fannin Limited  The Genito-Urinary Manufacturing Company Limited	, which if fully converted into ordinary shares we define the fully converted into ordinary shares we define the full of the f	vould result in a holding of 83°	% of the ordinary 76.86*
cumulative convertible preference shares shares.  Healthcare - Subsidiaries and Associate Subsidiaries Fannin Limited  The Genito-Urinary Manufacturing Company Limited  * See also post balance sheet events (note 44)	, which if fully converted into ordinary shares we define the fully converted into ordinary shares we define the full of the f	vould result in a holding of 83°	% of the ordinary 76.86*
cumulative convertible preference shares shares.  Healthcare - Subsidiaries and Associat Subsidiaries  Fannin Limited  The Genito-Urinary Manufacturing Company Limited	, which if fully converted into ordinary shares we define the fully converted into ordinary shares we define the full of the f	vould result in a holding of 83°	% of the ordinary 76.86*
cumulative convertible preference shares shares.  Healthcare - Subsidiaries and Associate Subsidiaries Fannin Limited  The Genito-Urinary Manufacturing Company Limited  * See also post balance sheet events (note 44)  Associated Undertakings  M. Casey Limited	which if fully converted into ordinary shares we defend undertakings  Manufacture and distribution of healthcare products Manufacture and distribution of healthcare products.  Manufacture and distribution of healthcare products.	vould result in a holding of 83° Republic of Ireland England and Wales	% of the ordinary 76.86* 76.86*
cumulative convertible preference shares shares.  Healthcare - Subsidiaries and Associate Subsidiaries Fannin Limited  The Genito-Urinary Manufacturing Company Limited  * See also post balance sheet events (note 44)  Associated Undertakings  M. Casey Limited  HealthDrive Corporation	which if fully converted into ordinary shares we defend undertakings  Manufacture and distribution of healthcare products Manufacture and distribution of healthcare products.  Manufacture and distribution of healthcare products reproducts of healthcare products revision of healthcare products revision of healthcare services	vould result in a holding of 83° Republic of Ireland England and Wales Republic of Ireland United States	% of the ordinary 76.86* 76.86*
cumulative convertible preference shares shares.  Healthcare - Subsidiaries and Associate Subsidiaries Fannin Limited  The Genito-Urinary Manufacturing Company Limited  * See also post balance sheet events (note 44)  Associated Undertakings  M. Casey Limited  HealthDrive Corporation  ** M. Casey Limited is 25% owned by Fanning Subsidiaries  The Group's holding in HealthDrive Corporation	which if fully converted into ordinary shares we defend undertakings  Manufacture and distribution of healthcare products Manufacture and distribution of healthcare products.  Manufacture and distribution of healthcare products.	Republic of Ireland England and Wales  Republic of Ireland  United States  44).  and all of the Class A Convertib	% of the ordinary  76.86*  76.86*  19.22**  43.81***
cumulative convertible preference shares shares.  Healthcare - Subsidiaries and Associate Subsidiaries Fannin Limited  The Genito-Urinary Manufacturing Company Limited  * See also post balance sheet events (note 44) Associated Undertakings M. Casey Limited  HealthDrive Corporation  ** M. Casey Limited is 25% owned by Panni  ** The Group's holding in HealthDrive Corporation the Class A Stock, which is convertible a	which if fully converted into ordinary shares we defect the Undertakings  Manufacture and distribution of healthcare products Manufacture and distribution of healthcare products.  Manufacture and distribution of healthcare products Provision of healthcare services in Limited. See also post balance sheet events (note poration consisted of 27.75% of the common stock	Republic of Ireland England and Wales  Republic of Ireland  United States  44).  and all of the Class A Convertib	% of the ordinary  76.86*  76.86*  19.22**  43.81***
cumulative convertible preference shares shares.  Healthcare - Subsidiaries and Associate Subsidiaries Fannin Limited  The Genito-Urinary Manufacturing Company Limited  * See also post balance sheet events (note 44)  Associated Undertakings  M. Casey Limited  HealthDrive Corporation  ** M. Casey Limited is 25% owned by Fanni ** The Group's holding in HealthDrive Corporation The Class A Stock, which is convertible a post balance sheet events (note 44).	which if fully converted into ordinary shares we defect the Undertakings  Manufacture and distribution of healthcare products Manufacture and distribution of healthcare products.  Manufacture and distribution of healthcare products Provision of healthcare services in Limited. See also post balance sheet events (note poration consisted of 27.75% of the common stock	Republic of Ireland England and Wales  Republic of Ireland  United States  44).  and all of the Class A Convertib	% of the ordinary  76.86*  76.86*  19.22**  43.81***
cumulative convertible preference shares shares.  Healthcare - Subsidiaries and Associate Subsidiaries Fannin Limited  The Genito-Urinary Manufacturing Company Limited  * See also post balance sheet events (note 44) Associated Undertakings M. Casey Limited  HealthDrive Corporation  ** M. Casey Limited is 25% owned by Panni  ** The Group's holding in HealthDrive Corporation the Class A Stock, which is convertible a	which if fully converted into ordinary shares we dead Undertakings  Manufacture and distribution of healthcare products Manufacture and distribution of healthcare products.  Manufacture and distribution of healthcare products Provision of healthcare services in Limited. See also post balance sheet events (note poration consisted of 27.75% of the common stock any time, would if converted, have resulted in a Gentlemann stock of the common stock any time, would if converted, have resulted in a Gentlemann stock of the common	Republic of Ireland England and Wales  Republic of Ireland  United States  44).  and all of the Class A Convertib	% of the ordinary  76.86*  76.86*  19.22**  43.81***
cumulative convertible preference shares shares.  Healthcare - Subsidiaries and Associate Subsidiaries Fannin Limited  The Genito-Urinary Manufacturing Company Limited  * See also post balance sheet events (note 44)  Associated Undertakings  M. Casey Limited  HealthDrive Corporation  ** M. Casey Limited is 25% owned by Fanni  ** M. Casey Limited is 25% owned by Fanni  ** The Group's holding in HealthDrive Cor  The Class A Stock, which is convertible a post balance sheet events (note 44).  Other Associated Undertakings	which if fully converted into ordinary shares we ded Undertakings  Manufacture and distribution of healthcare products Manufacture and distribution of healthcare products.  Manufacture and distribution of healthcare products Provision of healthcare services in Limited. See also post balance sheet events (note poration consisted of 27.75% of the common stock it any time, would if converted, have resulted in a feature of the common stock it any time, would if converted, have resulted in a feature of the common stock it any time, would if converted, have resulted in a feature of the common stock it any time, would if converted, have resulted in a feature of the common stock it and the common stock it any time, would if converted, have resulted in a feature of the common stock it and the com	Republic of Ireland England and Wales  Republic of Ireland  United States  44).  and all of the Class A Convertib Group holding of 43.81% at 31 M	76.86* 76.86* 19.22** 43.81*** ble Preferred Stock.larch 1994. See also

The Group owns 75% of the ordinary share capital and 100% of the cumulative preference share capital of London & Provincial Factors Limited ("L&P"), a venture capital investment of the Group made prior to its transition to being an industrial holding company. In 1993 the Group wrote off its investment following the appointment of a receiver to this company. L&P was accounted for under the equity method of accounting in 1992 as the Directors considered that the results and net assets of the company were not material in the context of the Group. In the year ended 31 March 1992 profit before taxation per the company's management accounts was IR£0.42 million of which the Group's share was IR£0.35 million and the net assets of L&P (comprising debtors IR£18.1 million, other assets IR£0.73 million and creditors IR£16.4 million) were IR£2.43 million. The carrying value of this investment in the Group's balance sheet at 31 March 1992 was IR£1.63 million.

The registered offices of each company are outlined in paragraph 2 of Part 3 of this document.



#### 41. Capital Commitments

	1994 IR£000	1993 IR£000
Capital expenditure that has been contracted for but has not been provided for in the financial statements	685	811
Capital expenditure that has been authorised by the directors but has not yet been contracted for	4,239	139

#### 42. Financial Commitments

At 31 March 1994 the Group had annual commitments under operating leases as follows:

	199	1994		13
	Land and Buildings IR£000	Other IR£000 25	Land and Buildings IR£000	Other IR£000 3
. Pyniting within one vear .		23		

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Certain subsidiaries have given guarantees in respect of borrowings of IR£2,524,000 (1993: IR£1,254,000) of other group undertakings. In these cases the guarantees are secured on specific tangible fixed and current assets.

In general borrowings of subsidiaries are secured by fixed and floating charges over their assets.

Guaranteed variable rate loan notes 1993-2013 amounting to IR£871,000 (1993: IR£1,548,560) issued by a subsidiary are guaranteed by the parent undertaking and by Ulster Investment Bank Limited.

#### (b) Grants

In certain circumstances capital grants amounting to a maximum of IR£3,649,000 (1993: IR£3,392,000) and revenue grants amounting to a maximum of IR£119,000 (1993: IR£74,000) may become payable.

#### (c) Other

Included in trade creditors and amounts due in respect of tangible fixed assets acquired is an amount of approximately IR£913,000 (1993: IR£1,833,000) due to creditors who have reserved title to goods supplied. Since the extent to which these creditors are effectively secured at any time depends on a number of conditions, the validity of some of which is not readily determinable, it is not possible to indicate how much of the above amount was effectively secured by reservation of title. However, the amount referred to above is matched in terms of book value of fixed assets and stocks of raw materials in the possession of the Group which were supplied subject to reservation of title, and accordingly the creditors referred to could be regarded as effectively secured to the extent of at least this amount.

The Group had forward foreign exchange contracts amounting to IR£ 310,000 at 31 March 1994 (1993: IR£668,000).

#### 44. Post balance sheet events

On 25 April 1994 the Group increased its equity shareholding in HealthDrive Corporation from 43.81% to 47.52% for a consideration of US\$500,000.

On 29 April 1994 the Group's subsidiary Fannin Limited, increased its interest in M. Casey Limited from 25.00% to 51.00% by the issue of shares in Fannin Limited. On the same date the Group also increased its shareholding in Fannin Limited from 76.86% to 83.69%. The consideration was satisfied by the issue of 603,703 ordinary shares in the Company.

Yours truly



## PART 3

# ADDITIONAL INFORMATION

# THE COMPANY AND ITS SHARE CAPITAL

- (a) The Company was incorporated in the Republic of Ireland with registered number 54858 under the Companies Act, 1963 as a private company limited by shares on 9th April 1976 with the name Development Capital Corporation Limited. On 10th May 1991, the name of the Company was changed to DCC Limited. The Company was re-registered under the Companies Acts, 1963 to 1990 (being the legislation under which the Company operates) as a public limited company on 19th March 1994 with the name DCC public limited company.
- (b) On 12th May 1991, the authorised share capital of the Company was 18,000,000 ordinary shares of IR£1 each of which 13,374,465 ordinary shares of IR£1 each were issued fully paid and 107,201 ordinary shares of IR£1 each were issued IR1p paid.
- (c) During the three years immediately preceding the date of this document, the Company made the following issues of shares and the following payments in respect of partly paid shares took place:-
  - (i) On 24th September 1991, the Company issued 45,000 ordinary shares of IR£1 each at IR£2.43 per share and 10,000 ordinary shares of IR£1 each at IR£3.79 per share on the exercise of certain executive share options. The aggregate amount realised was IR£147,250.
  - (ii) On 21st October 1991, the Company issued 394 ordinary shares of IR£1 each at IR£3.79 per share on the exercise of certain executive share options. The aggregate amount realised was IR£1,493.
  - (iii) On 13th December 1991, the Company issued 8,500 ordinary shares of IR£1 each at IR£2.81 per share on the exercise of certain executive share options. The aggregate amount realised was IR£23,885.
  - (iv) On 29th April 1992, the Company issued 35,000 ordinary shares of IR£1 each at IR£5.00 per share and 10,000 ordinary shares of IR£1 each at IR£6.83 per share on the exercise of certain executive share options. The aggregate amount realised was IR£243,300.
  - (v) On 15th October 1992, the Company issued 36,000 ordinary shares of IR£1 each at IR£2.92 per share on the exercise of certain executive share options. The aggregate amount realised was IR£105,120.
  - (vi) On 15th October 1992, an amount of IR£29,100 was subscribed in respect of 10,000 partly paid ordinary shares of IR£1 each which thereupon became fully paid.
  - (vii) On 19th February 1993, the Company issued 4,000 ordinary shares of IR£1 each at IR£2.81 per share and 10,000 ordinary shares of IR£1 each at IR£3.79 per share on the exercise of certain executive share options. The aggregate amount realised was IR£49,140.
  - (viii) On 22nd June 1993, the Company issued 150,000 ordinary shares of R£1 each to various executives pursuant to its Employee Partly Paid Share Scheme with IR1p being paid up thereon. These shares were issued at a variable premium with the maximum amount payable thereon being IR£9.50 per share (including IR1p paid on issue).
  - (ix) On 10th January 1994, the Company issued 180,500 ordinary shares of IR£1 each to various executives pursuant to its Employee Partly Paid Share Scheme with IR1p being paid up thereon. These shares were issued at a variable premium with the maximum amount payable thereon being IR£10.00 per share (including IR1p paid on issue).
  - (x) On 30th March 1994, the Company issued 920,400 Ordinary Shares of IR20p each at IR56.2p per share on the exercise of certain executive share options. The aggregate amount realised was IR£517,265.
  - (xi) On 30th March 1994, an amount of IR£21,554 was subscribed in respect of 38,490 partly paid ordinary shares of IR20p each which thereupon became fully paid.
  - (xii) On 21st April 1994, the Company issued 349,990 Ordinary Shares of IR20p each at IR£2.40 per share to a total of 60 persons being either directors or employees of companies which are subsidiaries or associated companies of the Company or in respect of which the Group holds an option to subscribe for shares. The aggregate amount realised was IR£839,976.
  - (xiii) On 29th April 1994, the Company issued 603,703 Ordinary Shares of IR20p each credited as fully paid up to certain shareholders in Fannin in consideration of their transferring to the Company 31,087 fully paid ordinary shares of IR£1 each in Fannin, thereby increasing the Company's shareholding in Fannin to 83.7%.
  - (d) At an extraordinary general meeting of the Company held on 10th March 1994 resolutions were passed for the following purposes:-
    - (i) authorising the re-registration of the Company as a public limited company pursuant to Section 9 of the Companies (Amendment) Act, 1983;
    - (ii) adopting revised Articles of Association;
    - (iii) sub-dividing each existing ordinary share of IR£1 (whether issued or unissued) into five Ordinary Shares of IR20p each;



- (iv) increasing the authorised share capital of the Company from IR£18,000,000 to IR£30,000,000 by the addition of the sum of IR£12,000,000 divided into 60,000,000 Ordinary Shares of IR20p each;
- (v) amending the objects clause in the Memorandum of Association of the Company;
- (vi) generally and unconditionally authorising the Directors for the purposes of section 20 of the Companies (Amendment) Act, 1983 to exercise all the powers of the Company to allot relevant securities up to an aggregate nominal amount of IR£4,700,000 representing approximately one third of the issued share capital of the Company at the date of the above-mentioned extraordinary general meeting, with such authority to expire on the expiry of a period of 5 years from the date of the passing of the relevant resolution unless previously revoked or varied;
- (vii) empowering the Directors pursuant to section 24 of the Companies (Amendment) Act, 1983 to allot equity securities for cash pursuant to the authority referred to in subparagraph (vi) above as if section 23(1) of that Act did not apply with such power being restricted to the allotment of equity securities in connection with the Listing where the aggregate nominal amount of the equity securities allotted does not exceed IR£4,700,000, such power to expire on 31st December 1994; and
- (viii) empowering the Directors pursuant to section 24 of the Companies (Amendment) Act, 1983 to allot equity securities for cash pursuant to the authority referred to in subparagraph (vi) above as if section 23(1) of that Act did not apply with such power being restricted to the allotment of equity securities in connection with a rights issue and the allotment (otherwise than in connection with a rights issue or pursuant to the power referred to in subparagraph (vii) above) of equity securities up to an aggregate nominal amount of IR£698,553 being 5% of the issued share capital of the Company at the date notice of the above-mentioned extraordinary general meeting was given. This power expires on the conclusion of the next annual general meeting of the Company.
- (e) Options have been granted by the Company to employees (including executive directors) of the Company and remain outstanding over 2,848,230 Ordinary Shares. Options over 2,450,200 of those shares were granted under the DCC Executive Share Option Scheme summarised in paragraph 5(b). The outstanding options over the balance of 398,030 shares were granted under earlier executive share option arrangements and may be exercised at prices between IR62p and IR75.8p per share at various times up to 17th February 1996.
- (f) Immediately following the completion of the Placing and assuming no exercise of options over Ordinary Shares and no payment up of partly paid Ordinary Shares prior thereto:-
  - the authorised share capital of the Company will be IR£30,000,000 divided into 150,000,000 Ordinary Shares of IR20p each of which 74,729,393 will be issued;
  - (ii) 72,629,378 of the issued Ordinary Shares will be fully paid and the remaining 2,100,015 will be IR0.2p paid.

Of these partly paid shares, 1,652,500 were issued under the DCC Employee Partly Paid Share Scheme summarised in paragraph 5(a). The balance of 447,515 partly paid shares were issued under earlier executive partly paid share schemes. Details of these issues are as follows:

No. of Shares	Total amount payable (inclusive of IR0.2p paid)	Latest date payable
194.890	IR100p	19th Sep 1996
128,655	IR180p	30th Sep 1998
123,970	1R221 <sub>P</sub>	10th Nov 1999
750,000	a maximum of IR190p	22nd Jun 2003
902,500	a maximum of IR200p	10th Jan 2004

- (g) During the three years immediately preceding the date of this document:- (i) no share or loan capital of the Company or any of its subsidiaries has been issued apart from intra-group issues by wholly owned subsidiaries and pro rata issues by partly owned subsidiaries and save as disclosed in paragraphs 1(c) above and 2(b) below; and (ii) no commissions, discounts, brokerages or other special terms have been granted by the Company or any of its subsidiaries in connection with the issue or sale of any share or loan capital otherwise than in connection with the Placing as described in paragraph 12 below.
- (h) Save in connection with the Placing and save as disclosed in paragraph 1(e) above and in paragraphs 2(c) and (d) below, no share or loan capital of the Company or any subsidiary is proposed to be issued for cash or other consideration or is under option or is agreed conditionally or unconditionally to be put under option.
- (i) The provisions of section 23(1) of the Companies (Amendment) Act, 1983 (which, to the extent not disapplied pursuant to section 24 of that Act, confer on shareholders rights of pre-emption, pro rata to their shareholdings, in respect of the allotment of equity securities which are, or are to be, paid up in cash, excluding shares allotted to employees under an employees' share scheme as defined in section 2 of that Act) apply to the authorised but unissued share capital of the Company to the extent not disapplied as described in paragraph 1(d)(vii) and (viii) above.
- (j) The Ordinary Shares in issue or to be issued are and will be in registered form.



# SUBSIDIARIES AND ASSOCIATED COMPANIES

(a) The names, countries of incorporation and principal activities of the principal subsidiaries and associated companies of the Group and the percentages of capital held directly or indirectly by the Company in such companies are as set out below:

Сотрану	Principal Activity	Country of Incorporation	% Holding
Holding Companies - Subsidiaries  DCC Corporate Partners Limited	Investment holding company	Republic of Ireland	100.00
S & L Investments Limited	Investment holding company	Republic of Ireland	100.00
Vencap Investors Limited	Investment holding company	Republic of Ireland	100.00
DCC Holdings (UK) Limited	Holding company	England and Wales	100.00
D.C.C. International Holdings B.V.	Investment holding company	The Netherlands	100.00

			_
Corporate Advisory and Investment (	Companies - Subsidiaries		
DCC Corporate Finance Limited	Corporate advisory services	Republic of Ireland	100.00
DCC Corporate Finance Limited	Corporate advisory services	England and Wales	100.00
D.C.C. Limited	Investment company	Isle of Man	100.00

	ompanies		
Subsidiaries -	Investment holding company	Republic of Ireland	80.00
Dare plc	miserment worting comband	•	
Kelkin Naturproducts Limited	Marketing and distribution of	Republic of Ireland	80.00
CERTI (Varut productio Emiliano	branded health food products		
	Marketing and distribution of	Republic of Ireland	80.00
Robt. Roberts Limited	branded food and beverage products		
	•	n 12:(7:34	80.00
Wardell Roberts Limited	Holding company	Republic of Ireland	OU.UU
Healthilife (Holdings) Limited	Marketing and distribution of	England and Wales	80.00
,	vitamins and food supplements		
Associated Companies			
	m	Republic of Ireland	26.32
Allied Foods Limited	Distribution of frozen and chilled foods	republic of fictured	20102
	Distribution of fresh produce	Republic of Ireland	10.91
Fyffes plc	DIRITION OF HEM Produce	<b>r</b> ·	
KP (Ireland) Limited	Manufacture of snackfoods	Republic of Ireland	40.00

<sup>\*</sup> The Company and a wholly owned subsidiary hold 10.91% of the ordinary shares of Fyffes. In addition, the Company holds 8.14% of the IR8.25p (net) Convertible Cumulative Preference Shares of Fyffes. If all of the IR8.25p (net) Convertible Cumulative Preference Shares of Fyffes in issue were converted into ordinary shares, the Company would hold 10.45% of the ordinary shares of Fyffes.

KP (Ireland) Limited is 50% owned by Wardell Roberts Limited, a subsidiary of the Company, resulting in a Groupcontrolled interest of 50%.



Сотрану	Principal Activity	Country of Incorporation	% Holding
Energy - Subsidiaries and Associa	rted Company		
Subsidiaries			
Emo Oil Limited	Fuel oil distribution Waste oil recycling	Republic of Ireland	75.00
Powerimpact plc	Investment holding company	England and Wales	80.00
Flogas plc	Holding company	Republic of Ireland	54.16*
Flogas Ireland Limited	Marketing and distribution of liquefied petroleum gas	Republic of Ireland	54.16*
Flogas (NI) Limited	Marketing and distribution of liquefied petroleum gas	Northern Ireland	54,16*
Flogas U.K. plc	Marketing and distribution of liquefied petroleum gas	' England and Wales	54.16*
30.6% by Powerimpact plc, the Limited, Flogas (NI) Limited an	as plc is held as to 29.7% by the Company and t e Company's subsidiary, resulting in a Group d Flogas U.K. plc are wholly owned subsidiaries	o-controlled interest of 60.3%.	liaries and as to Flogas Ireland
Associated Company		E-sleed and Walso	22.31**
Greenway Holdings Plc	Holding company for companies involved in the collection and reprocessing of waste oil	England and Wales	ZZ,31***

Print and Publishing - Subsidiaries an	d Associated Company )		
Subsidiaries			
Ochil plc	Investment holding company	Republic of Ireland	75.02
Printech International pic	Holding company	Republic of Ireland	75.02
Printech Ireland Limited	Computer documentation printing	Republic of Ireland	75.02
Associated Company			
John Hinde International Limited	Publishing and printing of view cards	Republic of Ireland	26.81

Computer Products Distribution -	Subsidiaries -		
Sharptext Group Limited	Holding company	<ul> <li>Republic of Ireland</li> </ul>	83.00*
Sharptext Limited	Computer and office products distribution	Republic of Ireland	83.00*
. Micro Peripherals Limited	Computer products distribution	England and Wales	83.00*

<sup>\*</sup> The Company's holding in Sharptext Group Limited consists of ordinary shares representing 76.8% of the ordinary share capital and all of the cumulative convertible preference shares, which if fully converted into ordinary shares would result in a holding of 83% of the ordinary shares. The 4% cumulative convertible preference shares carry similar income rights and rights on winding up to ordinary shares but do not carry voting rights. They are convertible into ordinary shares on a one for one basis in a number of circumstances, principally on a flotation or sale of Sharptext Group Limited.

Subsidiaries			
Fannin Limited	Manufacture and distribution of healthcare products	Republic of Ireland	83.69
The Genito-Urinary Manufacturing Company Limited	Manufacture and distribution of healthcare products	England and Wales ,	83.69
M. Casey Limited	Manufacture and distribution of healthcare products	Republic of Ireland	42.68*
* M. Casey Limited is 51% owned by Pa	annin and accordingly is a subsidiary of th	e Company.	
Associated Company			
HealthDrive Corporation	Provision of healthcare services	United States	47.52*

<sup>\*\*</sup>The Group's holding in HealthDrive Corporation consists of 27.75% of the common stock, all of the Class A Convertible Preferred Stock and all of the Class B Convertible Preferred Stock. The Class A and Class B Stock, which is convertible at any time would, if converted, result in a Group holding of 47.52%.



Company	Principal Activity	Country of Incorporation	% Holding
Other Associated Companies Broderick Holdings Limited	Equipment supplier to food manufacturing and catering industries	Republic of Ireland	41.17
Capco Holdings Limited Manor Park Homebuilders Limited	Building products distribution Residential house builder	Republic of Ireland Republic of Ireland	17.96 34.30

### REGISTERED OFFICES

The registered offices of the subsidiaries of the Company listed above are as follows:

Holding, corporate advisory and investment companies

Republic of Ireland subsidiaries DCC House, Stillorgan, Blackrock, Co. Dublin.

England and Wales subsidiaries Audrey House, 15/20 Ely Place, London EC1N 6SN.

Isle of Man subsidiary 33/37 Athol Street, Douglas, Isle of Man.

Netherlands subsidiary Prinses Irenestraat 61, 1077 WV Amsterdam, The Netherlands. Energy - subsidiaries

Emo Oil Limited, Clonminam Industrial Estate, Portlaoise, Co. Laois.

Powerimpact plc, Audrey House, 15/20 Ely Place, London EC1N 6SN.

Flogas plc, Flogas Ireland Limited, Dublin Road, Drogheda, Co. Louth.

Flogas U.K. plc, Merrylces, Leicestershire LE9 9FE.

Flogas (NI) Limited, Airport Road West, Sydenham, Belfast BT3 9DZ. Computer Products Distribution subsidiaries

Sharptext Group Limited, Sharptext Limited, 1 Airton Close, Tallaght, Dublin 24.

Micro Peripherals Limited, 4 Petre Road, Clayton Park, Clayton-le-Moors, Accrington, Lancashire BB5 5JP.

#### Food - subsidiaries

Oare plc, Wardell Roberts Limited, Robt. Roberts Limited, 79 Broomhill Road, Tallaght, Dublin 24.

Kelkin Naturproducts Limited, Tallaght Business Park, Whitestown, Tallaght, Dublin 24.

Healthilife (Holdings) Limited, Charlestown House, Baildon, Shipley, West Yorkshire BD17 7JS. Dublin Industri

Fannin Limited, 106 Lagan Road, Dublin Industrial Estate, Glasnevin, Dublin 11.

Healthcare - subsidiaries

The Genito-Urinary Manufacturing Company Limited, 841 Coronation Road, Park Royal, London NW10.

M. Casey Limited, 4 Lower Dundrum Road, Dublin 14.

Print and Publishing subsidiaries

Ochil plc, Printech International plc, Printech Ireland Limited, Cloverhill Industrial Estate, Clondalkin, Co. Dublin.



- (b) The following issues of shares and loan capital by subsidiaries of the Company (not being intra-Group issues by wholly owned subsidiaries or pro rata issues by partly owned subsidiaries) have taken place within the three years immediately preceding the date of this document:
  - (i) Between December 1992 and February 1993, Ochil plc issued 4,000,000 ordinary shares of IRE1 each to the Company at par. On 22nd February 1993, Ochil plc issued 1,000,000 ordinary shares of IRE1 each at par as follows:

Persons to whom issued	No. of shares
Brian Stokes	700,000
Kevin Henry	125,000 (IR1p paid)
Ultan Reilly	125,000 (IR1p paid)
Con O'Grady	50,000 (IR1p paid)

All of the above persons are members of the management of Printech, a subsidiary of Ochil plc. The partly paid shares were subscribed pursuant to the Ochil plc Directors' Share Subscription Scheme outlined in paragraph 5(c)(ix) below.

On 23rd February 1993, Ochil plc entered into an instrument constituting IR£3,786,454 Variable Rate Loan Notes 1999 which were issued at par in consideration of the transfer to it of shares in Printech. Of these loan notes, a total of IR£3,778,098 has since been redeemed. These loan notes are guaranteed by Bank of Ireland.

On the same date, Ochil plc entered into a further instrument (amended on 5th January 1994) constituting IR£10,610,429 Secured Loan Notes which were issued at par on that date as to IR£785,717 to Brian Stokes, IR£794,559 to Colette Stokes and the balance to the Company. Of these loan notes, a total of IR£896,000 has since been redeemed and a further like amount has been issued at par to The Scottish Provident Institution.

(ii) Between December 1992 and February 1993, Oare plc issued 2,400,000 ordinary shares of IR£1 each to the Company at par. On 26th February 1993, Oare plc issued 600,000 ordinary shares of IR£1 each at par as follows:

Persons to whom issued	No. of shares	
Ken Peare	272,700	
John O'Rourke	190,800	
Čhris Szymanski	136,500	

All of the above persons are members of the management of subsidiary companies of Oare plc.

On 18th February 1993, Oare plc and the Company entered into an instrument constituting IR£4,000,000 Guaranteed Variable Rate Loan Notes 1993 - 2013 and subsequently issued IR£1,548,560 of such loan notes at par in consideration of the transfer to it of shares in Wardell. Of these loan notes, a total of IR£677,941 has since been redeemed. These loan notes are guaranteed by Ulster Investment Bank Limited and by DCC.

By instruments dated 18th February 1993 and 9th March 1993, Oare plc constituted IR£18,800,000 15% Secured Loan Notes 1999 to 2003 of which IR£10,800,000 and IR£1,146,466 were issued at par to the Company on 26th February 1993 and in the year to 31st March 1994 respectively. Further loan notes under these instruments are issuable only to the Company or its subsidiaries.

(iii) Between August and September 1993, Powerimpact plc issued 200,000 ordinary shares of Stg£1 to DCC Holdings (UK) Limited at par. On 15th September 1993, Powerimpact plc issued 50,000 ordinary shares of Stg£1 each at par as follows:

Persons to whom issued	No. of shares	
Eugene Quigley	11,000	
Colman O'Keeffe	8,500	
Patrick Kilmartin	8,500	
Samuel Chambers	8,500	
Patrick Mercer	8,500	
John Ahern	5,000	

All of the above persons are members of the management of Flogas, whose holding company is the Company.

On 17th September 1993, Powerimpact plc entered into an instrument constituting IR£1,507,725 Variable Rate Loan Notes 2000 which were issued at par in consideration of the transfer to it of Flogas Units, all of which loan notes remain outstanding. These loan notes are guaranteed by Bank of Ireland.

By a further instrument dated 17th September 1993, Powerimpact plc constituted Fixed Rate Secured Loan Notes of which IR£23,103,100 was issued at par to the Company on 17th September 1993 and a further IR£130,030 on 31st March 1994.

(iv)	F)ogas issued Flogas U	nits as follows:-		
	Date	No. of units	Price per unit	Persons to whom issued
	23rd Oct 1991	18,855	IR230p	Trustees of Flogas 1987 Profit Sharing Schemes
•	24th Nov 1992	21,553	IR211p	Trustees of Flogas 1987 Profit Sharing Schemes
	17th Sep 1993	154,800	Stg225p/IR2 <del>4</del> 5p	Executives under Flogas 1987 Executive Share Option Scheme
	22nd Nov 1993	14,023	IR295p	Trustees of Flogas 1987 Profit Sharing Schemes
(v)	Printech issued ordina	ry shares of IR5p each as	follows:-	
	Date	No. of shares	Price per share	Persons to whom issued
	Various dates in 1991	104,500	Between IR60p and IR70p	Executives under the Printech International plc Director and Employee Share Option Scheme
•	12th Feb 1993	640,380 21,000 219,200 208,500	IR40.2p IR60p IR55p IR70p	Executives under the Printech International plc Director and Employee Share Option Scheme in connection with the offer for Printech by Ochil plc
(vi)	Wardell issued ordina	ary shares of IR10p each a	as follows:-	
	Date	No. of shares	Price per share	Persons to whom issued
	12th Jun 1991	16,134	[R100p /	Vendors of Healthilife (Floldings) Limited
	7th Aug 1991	2,000	TR45p	Executive under the Wardell Roberts PLC 1986 Executive Share Option Scheme
-	16th Oct 1991	500,000	IR109.25p	UB Investments plc
	22nd Jun 1992	150,000	IR45p	Executive under the Wardell Roberts PLC 1986 Executive Share Option Scheme
	18th Feb 1993	584,958	Between IR45p and IR73p ,	Executives under the Wardell Roberts PLC 1986 Executive Share Option Scheme in connection with the offer for Wardell by Oare plc
(v:	ii) Emo Oil issued shar	es as follows:-		
,	Date	No. of shares	Price per share	Persons to whom issued
	13th Dec 1991	538,614 "B" preference shares of 10p each	IR101p	Vencap Investors Limited (a wholly owned subsidiary of the Company)
	20th Apr 1993	934,056 convertible shares of 10p each	)R53.5p	Vencap Investors Limited
(7	viii) Sharptext Group is	sued ordinary shares of I	R10p each as follows:-	
	Date	No. of shares	Price per share	Persons to whom issued
	29th Dec 1992	176,506	. IR127.5p	The Company
. (	ix) Fannin issued ordi	, inary shares of IR£1 each	as follows:-	
	Dale	No. of shares	Price per share	Persons to whom issued
	29th Apr 1994	24,889	FRE46.61	Vendors of 26% of M. Casey Limited



- (c) The following shares in the capital of subsidiaries of the Company are under option:
  - (i) Flogas
    On 5th December 1989, in connection with the acquisition of Ergas Limited and Ergas (N.I.) Limited, Flogas granted to
    Nanking Limited, a subsidiary of Royal Dutch Shell Group, for a nominal consideration, an option to subscribe for 770,000
    ordinary shares of IR10p each in Flogas (subject to adjustment in certain circumstances) at IR£2.60 per share exercisable at
    any time before 4th December 1994. At the time of the partial offer by Powerimpact plc (a subsidiary of the Company) for
    Flogas, the option over 43% of these shares was purchased by Powerimpact plc.

Options are exercisable over 1,047,647 ordinary shares of IR10p in the capital of Flogas at prices from IR245p to IR285p (Stg225p to Stg271p). These options were granted to Flogas executives for a nominal consideration on various dates in 1991 and 1993 under the Flogas 1987 Executive Share Option Scheme and are exercisable during a period of 10 years from their date of grant.

The issued share capital of Flogas at the date hereof is 24,617,756 ordinary shares of IR10p each.

(ii) Ochil plc Options exercisable at par no earlier than 1st January 1996 and no later than 31st December 2002 over a total of 75,000 ordinary shares of IR£1 each in the capital of Ochil plc were granted for a nominal consideration to two executives of Printech under a subscription and option agreement dated 5th January 1994.

The Company has been granted an option, for a nominal consideration, entitling it, if either of the above options is exercised, to subscribe for such additional number of ordinary shares in Ochil plc as will bring its nominal holding to the greater of 75.01% of the issued share capital of Ochil plc and the percentage it held before exercise of the option. The subscription price per share under such option is the greater of IR£1 and the market value of such shares at the time of exercise.

The issued share capital of Ochil plc at the date hereof is 5,000,000 ordinary shares of IRE1 each.

(iii) Sharptext Group Under the 1989 Share Option Scheme of Sharptext Group, options exercisable over 60,000 ordinary shares of IR10p each in Sharptext Group for periods of 10 years from each date of grant were granted to executives of Sharptext Group for a nil consideration as follows:-

Date of Grant	No. of shares	Price per share
Mar 1989	40,000	IR£5.93
Ian 1990	20,000	IR£10.80

In addition, in March 1989 an option exercisable over 10,000 ordinary shares in Sharptext Group at a price of IR£5.93 per share was granted for a nominal consideration to the company's chairman under a separate 5 year option agreement. It has been agreed to replace this agreement with an option arrangement for a further 5 years on similar terms. DCC has the option to subscribe for 5% of the enlarged share capital of Sharptext Group on the sale or listing of that company.

Under the 1992 Share Option Schemes of Sharptext Group and Micro P, options exercisable over 39,500 ordinary shares in Sharptext Group for a period of 7 years were granted to executives of Sharptext Group in April 1993 for a nil consideration at a price of IR£9.50 per share.

It is anticipated that the number of shares under option in Sharptext Group and the price per share will be adjusted as a consequence of the issue of shares referred to in paragraph 2(b) (viii) above. Such an adjustment is provided for in the relevant schemes but has not yet been implemented.

The issued share capital of Sharptext Group at the date hereof is 860,946 ordinary shares of IR10p each and 315,760 4% cumulative convertible preference shares of IR10p each.

(iv) Emo Oil Under the Executive Share Option Scheme of Emo Oil, options were granted to executives of Emo Oil on 5th May 1989 for a nominal consideration over 150,000 ordinary shares of IR10p each in Emo Oil exercisable at a price of IR95.24p per share for a period of 10 years from the date of grant. An option on terms similar to the Executive Share Option Scheme of Emo Oil was granted to an executive of Emo Oil on 31st March 1994 for a nominal consideration over 112,084 ordinary shares of IR10p each in Emo Oil at a price of IR89.2p per share. This option is exercisable up to 18th December 2000.

Thomas Kirrane, the managing director of Emo Oil, holds an option, granted at a nominal consideration, to purchase from Vencap Investors Limited 90,000 ordinary shares of IR10p each in Emo Oil at IR95.24p per share. This option is exercisable up to 5th December 1998.

If any of the foregoing options is exercised, the Company is entitled to restore its shareholding to 75% of the shares in Emo Oil by purchasing an appropriate number of shares from the other shareholders at their then market value.

The issued ordinary share capital of Emo Oil at the date hereof is 6,164,739 ordinary shares of IR10p each.

- (d) The Group has entered into various agreements with the minority shareholders in Emo Oil, Oare plc, Ochil plc and Powerimpact plc under which:
  - the minority shareholders (except for one shareholder in Ochil pic) in any such company may require the Group to purchase or the Group may require those minority shareholders to sell to it their minority shareholdings in such company, at various times in the period 1996 to 1998 inclusive at a price equal to the open market value thereof as determined (in the absence of agreement) by reference to the average of two external valuations conducted respectively by a firm of chartered accountants and by a merchant bank; the purchase price thus determined may be paid by way of cash or (at the option of the minority shareholders) be satisfied by way of the issue of fully paid Ordinary Shares in the Company at the then prevailing market price per share or (in certain instances) by way of the issue by the Company of loan notes.



- (ii) The minority shareholders in Ochil plc or certain of them were also granted options whereunder they can require the Group to purchase or the Group may require those minority shareholders or certain of them to sell to it their entire minority shareholding in certain other circumstances principally relating to termination of employment and to flotation of the Company; and
- (iii) the minority shareholders in each of those companies have been granted various minority protections, principally certain rights to be represented on the board of such companies and certain vetoes on changes by those companies including major changes to their respective businesses or those of their subsidiaries.

# 3. DIRECTORS' AND OTHER INTERESTS

- (a) The interests of the Directors (including persons connected with them) in the share capital of the Company as of the date hereof, and as they will be following completion of the Placing, as required to be shown by the register maintained under section 59 of the Companies Act, 1990, are and will be as follows:-
  - Summary of position at the date of this document

	No. of Ordinary Shares		No. of Ordinary	
	Fully Paid	Partly Paid	Shares under option	
Alex Cooks	10,000	Nil	Nil	
Alex Spain lim Flavin	977,320	890,330	950,000	
Morgan Crowe	394,210	167,855	350,100	
Patrick Gallagher	Nîl	Nil	Nil	
David Gavagan	275,500	169,670	350,100	
Desmond McGuane	5,000	Nil	Nil	

All of the above interests are beneficially owned.

Summary of position following completion of the Placing

	No. of Ordinary Shares )		No. of Ordinary	
	Fully Paid	Partly Paid	Shares under option	
Alex Spain Jim Flavin Morgan Crowe Patrick Gallagher David Gavagan Desmond McGuane	10,000 805,000 334,210 Nil 210,500 5,000	Nil 890,330 167,855 Nil 169,670 Nil	Nil 950,000 350,100 Nil 350,100 Nil	

All of the above interests will be beneficially owned

(iii) Partly paid Ordinary Shares

The following are the details of partly paid Ordinary Shares which are held by Directors and were issued to them under the DCC Employee Partly Paid Share Scheme referred to in paragraph 5(a) below or under previous schemes:-

	No. of partly	Total amount payable	Latest date
Holder	paid Ordinary Shares	(inclusive of IR0.2p paid)	payable
Jim Flavin	162,830	IR100p	19th Sep 1996
	115,000	IR180p	30th Sep 1998
	112,500	IR221p	10th Nov 1999
	125,000	a maximum of IR190p	22nd Jun 2003
	375,000	a maximum of IR200p	10th Jan 2004
Morgan Crowe	890,330 11,865 2,995 2,995 50,000 100,000	IR100p IR180p IR221p a maximum of IR190p a maximum of IR200p	19th Sep 1996 30th Sep 1998 10th Nov 1999 22nd Jun 2003 10th Jan 2004
David Gavagan	167,855 11,865 4,995 2,810 50,000 100,000 169,670	IR100p IR180p IR221p a maximum of IR190p a maximum of IR200p	19th Sep 1996 30th Sep 1998 10th Nov 1999 22nd Jun 2003 10th Jan 2004

(iv) Options over Ordinary Shares

The following options, details of which are shown in the register maintained under Section 59 of the Companies Act, 1990, have been granted to Directors over Ordinary Shares and are outstanding pursuant to the DCC Executive Share Option Scheme referred to in paragraph 5(b) below or pursuant to previous executive share option arrangements:



Holder	No. of Ordinary Shares under option	Exercise Price	Latest date for exercise
	-	YO DE D.	17th Feb 1996
Jim Flavin	150,000	IR 75.8p	
	200,000	IR100.0p	23rd Oct 1996
	250,000	IR136.6p	18th Feb 1998
	125,000	1R200.0p	15th Feb 1999
	225,000	R200.0p	14th Feb 2001
	950,000	•	
Morgan Crowe	100,000	IR 62.0p	13th May 1995
111010411	100,100	IR100.0p	23rd Oct 1996
	50,000	1R136.6p	18th Feb 1998
	100,000	IR200.0p	14th Feb 2001
	350,100	•	
David Gavagan	125,100	IR100.0p	23rd Oct 1996
	100,000	IR136.6p	18th Feb 1998
	50,000	IR200.0p	15th Feb 1999
	75,000	IR200.0p	14th Feb 2001
	350,100		_

<sup>\*</sup>The consideration for the grant of the options (as distinct from the exercise price) was nominal in each case.

- (b) The following interests (excluding shares held in a nominee capacity for other members of the Group) are held by Directors in the share capital of subsidiaries of the Company:
  - (i) Jim Flavin has a non-beneficial interest in 3,420 Flogas Units in his capacity as administrator of an estate.
  - (ii) Desmond McGuane has a beneficial interest in 321 Flogas Units.

Mr. Flavin and Mr. McGuane disposed of a non-beneficial interest in 2,580 Flogas Units and a beneficial interest in 290 Flogas Units respectively pursuant to the partial offer for Flogas Units made by Powerimpact plc referred to in paragraph 11 (c) (i). Mr. Flavin disposed of a non-beneficial interest in 20,000 ordinary shares in Wardell pursuant to the offer for the shares in Wardell made by Oare plc referred to in paragraph 11(b)(i).

- (c) Save as disclosed above, none of the Directors (nor any person connected with them) has any interest in the share capital of the Company or of any of its subsidiaries.
- (d) Details of those shareholdings which, insofar as the Company is aware, at present amount or, following completion of the Placing, will amount to 3% or more of the Company's issued share capital are as follows:-

• •	Ordinary Shares Held	As at the date of this document %	Following Placing %
Irish Life Assurance plc	8,534,365	11.90	11.42
IBI Nominees Limited	8,157,915	11.37	10.92
Norwich Union Life Insurance Society	6,906,650	9.63	9.24
3i International Holdings	4,721,155	6.58	6.32
Priends Provident Life Assurance Company Limited	4,310,695	6.01	5. <i>77</i>
Standard Life Assurance Company	4,300,000	6.00	5.75
Guinness Ireland Pension Scheme	4,179,635	5.83	5.5 <del>9</del>
University of Dublin Trinity College, Pension Fund	3,106,520	4.33	4.16
University College Dublin Pension Scheme	2,992,715	4.17	4.00
Phildrew Nominees Limited	2,500,000	3.49	3.35
Irish Airlines Pensions Limited	2,283,010	3.18	3.06

- (e) Apart from the shareholdings specified in paragraph (d) above, the Directors are not aware of any shareholding which at present or after completion of the Placing amounts or is expected to amount to 3% or more of the Company's issued share capital.
- (f) The aggregate emoluments (including pensions and benefits in kind) of the Directors paid by members of the Group in respect of the Company's financial year ended 31st March 1994 were IR£516,000. It is estimated that the aggregate emoluments of the Directors for the current financial year ending 31st March 1995 under the arrangements in force at the date of this document will be approximately IR£588,000.
- (g) Save as disclosed in paragraph (b) above, none of the Directors has or has had any direct or indirect interest in any assets which during the two years immediately preceding the date of this document have been acquired or disposed of by or leased to the Company or any of its subsidiaries or are proposed to be acquired, disposed of by or leased to the Company or any of its subsidiaries.



- None of the Directors has any direct or indirect interest in any contract or arrangement existing at the date hereof which is significant in relation to the business of the Company or any of its subsidiaries taken as a whole.
- No Director has or had an interest in a transaction which is or was unusual in its nature or conditions or significant to the business of the Group and which was effected by the Company or any of its subsidiaries during the current or immediately preceding financial year or was effected during an earlier financial year and remains in any respect outstanding or unperformed.
- Apart from the employee house loans specified below, there are no outstanding loans by any member of the Company to any of the Directors nor has any member of the Group provided any guarantees for their benefit.

Director

Amount outstanding at the date of this document

Jim Flavin Morgan Crowe David Gavagan

IR£63,668 IR£40,059 IR£69,122

DIRECTORS' SERVICE AGREEMENTS

- On 15th February 1991, the Company entered into a service agreement with Jim Flavin whereby he would serve as Chief Executive of the Company for a period of seven years from that date upon terms that thereafter the agreement may be terminated by the Company on giving 12 months' prior written notice or by Mr. Flavin on giving six months' prior written notice. The agreement provided for an initial salary of IR£120,000 per annum (since revised to IR£180,000) subject to annual review by the Board and for a bonus of 5% of salary per annum.
- There are no other existing or proposed service agreements between any of the Directors and the Company or any subsidiary which cannot be terminated by the employing company without payment of compensation (other than statutory compensation) within one year.

EMPLOYEE SHARE SCHEMES

DCC Employee Partly Paid Share Scheme ("the Scheme") On 22nd June 1993 the Company adopted an Employee Partly Paid Share Scheme for executive directors and employees of the Company and of its subsidiaries to replace the Option Scheme described under paragraph (b) below.

The principal features of the Scheme are set out below:-

- The Scheme is available to any executive (i.e. a director of the Company or a subsidiary who is required to devote substantially the whole of his time to the service of the Company and/or its subsidiaries or an employee of the Company or a subsidiary who is required to devote not less than 20 hours per week to the service of the Company or a subsidiary) who shall be nominated for the purpose of participation in the Scheme by the Board or a duly authorized committee thereof.
- The nominal value of shares which may be allotted on any day pursuant to the Scheme shall not when added to the nominal value of partly paid shares previously issued under the Scheme (whether or not these remain partly paid or have been fully paid up) exceed 5% of the ordinary share capital of the Company in issue (whether fully or partly paid) immediately prior to that day.
- (iii) The nominal value of shares which may be allotted on any day pursuant to the Scheme shall not when added to the nominal value of:
  - any shares issued under the Scheme within the period of 10 years prior to that day; and A.
  - any shares issued or any options granted within the period of 10 years prior to that day under any executive share option scheme or employees' share scheme of the Company adopted on or after 9th March 1994;

exceed 10% of the ordinary share capital of the Company in issue (whether fully or partly paid) immediately prior to that

- (iv) The nominal value of shares which may be allotted on any day pursuant to the Scheme shall not, when added to the nominal value of:
  - any shares issued under the Scheme within the period of 3 years prior to that day; and A.
  - any shares issued or any options granted within the period of 3 years prior to that day under any executive share option scheme or employees share scheme of the Company adopted on or after 9th March 1994;

exceed 3% of the ordinary share capital of the Company in issue (whether fully or partly paid) immediately prior to that day.

(v) Partly paid shares shall not be issued to any executive if, upon the issue of such shares (the "relevant issue"), the value of such shares when taken together with the value of other shares issued to or put under option (pursuant to the Scheme or any other executive share option scheme or employees' share scheme of the Company) in favour of the same executive after 9th March 1994 but within the period of ten years prior to the relevant issue (and which at the date of the relevant issue remain partly paid or, in the case of an option, remain unexercised) would exceed a specified limit being the greatest of IR£100,000, four times the emoluments of the executive in the then current tax year and four times his emoluments for each of certain other periods specified therein.



- (vi) Partly paid shares will be issued under the Scheme at an initial payment of IR1p per share which shall be due for payment upon allotment. Shares will be issued on the basis that they can be paid up in full at any time by the executive holding them. Partly paid shares shall in any event become payable in full on the occurrence of any one of the following:-
  - A. at the call of the Company upon the expiry of 10 years from the date of their issue; or
  - B. at the call of the Company upon the executive holding partly paid shares ceasing to be an employee or director of the Company or of a subsidiary (with a deferment in certain circumstances, including where the Board determines otherwise, until the later of the first anniversary of the cesser and the date three years and six months after the date of issue of the shares but not later than the tenth anniversary of their date of issue). If an executive holding partly paid shares ceases to be an employee or director for reasons other than death, retirement or ill-health and has not previously elected to pay up his shares or if an executive is entitled to or given a deferment in respect of the payment up of partly paid shares and the time period for which such deferment is given expires, the Board is entitled and shall endeavour as agent for that executive to seek a buyer for the partly paid shares held by that executive, in which event the amount payable on call (before deducting the amount already paid) shall be the Jower of the sale price and the Market Price on Issue (as defined below) but not less than the nominal value; or
  - at the call of the Company upon liquidation of the Company; or
  - if a takeover offer made for the entire issued share capital of the Company has become unconditional in all respects and is accepted by an executive in respect of his holding of partly paid shares; or
  - E. if a person making a takeover offer has declared the offer unconditional in all respects and validly serves notice on all non-accepting shareholders under Section 204 of the Companies Act, 1963.
- (vii) Each share will be issued on the basis that the amount payable on the share by the executive shall be determined as follows (provided that the minimum amount shall be its nominal value and the maximum amount, including a variable premium, shall be the Market Price on Issue):-
  - A. if an executive decides at any time to pay up the shares or any of them, the amount payable up will be the lower of the market value at the date upon which the executive serves a notice to that effect and the Market Price on Issue; and
  - B. if the shares require to be paid up at the call of the Company upon the expiry of 10 years from the date of their issue or upon the executive holding the same ceasing to be an employee or director of the Company or of a subsidiary or upon liquidation of the Company, the amount payable up will be the lower of:-
    - the Market Price on Issue, and
    - II. the market value at the date the balance of the subscription price is called by the Company or at the date of liquidation.

The Market Price on Issue of a share shall be:-

- A. the market value of a fully paid Ordinary Share at the date of issue of the partly paid share, as determined by the Board, if the Company is not publicly quoted at the time the shares are issued partly paid; or
- B. the average closing mid-market price of a fully paid Ordinary Share over the 5 preceding business days as derived from The Irish Stock Exchange Daily Official List, if the Company is publicly quoted at the time the shares are issued partly paid.
- (viii) Executives may not transfer any partly paid shares held by them until such shares are fully paid. Dividends shall be paid in respect of partly paid shares in the proportion which the amount paid up on each share bears to its Market Price on Issue.
- (ix) Provision is made in the Scheme as follows for certain adjustments in case of a rights issue by the Company, a sub-division or consolidation of its shares or a bonus issue:-
  - A. in the case of a rights issue, an executive holding partly paid shares will have the option of taking up his pro rata entitlement of shares on the same basis as other shareholders or of having his rights sold nil paid and the proceeds used to subscribe for additional partly paid shares and/or to pay up part of the uncalled balance due per partly paid share in such manner that both the capital value (on a fully paid basis) of the executive's total partly paid shareholding and his unpaid liability in respect thereof are maintained at the levels at which they stood prior to the rights issue and for this purpose the amount of the balance payable on the shares may be adjusted;
  - B. in the case of a sub-division or consolidation, partly paid shares held by executives will be sub-divided or consolidated on the basis that the amounts paid up thereon and the Market Price on Issue will be adjusted pro rata to the adjustment effected by sub-division or consolidation;
  - C. in the case of a bonus issue, it is intended that the executive be entitled to an allotment of further shares in the same proportion (relative to the number of existing shares held) as applies to all other shareholders to the intent that both the capital value of his partly paid shareholding and his unpaid liability in respect thereof are maintained at the levels at which they stood prior to the bonus issue and for this purpose the amount of the balance payable on his partly paid shares may be adjusted.



- (x) The Board may make rules and regulations not inconsistent with the document constituting the Scheme and establish procedures for administration and implementation of the Scheme as it thinks fit.
- (xi) The Scheme may be discontinued at any time by resolution of the Board and may be varied by resolution of the Board subject in the case of certain provisions to the consent of the Company in general meeting provided that no variation shall increase the amount payable by an executive or impose more onerous obligations on any executive.
- (xii) Shares may not be issued under the Scheme later than 22nd June 2003 and may not be issued to an executive who has less than two years of service to complete before his normal retirement date.
- (b) DCC Executive Share Option Scheme (the "Option Scheme")

  Prior to the adoption of the Scheme detailed in subparagraph (a) above, the Company operated an executive share option scheme which dated from 23rd October 1986 ("the Option Scheme"). In view of the adoption of the Scheme, the Board has determined that no further options will be granted under the Option Scheme. However, options over 2,450,200 Ordinary Shares remain outstanding under the Option Scheme and may be exercised at prices between JR100p and IR200p per share at various times up to 14th February 2001.

The principal features of the Option Scheme are set out below:-

- (i) Participation in the Option Scheme was available to any executive who was nominated for the purpose by the Board. For these purposes an executive is any director who was required to devote substantially the whole of his time to the service of the Company or any employee of the Company or of a subsidiary who was required to devote not less than 20 hours a week to the service of the Company or a subsidiary.
- (ii) The number of shares in respect of which options could be granted under the Option Scheme on any day could not, when added to the number of shares which immediately prior to that day remained to be issued pursuant to options so granted or granted by option agreements entered into prior to 6th April 1986, exceed such number of shares as represented 10% of the ordinary share capital of the Company in issue and under option immediately prior to that day.
- (iii) The subscription price at which options may be exercised under the Option Scheme was determined by the Board but could not be less than the market value of a share, as determined by the Directors, or the nominal value of a share, whichever is the greater, provided that if a subscription price so determined should subsequently transpire to be less than the market value of the share at the time of grant of the right, the said subscription price should be increased to that market value.
- (iv) To the extent that they have not been exercised, options will lapse on the earliest of the tenth anniversary of their grant, the expiry of 12 months from the date of death of a participant or such earlier date as the Board may prescribe when giving an executive an invitation to apply for an option under the Option Scheme.
- (v) Options are personal to the participant and may not be transferred, assigned, mortgaged, charged or otherwise disposed of by the participant.
- (vi) The Company may at any time by resolution of the Board vary, amend or revoke any of the provisions of the Option Scheme in such manner as may be thought fit provided always that the purpose of the Option Scheme shall not be altered and provided that no alteration to certain provisions may be made without the consent of the Company in general meeting. No such alteration, amendment or revocation shall increase the amount payable by any participant or otherwise impose more onerous obligations on any participant in respect of the exercise of an option which has already been granted or the transfer of shares issued pursuant to the Option Scheme and no such alteration in the Option Scheme shall take effect until the approval of the Revenue Commissioners (where required) has been obtained.
- (c) Employee Share Schemes of Subsidiaries
  The following is a summary of the employee share schemes currently operated by subsidiaries of the Company.
- (i) Emo Oil Limited Executive Share Option Scheme
  - A. Term of Scheme. Options may not be granted under the scheme more than ten years after the adoption date of 28th April 1989.
  - B. Eligibility. Full time directors of Emo Oil or a subsidiary and employees who are required to devote not less than 20 hours per week to the service of Emo Oil or a subsidiary are eligible to participate on the invitation of the board of Emo Oil.
  - C. Subscription Price per Share. This is determined by the board of Emo Oil but is not to be less than the greater of the nominal value of a share and its market value at the time of grant.
  - D. Limits. Subject to adjustment for certain variations of capital, the number of shares in respect of which options may be granted on any day shall not, when added to the number of shares issued or remaining issuable pursuant to options previously granted under the scheme, exceed 150,000 shares.
  - E. Consideration. The consideration for the grant of an option shall be the sum of IR£1.
  - F. Exercise of Options. Options are capable of being exercised at any time following their grant.
  - G. Lapse of Options. An option shall lapse (to the extent not exercised) on the earliest of the tenth anniversary of its grant date, the expiry of 12 months after the death of the option holder, the date of termination of employment for reasons other than death and such earlier date as the board may prescribe when inviting application for the option.



- H. Amendment and Termination. The scheme may be amended by board resolution, subject in certain circumstances to shareholder approval. The scheme may be terminated by board resolution or by ordinary resolution of the Company. The board of Emo Oil has resolved that no further options shall be granted pursuant to the scheme.
- (ii) Flogas plc 1987 Executive Share Option Scheme
  - A. Term of Scheme. Options may not be granted under the scheme more than 10 years after the adoption date (28th September 1987).
  - B. Eligibility. All full time directors of Flogas or a subsidiary and employees of Flogas or a subsidiary who are required to work for at least 20 hours per week are eligible to participate in the scheme on the invitation of the board of Flogas.
  - C. Subscription Price per Share. This is determined by the board but shall not be less than the nominal value of an ordinary share, the average "business done" quotation of a share on The Irish Stock Exchange Daily Official List on the day preceding the date of the invitation to apply for an option or the market value of a share at the time of grant.
  - D. Limits. Subject to adjustment for certain variations of capital, the number of shares in respect of which options may be granted under the scheme on any day shall not, when added to the number of shares issued or remaining issuable pursuant to options previously granted under the scheme, exceed 1,949,134 shares (being 10% of the issued share capital of Flogas on 28th September 1987).

The aggregate number of shares in respect of which options may be granted under the scheme or under the (now terminated) Flogas plc 1983 Executive Share Option Scheme shall not, when added to the number of shares issued or remaining issuable under options granted under the scheme within the preceding 10 years, exceed 5% of the ordinary share capital of Flogas in issue on such day.

The number of shares in respect of which options may be granted under the scheme on any day shall not, when added to the number of shares issued or remaining issuable pursuant to options granted under the scheme within the preceding 10 years and the number of shares issued or remaining issuable under any other share incentive scheme within that period, exceed 10% of the ordinary share capital of Flogas in issue on such day.

An option shall not be granted to a director or employee if, upon the grant of such option, the number of shares issued or remaining issuable pursuant to options granted to him under the scheme or the (now terminated) Flogas plc 1983 Executive Share Option Scheme would represent more than 1.5% of the nominal value of the issued ordinary share capital of Flogas at 28th September 1987 (being 19,491,340 shares). Such figure is subject to adjustment in the case of capitalisation and rights issues.

No option may be granted to a United Kingdom resident employee if immediately following such grant he would hold subsisting options with an aggregate exercise price exceeding the greater of Stg£100,000 and four times his relevant emoluments.

- E. Consideration. The consideration for the grant of an option is to be the sum of IR£1.
- F. Exercise of Option. Options are generally capable of being exercised on the expiration of 28 days following the grant date.
- G. Lapse of Option. An option shall lapse (to the extent not exercised) on the earliest of the date 10 years from the grant date, the expiry of 12 months after the death of the participant, the expiry of six months from the date he ceases to be an employee by reason of injury, disability, redundancy or retirement at normal age and the date he ceases to be an executive otherwise than as aforesaid.
- H. Amendment and Termination. The scheme may be amended by board resolution, subject in certain circumstances to shareholder approval. The scheme may be terminated at any time by resolution of the board.

The scheme is modified in certain respects in its application to United Kingdom resident employees.

- (iii) Flogas plc Republic of Ireland 1987 Profit Sharing Scheme
  - A. Term of Scheme. The scheme is constituted by a trust deed dated 10th December 1987 (as amended) and will determine on the earlier of the date 20 years after the death of the survivor of the descendants then living of King George V and the fifth anniversary of the passing of a resolution that the scheme be terminated.
  - B. Eligibility. Full time permanent employees or executive directors of Flogas (or of a subsidiary to which the scheme extends) whose remuneration is subject to tax under Schedule E of the Income Tax Act 1967 and who have been in continuous service for a period of not less than 12 months prior to the end of the financial year in respect of which shares are appropriated shall be eligible to participate in the Scheme.
  - C. Amount of Allocated Profit. As soon as practicable after the end of each financial year, the board of Flogas shall determine the amount (if any) of the profits to be allocated to employees eligible to participate in the scheme for that financial year. This amount when aggregated with any corresponding amount allocated under any other profit sharing scheme of Flogas or any subsidiary shall not exceed 2% of the consolidated profits of the Flogas group before taxation and extraordinary items and shall not be made available unless such profits exceed IR64.2 million.
  - D. Application of the Allocated Profit. Ten days after the date of its annual general meeting for the relevant financial year Flogas shall pay to the trustees of the scheme the proportion of the allocated profit which is appropriated to employees who have elected to participate in the scheme. This amount is held on trust by the trustees who shall apply it to subscribe for shares in Flogas within 21 business days after the annual general meeting or as soon as practicable thereafter, but in any event not later than nine months after the end of the relevant financial year.



- E. Price of Shares. The shares to be subscribed by the trustees shall be subscribed for by them at a price equal to the average "business done" quotation for the shares in the company as shown in The Irish Stock Exchange Daily Official List during the dealing days (or if these are more than five, the first five dealing days) between the day on which Flogas makes a preliminary announcement to The Irish Stock Exchange of its consolidated results for the relevant financial year and the day on which dealings commence exclusive of the final dividend for that year, the amount of which dividend (excluding the associated tax credit) shall be deducted from such average price.
- F. Limits. The aggregate number of shares to be subscribed for by the trustees in respect of any financial year shall not, without the prior approval of the shareholders of Flogas, exceed 200,000 shares (being an aggregate for all profit sharing schemes in respect of that financial year). The aggregate number of shares to be subscribed for or held by the trustees under the scheme shall not, without the prior approval of the shareholders of Flogas, exceed 1,000,000 shares (being an aggregate for all such profit sharing schemes). The above limits may be adjusted as the board think fit in the event of a capitalisation or rights issue subject to confirmation in writing by the auditors.
- G. Apportionment of Shares between Employees. Subject to the statutory limit, 75% of shares allocated for any financial year are allocated equally among the participating employees and the balance of 25% are divided amongst them in proportion to the products of their respective salaries (not exceeding IR£25,000) and length of continuous service.
- H. Amendment. The scheme may be amended by the company with the consent of the trustees, subject, in the case of certain provisions, to shareholder approval.

(iv) Flogas plc United Kingdom 1987 Profit Sharing Scheme

- A. Term of Scheme. The scheme is constituted by a trust deed dated 27th September 1987 (as amended) and will determine on the earlier of 26th September 2066 and the fifth anniversary of the passing of a resolution that the Scheme be terminated.
- B. Eligibility. Employees or executive directors of Flogas or of a subsidiary to whom the scheme extends and whose remuneration is subject to UK tax under Case 1 of Schedule E of the Income and Corporation Taxes Act 1970 and who have been in continuous service for a period of not less than 12 months prior to the end of the financial year in respect of which shares are appropriated and who normally devote at least 25 hours per week to their office or employment shall be eligible to participate in the scheme.
- C. Other Provisions. The terms of the scheme are otherwise similar to those of the Flogas plc Republic of Ireland 1987 Profit Sharing Scheme as summarised above.
- (v) Sharptext Group Limited Share Option Plan 1989
  - A. Term of Plan. The plan was adopted on 28th February 1989 and is of unlimited duration.
  - B. Eligibility. Any full time director of Sharptext Group or of a subsidiary to which the plan is extended and any employee of Sharptext Group or such a subsidiary having a normal contractual working week of 20 hours or more may, if selected by the board of Sharptext Group, participate in the plan.
  - C. Subscription Price Per Share. This is determined by the board and shall not be less than the higher of the nominal value of the share and its market value on the date of grant.
  - D. Limits. There are no aggregate or individual limits as to the number of shares over which options may be granted under the plan.
  - E. Consideration. No consideration is payable by a director or employee for the grant of an option.
  - F. Exercise of Option. Options are generally capable of being exercised following the earlier of the expiry of three years from the date of grant and any earlier date determined by the board.
  - G. Lapse of Options. An option shall lapse to the extent not exercised upon the earlier of (i) the expiry of 10 years from the date of grant and (ii) the date upon which the participant ceases to be an employee or such later date within 12 months of the cessation of employment as the board may determine provided that in the case of death the relevant date will be the expiry of 12 months from the date of death.
  - H. Amendment and Termination. The scheme may be amended by board resolution. The board at Sharptext Group may at any time resolve to cease granting further options under the plan.
    - The board of Sharptext Group has resolved that no further options shall be granted under the plan.
- (vi) Micro Peripherals Share Option Plan 1989
  - A. Term of Plan. The plan was adopted on 22nd December 1989 and is of unlimited duration. The plan relates to shares in Sharptext Group.
  - B. Eligibility. Any director or employee of a Sharptext Group company to which the plan is extended having in the case of a director a normal contractual working week of 25 hours or more or in the case of an employee, 20 hours or more may, if selected by the board of Sharptext Group, participate in the plan.
  - C. Subscription Price Per Share. This is determined by the board of Sharptext Group and shall not be less than the higher of the nominal value of the share and its market value on the date of grant.



D. Limits. There are no aggregate limits as to the number of shares over which options may be granted under the plan.

An option shall not be granted to a director or employee under the plan if as a result the aggregate amount payable under outstanding options granted under the plan or any other UK Inland Revenue approved scheme of Sharptext Group or an associated company would exceed the greater of Stg£100,000 and four times his emolument.

- E. Consideration. No consideration is payable by a director or employee for the grant of an option.
- F. Exercise of Option. Options are generally capable of being exercised after the the expiry of three years from the date of grant.
- G. Lapse of Options. Options shall lapse (to the extent not exercised) upon the earlier of (i) 10 years from the date of grant and (ii) the date a participant ceases to be an employee which date is subject to an extension of at least 12 months where the cessation results from death, injury, disability, retirement or redundancy.
- H. Amendment and Termination. The scheme may be amended by board resolution. The board of Sharptext Group may at any time resolve to cease granting further options under the plan.

The board of Sharptext Group has resolved that no further options shall be granted under the plan.

### (vii) Sharptext Group Limited Irish Share Option Plan 1992.

- A. Term of Plan. The plan was adopted on 30th April 1993 and is of unlimited duration.
- B. Eligibility. Any person (including a director) who is employed by Sharptext Group or a subsidiary to which the plan is extended may, if selected by the board of Sharptext Group, participate in the plan.
- C. Subscription Price per Share. This is determined by the board and shall not be less than the higher of the nominal value of the share and such other value as the board may determine.
- D. Limits. There are no aggregate or individual limits as to the number of shares over which options may be granted under the plan.
- E. Grant of Option. No consideration is payable by a director or employee for the grant of an option.
- F. Exercise of Option. Options are generally capable of being exercised after the earlier of the expiry of three years from the date of grant and any earlier date determined by the board.
- G. Lapse of Options. An option shall lapse (to the extent not exercised) on the earlier of (i) the expiry of seven years from the date of grant and (ii) the date a participant ceases to be an employee of the Sharptext Group or such later date within 12 months of the cessation of employment as the board may determine provided that in the case of death the relevant date will be the expiry of 12 months from the date of death.
- H. Amendment and Termination. The scheme may be amended by board resolution. The board at Sharptext Group may at any time resolve to cease granting further options under the plan.

The board of Sharptext Group has resolved that no further options shall be granted under the plan.

## (viii) Micro Peripherals Share Option Plan 1992

- A. Term of Plan. The plan was adopted on 30th April 1993 and is of unlimited duration. The plan relates to shares in Sharptext Group.
- B. Other Provisions. The terms of the plan are similar to those of the Sharptext Group Limited Irish Share Option Plan 1992, as summarised above.

The board of Sharptext Group has resolved that no further options shall be granted under the plan.

### (ix) Ochil plc Directors' Share Subscription Scheme

- A. Adoption. The scheme was adopted on 22nd February 1993 to permit subscription for partly paid shares by full time directors of Ochil plc and its subsidiaries.
- B. Eligibility. The scheme is available to full time directors of Ochil plc or any subsidiary.
- C. Subscription Price per Share. The subscription price at which scheme shares may be subscribed is to be determined by the board but shall not be less than IR1p per scheme share.
- D. Limitation. No more than 300,000 shares shall be issued pursuant to the scheme.
- E. Payment up of Shares. If a participant cease to hold office or employment on account of retirement or health reasons, he may be called upon to pay the amount unpaid on scheme shares held by him.
- P. Termination. The scheme may be terminated at any time by resolution of Ochil plc or of its board.

The board of Ochil plc has resolved that no further partly paid shares shall be issued under the scheme.

### PRINCIPAL ESTABLISHMENTS

(a) The Group's head office is a leasehold premises comprising 6,519 sq. feet situate at DCC House, Stillorgan, Blackrock, County Dublin. The current annual rent is IR£80,000 and the lease is for a term of 35 years from 5th May 1983.



- (b) The Group's subsidiaries operate from the following principal establishments:
  - (i) Food
  - A. Leasehold premises comprising 42,745 sq. feet situate at 79/80 Broomhill Road, Tallaght, Dublin 24. The current annual rent is IR£2.00. The lease is for a term of 999 years from 29th September 1973.
  - B. Leasehold premises comprising 27,860 sq. feet situate at 78 Broomhill Road, Tallaght, Dublin 24. The current annual rent is IR£2.00. The lease is for a term of 999 years from 29th September 1973.
  - C. Leasehold premises comprising 18,000 sq. ft. on 1.9125 acres situate at Biaris Industrial Estate, Altona Road, Lisburn, Co. Antrim. The current annual rent is Stg£1. The lease is for a term of 999 years from 14th October 1988.
  - D. Freehold premises comprising 47,000 sq. feet situate at Charlestown House, Otley Road, Baildon, Shipley, West Yorkshire.
  - (ii) Energy
  - A. Freehold prémises comprising 11,000 sq. feet situate at Dublin Road, Drogheda, Co. Louth.
  - B. Leasehold premises of 4 acres approximately situate at Marsh Road, Drogheda, Co. Louth. The current annual rent is IR£11,500. The lease is for a term of 60 years from 1st April 1978.
  - C. Leasehold premises of 2.6 acres situate at Tivoli Industrial Estate, Cork. The current annual rent is IR£28,000. The lease is for a term of 99 years from 6th April 1987.
  - D. Freehold premises comprising 3,800 sq. feet on a 7 acre site situate at Heath Road, Merrylees, Nr. Desford, Leicester.
  - E. Leasehold premises comprising 3,400 sq. feet on an 8 acre site situate at Airport Road West, Sydenham, Belfast. The current annual rent is Stg£53,000 plus value added tax. The lease is for a term of 50 years from 1st February 1984.
  - F. Leasehold premises on a 4 acre site situate at Clonminam Industrial Estate, Portlaoise, Co. Laois. The current annual rent is IR£1.00. The lease is for a term of 999 years from 11th August 1980.
  - G. Freehold and leasehold premises on a site of 6 acres situate at Grannagh, Co. Kilkenny. The leasehold premises is held under two leases. The first lease is for a term of 98 years from 1st October 1952 subject to a current annual rent of IR£5.00. The second lease is for a term of 93 years from 1st October 1957 subject to a current annual rent of IR£1.50.
  - H. Leasehold premises on a site of 5 acres situate at Airport Road West, Sydenham, Belfast. The property is held under two leases from the Belfast Harbour Commission. The current annual rental is Stg£50,000. The first lease is for a term of 100 years from 1st January 1987. The second lease was granted for a term of 97 years and 6 months from 1st July 1989.
  - (iii) Print and Publishing Freehold premises comprising 165,000 sq. feet situate at Cloverhill Industrial Estate, Clondalkin, Dublin 22.
  - (iv) Computer Products Distribution
  - A. Leasehold premises comprising 28,000 sq. feet situate at 4 Petre Road, Clayton Park, Clayton-le-Moors, Accrington, Lancashire. The current annual rent is Stg£15,000. The lease is for a term of 125 years less 20 days from 25th March 1987.
  - B. Leasehold premises comprising 7,500 sq. feet situate at Unit 12B Cedarwood North, Chineham Business Park, Basingstoke, Hampshire. The current annual rent is Stg£108,100. The lease is for a term of 25 years from 25th March 1990.
  - C. Leasehold premises comprising 16,000 sq. feet situate at Airton Road, Tallaght, Dublin 24. The current annual rental is IR£58,000. The lease is for a term of 35 years from 22nd March 1978.
  - (v) Healthcare
     Freehold premises comprising 15,300 sq. feet situate at 106B Dublin Industrial Estate, Glasnevin, Dublin 11.
  - 7. MEMORANDUM AND ARTICLES OF ASSOCIATION
  - (a) The Memorandum of Association of the Company provides that the principal object of the Company is 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 that of any nominee, shares, stocks, debentures, debenture stocks, bonds, notes, obligations and securities. A full description of the objects of the Company is set out in Clause 3 of its Memorandum of Association.
  - (b) The following is a summary of certain of the principal provisions of the Company's Articles of Association:
    - Votes at general meetings may be given either personally or by proxy. Subject to any rights or restrictions for the time being attached to any class or classes of shares and to the provisions of the Articles summarised in subparagraph (vii) below, on a show of hands every member present in person and every proxy shall have one vote, so, however, that no individual shall have more than one vote, and on a poll every member shall have one vote for every share of which he is the holder. The Chairman of a meeting at which there is an equality of votes shall be entitled to a second or casting vote.



(ii) Variation of Rights

Without prejudice to certain other provisions of the Articles, any share in the Company may be issued with such preferred, deferred or other special rights or such restrictions, whether in regard to dividend, voting, return of capital or otherwise, as the Company may from time to time by special resolution determine, but subject always to any special rights previously conferred on the holders of any existing shares or class of shares in the capital of the Company.

Whenever the share capital is divided into different classes of shares, the rights attached to any class may be varied or abrogated with the consent in writing of the holders of three-fourths in nominal value of the issued shares of that class, or with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of that class.

(iii) Alteration of Share Capital

The Company may by ordinary resolution:

- A. increase its share capital;
- B. consolidate and divide all or any of its share capital into shares of a larger amount;
- C. subject to the provisions of the Companies Acts, 1963 to 1990, sub-divide its shares into shares of smaller amount; or
- D. cancel any shares which have not been taken or agreed to be taken by any person and diminish the amount of its share capital by the amount of the shares so cancelled.
- (iv) Redeemable Shares

Subject to the provisions of the Companies Acts, 1963 to 1990, any shares may be issued on the terms that they are, or, at the option of the Company or the holder are, liable to be redeemed on such terms and in such manner as may be provided by the Articles.

(v) Purchase of Own Shares

Subject to the provisions of the Companies Acts, 1963 to 1990 and to any rights conferred on the holders of any class of shares, the Company may purchase all or any of its shares of any class. No purchase by the Company of its own shares will take place unless it has been authorised by special resolution of the Company in general meeting.

(vi) Transfer of Shares

Subject to such of the restrictions of the Articles and to such of the conditions of issue as may be applicable, the shares of any member may be transferred by instrument in writing in any usual form or in any other form which the Directors may approve. Any instrument of transfer shall be executed by or on behalf of the transferor and (except in the case of fully-paid shares) by or on behalf of the transferee.

The Directors may, in their absolute discretion and without giving any reason, refuse to register the transfer of a share which is not fully paid or any transfer of a share to a minor or a person of unsound mind. The Directors may also refuse to register any transfer unless it is lodged at the registered office of the Company or at such other place as the Directors may appoint and is accompanied by the certificate for the shares to which it relates and by such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer save where the transferor is a Stock Exchange nominee. The Directors may also refuse to register any transfer which is in respect of more than one class of shares or which is in favour of more than four transferees.

The registration of transfers of shares may be suspended at such times and for such periods (not exceeding thirty days in each year) as the Directors may determine.

(vii) Disclosure of Beneficial Ownership

The Directors may, at any time, in their absolute discretion, give a notice to the holder of any share requiring such holder to notify the Company in writing within a period of at least 28 days from the date of service of such notice of full and accurate particulars of:-

- A. his interest in such share;
- B. the interests of all persons having any beneficial interest in the share and, where any such person is a body corporate, the identity of the person(s) who control(s) such body corporate; and
- C. any arrangements entered into by him or any person having any beneficial interest in the share whereby it has been agreed or undertaken or the holder of such share can be required to transfer the share or any interest therein to any person or to act in relation to any meeting of the Company or of any class of shares of the Company in a particular way or in accordance with the wishes or directions of any other person (other than a person who is a joint holder of such share).

The Directors may require any such particulars to be verified by statutory declaration.

If at any time the Directors shall determine that the holder of any share has failed (1) to comply, to the satisfaction of the Directors, with all or any of the terms of any such notice as aforesaid, (2) to comply, to the satisfaction of the Directors, with the terms of any notice given pursuant to section 81 of the Companies Act, 1990, or (3) to pay any monies payable in respect of that share in the manner and at the time appointed for payment ("Specified Event"), the Directors may serve a notice on the holder(s) of the shares ("Restriction Notice"), whereby upon the expiry of 14 days and for so long as such Restriction Notice remains in force:-



- I. no holder(s) of the shares specified in such Restriction Notice ("the Specified Shares") shall be entitled to attend, speak or vote at any general meeting of the Company or to exercise any other right conferred by membership in relation to any such meeting; and
- the Directors shall, where the Specified Shares represent not less than 0.25% of the class of shares concerned, be entitled:-
  - (a) to withhold payment of any dividend or other amount payable, including shares issued in lieu of dividends, in respect of the Specified Shares; and/or
  - (b) in case the Specified Event is one described at (2) or (3) above, to refuse to register any transfer of the Specified Shares or any renunciation of any allotment of new shares or debentures made in respect thereof unless such transfer or renunciation is shown to the satisfaction of the Directors to be an arm's length transfer or renunciation to another beneficial owner unconnected with the holder or any person appearing to have an interest in the Specified Shares.

### (viii) Directors

- A. Number of Directors. Unless otherwise determined by ordinary resolution of the Company, the number of Directors (other than alternate Directors) shall not be less than two nor more than fifteen. A Director shall not be required to hold a share qualification.
- B. Remuneration. The ordinary remuneration of the Directors shall from time to time be determined by an ordinary resolution of the Company and shall (unless such resolution shall otherwise provide) be divisible among the Directors as they may agree, or, failing agreement, equally, except that any Director who shall hold office for part only of the period in respect of which such remuneration is payable shall be entitled only to rank in such division for a proportion of the remuneration related to the period during which he has held office. A Director who holds any additional office or who serves on a committee 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 as the Directors may determine. A Director holding an executive office shall receive such remuneration, whether in addition to or in substitution for his ordinary remuneration as a director, as the Directors may determine.
- C. Age. A Director is not required to retire at any time on account of age.
- D. Retirement. At each annual general meeting of the Company one-third of the Directors or, if their number is not three or a multiple of three, the number nearest to one-third shall retire from office.
- E. Votes. Questions arising at any meeting of Directors shall be decided by a majority of votes. Where there is an equality of votes, the chairman of the meeting shall have a second or casting vote.
- F. Restrictions on Director's Voting. Save as otherwise provided by the Articles, a Director shall not vote at a meeting of the Directors or a committee of Directors on any resolution concerning a matter in which he has, directly or indirectly, an interest which is material or a duty which conflicts or may conflict with the interests of the Company. A Director shall not be counted in the quorum present at a meeting in relation to a resolution on which he is not entitled to vote.
  - A Director shall (in the absence of some other material interest than is indicated below) be entitled to vote (and be counted in the quorum) in respect of any resolutions concerning any of the following matters:-
  - the giving of any security, guarantee of indemnity to him in respect of money lent by him to the Company or any
    of its subsidiary or associated companies or obligations incurred by him at the request of or for the benefit of the
    Company or any of its subsidiary or associated companies;
  - II. the giving of any security, guarantee or indemnity to a third party in respect of a debt or obligation of the Company or any of its subsidiary or associated companies for which he himself has assumed responsibility in whole or in part and whether alone or jointly with others under a guarantee or indemnity or by the giving of security;
  - III. any proposal concerning any offer of shares or debentures or other securities of or by the Company or any of its subsidiary or associated companies for subscription, purchase or exchange in which offer he is entitled to participate as a holder of securities or is to be interested as a participant in the underwriting or sub-underwriting thereof;
  - IV. any proposal concerning any other company in which he is interested, directly or indirectly and whether as an officer or shareholder or otherwise howsoever, provided that he is not the holder of or beneficially interested in 1% or more of the issued shares of any class of such company or of the voting rights available to members of such company (any such interest being deemed for this purpose to be a material interest in all circumstances);
  - V. any proposal concerning the adoption, modification or operation of a superannuation fund or retirement benefits scheme under which he may benefit in a manner similar to the benefits awarded to other employees to whom the scheme relates and which has been approved by or is subject to and conditional upon approval for taxation purposes by the appropriate Revenue authorities; or
  - VI. any proposal concerning insurance which the Company proposes to maintain or purchase for the benefit of Directors or for the benefit of persons including the Directors.
- G. Directors' Interests. Subject to the provisions of the Companies Acts, 1963 to 1990, and provided that he has disclosed to the Directors the nature and extent of any material interest of his, a Director notwithstanding his office:-



- may be a party to, or otherwise interested in, any transaction or arrangement with the Company or any subsidiary
  or associated company thereof or in which the Company or any subsidiary or associated company thereof is
  otherwise interested;
- II. may be a director or other officer of, or employed by, or a party to any transaction or arrangement with, or otherwise interested in, any body corporate promoted by the Company or in which the Company or any subsidiary or associated company thereof is otherwise interested; and
- III. shall not, by reason of his office, be accountable to the Company for any remuneration or other benefit which he derives from any such office or employment or from any such transaction or arrangement or from any interest in any such body corporate unless the Company otherwise directs and no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit.
- H. Borrowing Powers. Subject to the provisions of the Articles, the Directors may exercise all the powers of the Company to borrow or raise money and to mortgage or charge its undertaking, property, assets and uncalled capital or any part thereof, and to issue debentures, debenture stock and other securities, whether outright or as collateral security for any debt, liability or obligation of the Company or of any third party. The Directors shall restrict the borrowings of the Company and exercise all voting and other rights or powers of control exercisable by the Company in relation to its subsidiaries so as to secure (so far as regards subsidiaries, as by such exercise they can secure) that the aggregate amount for the time being remaining undischarged of all Borrowed Moneys (as defined in the Articles) shall not at any time without the previous sanction of an ordinary resolution of the Company exceed a sum equal to two times the Share Capital and Consolidated Reserves (as defined in the Articles).

(ix) Untraced Shareholders

The Company shall be entitled to sell at the best price reasonably obtainable any share of a holder or any share to which a person is entitled by transmission if and provided that for a period of twelve years no cheque or warrant sent by the Company (through the post in a pre-paid letter addressed to the holder or the person entitled by transmission to the share to his address on the Register or at the last known address) has been cashed and no communication has been received by the Company from the holder or the person entitled by transmission (provided that during such twelve year period at least three dividends shall have become payable in respect of such share) and provided that the Company has at the expiration of the said period of twelve years by advertisement in a leading national daily newspaper in the Republic of Ireland and in a newspaper circulating in the area in which the address of the holder or the person entitled by transmission to the share is located given notice of its intention to sell that share and has informed the Stock Exchange of its intention to sell such share and provided further that the Company has not during the further period of three months after the date of the advertisement and prior to the exercise of the power of sale received any communication from the holder or person entitled by transmission,

The Company shall account to the holder or other person entitled to such share for the net proceeds of such sale by carrying all moneys in respect thereof to a separate account which shall be a debt of the Company and the Company shall be deemed to be a debtor and not a trustee in respect thereof for such holder or other person.

(x) Dividends

Except as otherwise provided by the rights attached to shares, all dividends shall be declared and paid according to the amounts paid up on the shares on which the dividend is paid. Subject as aforesaid, all dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid; but, if any share is issued on terms providing that it shall rank for dividend as from a particular date, such share shall rank for dividend accordingly. No amount paid on a share in advance of calls shall be treated as paid on a share for purposes of the above.

The Directors may, subject to approval by the Company at any general meeting in respect of any dividend declared or proposed to be declared at that general meeting or at any time prior to or at the next following annual general meeting (and provided that an adequate number of unissued Ordinary Shares is available for the purpose), offer holders of Ordinary Shares the right, prior to or contemporaneously with their announcement of the dividend in question and any related information as to the Company's profits for such financial period or part thereof, to elect to receive in lieu of such dividend (or part thereof) an allotment of additional Ordinary Shares credited as fully paid.

Any dividend which has remained unclaimed for twelve years from the date the dividend became due for payment shall, if the Directors so resolve, be forfeited and cease to remain owing by the Company.

(xi) Distribution of Assels on Winding Up

If the Company shall be wound up and the assets available for distribution among the members as such shall be insufficient to repay the whole of the paid up or credited as paid up share capital, such assets shall be distributed so that, as nearly as may be, the losses shall be borne by the members in proportion to the capital paid up or credited as paid up at the commencement of the winding up on the shares held by them respectively. If on a winding up the assets available for distribution among the members shall be more than sufficient to repay the whole of the share capital paid up or credited as paid up at the commencement of the winding up, the excess shall be distributed among the members in proportion to the capital at the commencement of the winding up paid up or credited as paid up on the said shares held by them respectively.

8. WORKING CAPITAL

The Directors consider that, taking into account the bank facilities available to the Group and the net proceeds of the Placing, the Group has sufficient working capital for its present requirements.



#### MATERIAL CHANGES

There has been no significant change in the trading or financial position of the Group since 31st March 1994, the date to which the latest audited financial statements of the Group were made up.

### 10. LITIGATION

There are no legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the Directors are aware) to which any member of the Group is or was a party, which may have, or have had within the twelve months prior to the date of this document, a significant effect on the financial position of the Group.

### 11. MATERIAL CONTRACTS

The following contracts (not being contracts entered into in the ordinary course of business) have been entered into by members of the Group within the two years immediately preceding the date of this document and are or may be material:

- (a) (i) Offer Document issued 22nd December 1992 being a recommended cash offer by AIB Corporate Finance Limited on behalf of Ochil plc (a subsidiary of the Company) to acquire the whole of the issued share capital of Printech at a price of IR77.5p in cash (or a loan note alternative) for each ordinary share of IR5p each in the share capital of Printech and acceptances thereof.

  As a result of this offer, Ochil plc acquired 28,021,070 ordinary shares of Printech representing 91.6% of its issued share capital.
  - (ii) Subscription Agreement dated 15th December 1992 between Brian Stokes, Kevin Henry, Ultan Reilly, Con O'Grady, Colette Stokes, the Company and Ochil plc under the terms of which the parties other than Ochil plc and Colette Stokes agreed to subscribe for shares in Ochil plc and Brian Stokes and the Company agreed to take tip subordinated loan stock in Ochil plc amounting in total to IR£10,610,429.
  - (iii) Shareholders Agreement dated 15th December 1992 between Brian Stokes, Kevin Henry, Ultan Reilly, Con O'Grady, Colette Stokes and the Company for the purpose of providing minority protection rights for the minority shareholders in Ochil plc.
  - (iv) Option Deed dated 15th December 1992 between Brian Stokes and Colette Stokes, Kevin Henry, Ultan Reilly and Con O'Grady and the Company whereby the parties thereto other than the Company may sell their shares (and where relevant loan notes) in Ochil plc to the Company or the Company may acquire their shares (and where relevant loan notes) in Ochil plc in the circumstances specified therein at their then open market value (determined in the absence of agreement by reference to the average of two external valuations conducted respectively by a firm of chartered accountants and a merchant bank). The purchase price is payable at the option of the sellers in cash or in certain instances in the form of loan notes issued by the Company or by way of the issue by the Company of fully paid Ordinary Shares at the then prevailing market price per Ordinary Share.
  - (v) Agreement dated 5th January 1994 between The Scottish Provident Institution, the Company, Brian Stokes, Kevin Henry, Ultan Reilly, Con O'Grady and Ochil plc whereunder The Scottish Provident Institution sold 2,564,000 ordinary shares of IR5p each, representing 8.4% of the issued share capital in Printech, to Ochil plc, purchased 304,000 ordinary shares of IR£1 each in Ochil plc and subscribed IR£896,000 Variable Rate Secured Loan Notes 1999 to 2003 in Ochil plc. The Scottish Provident Institution agreed to be bound by the shareholders' agreement referred to at (iii) above. In addition, the parties agreed that The Scottish Provident Institution may sell its shares and loan notes in Ochil plc to the Company and the Company may acquire The Scottish Provident Institution's shares and loan notes in Ochil plc in the circumstances specified therein at their then open market value (determined in the absence of agreement by reference to the average of two external valuations conducted respectively by a firm of chartered accountants and a merchant bank). The purchase price is payable at the option of the seller in cash or in the form of loan notes issued by the Company or by way of the issue by the Company of fully paid Ordinary Shares at the then prevailing market price per Ordinary Share.
- (b) (i) Offer Document issued 6th January 1993 being a recommended cash offer by AIB Corporate Pinance Limited on behalf of Oare plc (a subsidiary of the Company) to acquire the whole of the issued share capital of Wardell at a price of IR75p in cash (or a loan note alternative) for each ordinary share of IR10p each in the share capital of Wardell and acceptances thereof. As a result of this offer, Oare plc acquired the entire issued share capital of Wardell.
  - (ii) Share Subscription Agreement dated 12th December 1992 between Ken Peare, John O'Rourke, Chris Szymanski, the Company and Oare plc under the terms of which the parties other than Oare plc agreed to subscribe for shares in Oare plc and the Company agreed to take up subordinated loan stock in Oare plc amounting in total to IR£10.8 million.
  - (iii) Shareholders Agreement dated 12th December 1992 between Ken Peare, John O'Rourke, Chris Szymanski and the Company for the purpose of providing minority protection rights for the minority shareholders in Oare plc.
  - (iv) Option Deed dated 26th February 1993 between Ken Peare, John O'Rourke, Chris Szymanski and the Company whereby the parties thereto other than the Company may sell their shares in Oare plc to the Company or the Company may acquire their shares in Oare plc at certain times between 1996 and 1998 at their then open market value (determined in the absence of agreement by reference to the average of two external valuations conducted respectively by a firm of chartered accountants and a merchant bank). The purchase price is payable at the option of the sellers in cash or in the form of loan notes issued by the Company or by way of the issue by the Company of fully paid Ordinary Shares at the then prevailing market price per Ordinary Share.



- (c) (i) Offer Document issued 13th August 1993 being a recommended partial cash offer by AIB Corporate Finance Limited on behalf of Powerimpact plc (a subsidiary of the Company) to acquire 7,367,072 Flogas Units at a price of IR325p in cash (or a loan note alternative) for each Flogas Unit and acceptances thereof. As a result of this offer, Powerimpact plc acquired 7,367,072 Flogas Units representing 30.1% per cent of the share capital of Flogas and of the associated shares in Flogas UK plc.
  - (ii) Subscription Agreement dated 5th August 1993 between Eugene Quigley, Patrick Mercer, Samuel Chambers, Patrick Kilmartin, Colman O'Keeffe, John Ahern, the Company and Powerimpact plc under the terms of which the parties other than Powerimpact plc (or, in the case of the Company, one of its subsidiaries) agreed to subscribe for shares in Powerimpact plc and the Company or one of its subsidiaries agreed to take up subordinated loan stock in Powerimpact plc.
  - (iii) Shareholders Agreement dated 5th August 1993 between Eugene Quigley, Patrick Mercer, Samuel Chambers, Patrick Kilmartin, Colman O'Keeffe, John Ahern and the Company for the purpose of providing minority protection rights for the minority shareholders in Powerimpact plc.
  - (iv) Option Deed dated 5th August 1993 and made between Eugene Quigley, Patrick Mercer, Samuel Chambers, Patrick Kilmartin, Colman O'Keeffe, John Ahern and the Company whereby the parties thereto other than the Company may sell their shares in Powerimpact plc to the Company or the Company may acquire their shares in Powerimpact plc at certain times between 1996 and 1998 at their then open market value (determined in the absence of agreement by reference to the average of two external valuations conducted respectively by a firm of chartered accountants and a merchant bank). The purchase price is payable at the option of the sellers in cash or in the form of loan notes issued by the Company or by way of the issue by the Company of fully paid Ordinary Shares at the then prevailing market price per Ordinary Share.
- (d) (i) Agreement dated 24th March 1993 between Thomas Kirrane, Mary Kirrane, John O'Brien, Ann O'Brien, Adrian Gallagher, Gerry Wilson, Vencap Investors Limited and Emo Oil providing for the subscription for and purchase by Vencap Investors Limited of shares in Emo Oil and for the purpose of providing minority protection rights for the minority shareholders in Emo Oil. As a result of the subscription and purchase, Vencap Investors Limited increased its shareholding in Emo Oil to 75% of the issued share capital.
  - (ii) Option Deed dated 20th April 1993 between Thomas Kirrane, Mary Kirrane, John O'Brien, Ann O'Brien, Adrian Gallagher, Gerry Wilson, Brian Fagan and Vencap Investors Limited ("Vencap") under which the parties thereto (other than Vencap) may sell their shares in Emo Oil to Vencap or Vencap may acquire their shares in Emo Oil at certain times between 1996 and 1998 at their their open market value (determined in the absence of agreement by reference to the average of two external valuations conducted respectively by a firm of chartered accountants and a merchant bank). The purchase price is payable at the option of the sellers in cash or by way of the issue by the Company of fully paid Ordinary Shares at the then prevailing market price per Ordinary Share.
  - (iii) Agreement dated 29th April 1993 between Emo Oil and Greenway (then named Kingston Oil & Gas plc) under which Emo Oil sold the entire issued share capital of its UK subsidiary Emo Oil (UK) Limited to Greenway in consideration of the issue to Emo Oil of 5,647,838 ordinary shares of Stg50p each in Greenway (representing 29.9% of its then issued share capital).
- (e) Contract entered into on 30th November 1992 whereby the Company purchased 7,667,500 ordinary shares of IR5p each in Fyffes, representing 2.7% of the then issued ordinary share capital, for a total consideration of IR£4,907,200.
- (f) The Placing Agreement as described in paragraph 12 below.

### 12. PLACING ARRANGEMENTS

Under a sponsorship and placing agreement (the "Placing Agreement") dated 12th May 1994 between (1) the Company, (2) James Flavin, Morgan Crowe and David Gavagan (the "Vendors"), (3) AlB Capital Markets plc, (4) UBS Limited, (5) AlB Capital Markets — Corporate Finance Limited and (6) J O Hambro Magan & Company Limited, AlB Capital Markets plc and UBS Limited (the "Underwriters") have agreed, subject to the conditions referred to below, as agents for the Company or (as the case may be) the Vendors, to use all reasonable endeavours to procure subscribers for 3,297,320 Ordinary Shares (the "New Shares") and to procure purchasers of 172,320, 60,000 and 65,000 Ordinary Shares (together the "Sale Shares") owned by James Flavin, Morgan Crowe and David Gavagan respectively, or failing which themselves to subscribe for or (as the case may be) purchase, in equal proportions, the New Shares and the Sale Shares (together the "Placing Shares") at the Placing Price. AlB Capital Markets - Corporate Finance Limited and J O Hambro Magan & Company Limited (the "Sponsors") have agreed to act as joint sponsors of the Company in respect of the Listing.

The Placing Agreement provides, inter alia, that each of the Underwriters will receive a commission of 1% on the sum of IR£4.1 million, being the aggregate value at the Placing Price of the Placing Shares the subject of its obligations under the Placing Agreement, and that the Company will pay a fee to each of the Sponsors. Out of the above commissions, the Underwriters will pay to the Company's stockbrokers a commission of 0.5% on the aggregate value at the Placing Price of any Placing Shares that may be placed through such stockbrokers. The Company will pay all other expenses of or incidental to the Placing and Listing, including the fees of its professional advisers, the listing fees of The London Stock Exchange and The Irish Stock Exchange, capital duty on the allotment of the Placing Shares, printing costs, registrars' fees and the Underwriters' and the Sponsors' legal and out of pocket expenses.

The Placing Agreement, which contains certain representations, warranties and indemnities by the Company in favour of the Underwriters and the Sponsors, is conditional, inter alia, on Listing occurring not later than the close of business on 19th May 1994 or such later date as may be approved by the Underwriters and the Sponsors. The Underwriters and the Sponsors also have the right to terminate the Placing Agreement in certain circumstances, including where, before Listing, there is a breach of the warranties contained in the Placing Agreement.



### 13. TAXATION

Dividends paid by an Irish company to its shareholders are normally taxable with credit being given to the shareholders in respect of the corporation tax paid by the company. The rate of tax credit varies with the rate of tax payable on the corporate profits from which the dividends are sourced. Dividends paid by the Company will carry tax credits as follows:

- (a) if sourced from profits taxed at the standard corporate rate: 25/75ths of the amount of the dividend;
- (b) if sourced from 10% taxed profits: 1/18th of the amount of the dividend.

Irish resident shareholders, other than companies, are liable to income tax on the amount of the dividend plus tax credit. In general, Irish resident companies are not liable to corporation tax on the amount of the dividend, though certain life assurance companies are chargeable to corporation tax thereon under the provisions of Part III of the Corporation Tax Act 1976, as amended by Chapter IV of Part 1 of the Finance Act 1993. The amount of the tax credit is set off against the income tax payable by the individual Irish shareholders. An Irish shareholder who is not liable to tax may claim payment of the tax credit from the Irish Revenue Commissioners. An Irish company which pays dividends is normally liable to advance corporation tax (ACT) equal to the amount of the tax credit, if any, on such dividend.

Under the double tax convention between the Republic of Ireland and the United Kingdom, a UK resident shareholder may be entitled to a cash refund of a portion of the tax credit on making an appropriate claim to the Irish Revenue Commissioners. A cash refund will only arise where the tax credit is greater than 15% of the gross dividend. The cash refund will be the difference between the actual tax credit and 15% of the gross dividend (net paid plus tax credit).

A UK resident shareholder will not, however, be entitled to claim a refund of the tax credit if:-

- (a) it is a company controlling (directly or indirectly) shares entitled to 10% or more of the votes attaching to the Company's shares; or
- (b) the shareholding in the Company is effectively connected with the business of a permanent establishment of the shareholder in ireland.

A UK shareholder will generally be liable to UK income or corporation tax on the aggregate of the dividend received and the related Irish tax credit. The UK shareholder may claim any tax withheld in Ireland as a credit against his UK tax liability on the dividend and related tax credit. Approved UK pension funds are generally entitled to reclaim the whole of the related tax credit from the Irish Revenue Commissioners.

The Company is not a close company as defined in the Corporation Tax Act, 1976.

Disposal of shares will constitute a disposal by Irish resident shareholders for the purposes of Republic of Ireland taxation on capital gains and, accordingly, may give rise to a liability to taxation depending on the circumstances of the shareholder (subject to the usual reliefs and allowances, including indexation relief, which may then be available).

The above information is of a general nature only and is not intended to be exhaustive. If you are in any doubt as to your tax position, you should consult your professional adviser. Overseas shareholders, in particular, should seek advice relevant to their own tax jurisdiction.

### 14. OTHER MATTERS

- (a) AIB Capital Markets Corporate Finance Limited, J O Hambro Magan & Company Limited and Coopers & Lybrand have given and have not withdrawn their respective written consents to the issue of this document with the inclusion herein of the references to them, and in the case of Coopers & Lybrand with the inclusion herein of their report and the references thereto, in the form and context in which they are included.
- (b) No cash securities or benefits have within the two years immediately preceding the date hereof been paid or given or are now proposed to be paid or given to a promoter.
- (c) The financial information relating to the Group included in this document does not comprise full accounts as referred to in Section 19 of the Companies (Amendment) Act, 1986, copies of which are required by that Act to be annexed to a company's annual return. Copies of the full accounts for each of the years ended 31st March 1992 and 1993 have been so annexed to the relevant annual returns, and a copy of the full accounts for the year ended 31st March 1994 will be annexed to the annual return which will be filed after the annual general meeting of the Company in 1994. The auditors have made reports without qualification under Section 163 of the Companies Act, 1963 in respect of all such accounts.
- (d) There is no agreement to waive future dividends of the Company.
- (e) Certain subsidiaries of the Company are party to the various instruments creating loan notes referred to in paragraph 2(b) of this Part 3.



- (f) During the last financial year and the current financial year of the Company, there has not occurred any public takeover by a third party in respect of shares in the Company or any public takeover by the Company or any of its subsidiaries of another company except for a recommended partial cash offer by Powerimpact plc (a subsidiary of the Company) for 7,367,072 Flogas Units at a price of IR325p per Flogas Unit (or equivalent in loan notes). The offer was made on 13th August 1993 and resulted in the acquisition by Powerimpact plc of 7,367,072 Flogas Units, representing 30.1% of the share capital in Flogas and of the associated shares in Flogas U.K. plc. An acquisition of 154,800 Flogas Units from executives of Flogas (who had acquired such shares on the exercise of options) was also made at the time, bringing the Group's holding to 60.27% of the issued share capital of those companies.
- (g) The Placing price of IR250p represents a premium of IR230p over the nominal value of IR20p per Ordinary Share.
- (h) It is expected that definitive share certificates will be posted to placees on 19th May 1994.
- (i) (A) Morgan Crowe represented the Company on the board of Electronic Design & Assembly Limited, a venture capital investment, from December 1981 to 15th November 1983, at which time a liquidator was appointed to that company. The liquidation was completed in March 1988. The deficiency to creditors was estimated at the date of liquidation at IR£335,000.
  - (B) Morgan Crowe represented the Company on the board of National Aluminium (Manufacturing) Limited, a venture capital investment, from June 1983 until July 1985. David Gavagan was appointed as an alternate director (to Morgan Crowe) of National Aluminium (Manufacturing) Limited in June 1984. A liquidator was appointed to this company in July 1985. The sworn statement of affairs lodged in the High Court showed a deficiency to creditors of IR£3.3 million. The liquidation is not completed.
  - (C) Alex Spain was a non-executive director of Millfield Commercial Investments Limited, a UK registered private company, from 11th March 1987 until 13th November 1989. An administrative receiver of that company was appointed on 21st November 1989 and on 1st March 1991 a liquidator was appointed. It is understood that the deficiency to creditors in the liquidation was of the order of Stg£400,000.
- (j) The total expenses of or incidental to the Placing, which are payable by the Company, are estimated to amount to approximately IR£1.3 million (excluding VAT).

### 15. DOCUMENTS AVAILABLE FOR INSPECTION

Copies of the following documents may be inspected (i) at DCC House, Stillorgan, Blackrock, Co. Dublin; (ii) at the offices of the solicitors to DCC, William Fry, Solicitors, Fitzwilton House, Wilton Place, Dublin 2; (iii) at AIB Bank, Registrars' and New Issue. Department, 12 Old Jewry, London EC2R 8DP; and (iv) at the UK office of William Fry, Solicitors, Audrey House, 15/20 Ely Place, London EC1N 6SN during usual business hours on any weekday (Saturdays and public holidays excepted) for a period of 14 days following the date of this document:-

- (a) the Memorandum and Articles of Association of the Company;
- (b) the audited consolidated accounts of the Company for the two financial years ended 31st March 1993 and 1994;
- (c) the report of Coopers & Lybrand reproduced herein, together with their statement of adjustments;
- (d) the written consents referred to in paragraph 14(a) on page 77;
- (e) the material contracts referred to in paragraph 11 on page 75 or a written memorandum thereof;
- (f) the rules of the DCC Employee Partly Paid Share Scheme and of the DCC Executive Share Option Scheme referred to in paragraph 5 on page 65;
- (g) the service agreement referred to in paragraph 4 on page 65; and
- (h) the loan note instruments referred to in paragraph 2(b) on page 60.

Date 12th May 1994

### CHAIRMAN'S STATEMENT

We are pleased to report the achievement of an outstanding result in the year to 31st March 1989,

### NET ASSET VALUE PER SHARE

The net asset value per share, inclusive of the proposed dividend of IR7p per share, was IR£10.84 as at 31st March 1989 compared to IR£7.21 per share as at 31st March 1988, an increase of 50.3%. Over the same period the ISEQ overall equity index rose by 32.8%. The outperformance against the market index is noteworthy, particularly having regard to our substantial cash balances which earn a low after tax return.

Shareholders who have participated in all share issues since the first issue on 10th May 1976 have obtained a compound annual return, inclusive of capital growth and gross dividend income, of 26.6% based on a share price of IR£10.77 at 31st March 1989.

# OPERATING PROFIT AND INVESTMENT GAINS

The operating profit and investment gains after taxation amounted to IRL38,345,000 compared to IRL7,129,000 in the previous year. A summary breakdown of this figure is set out on page 1.

During the year we sold a number of our smaller investments and realised a profit of IR£1,928,000 over cost and IR£1,002,000 over the valuation in the accounts of 31st March 1988.

### DIVIDENDS

The Directors are proposing a net dividend of IR7p per share in respect of the year ended 31st March 1989 (IR6p in the year to 31st March 1988), an increase of 16.7%. The tax credit on the dividend will be IR1.3p per share.

### GROUP DEVELOPMENT

DCC is evolving into a substantial international venture investment and corporate finance advisory group. In recognition of this broadening of DCC's business base, DCC will in future operate principally through subsidiaries called DCC Ventures and DCC Corporate Finance.

DCC Ventures provides venture capital for start-up and early stage companies and development capital for growing private companies. In addition it purchases existing shares in private companies where there may be a desire by shareholders to realise part or all of their investment. There are increasing opportunities for management, in partnership with a venture investor, to buy-out the business they work in, or for new management to buy-in to a company and revitalise it. DCC Ventures provides capital to enable management to take advantage of such opportunities.

DCC Corporate Finance is an issuing house and provides an advisory service to any public or private company, whether or not DCC has an investment stake. The main areas of DCC's corporate finance activity are public issues, mergers, acquisitions, disposals and financial structuring.

### BOSTON OFFICE

DCC has recently established an office in Boston and has formed two U.S. subsidiaries, DCC Ventures Incorporated and DCC Corporate Finance Incorporated. This office, in addition to selectively seeking investment opportunities for DCC Ventures, will, through DCC Corporate Finance, seek development opportunities for DCC's Irish and U.K. investments.

# INVESTMENT IN IRELAND

As DCC grows internationally it is better placed to support worthwhile investment projects in Ireland. DCC Ventures in Ireland is aggressively seeking new investments in this market and is encouraged by the much improved economic outlook and investment climate.

To support the development of smaller businesses in Ireland, DCC, in association with Davy Stockbrokers and The Investment Bank of Ireland Limited, established the DCC Business Expansion Fund. This Fund, together with DCC Ventures in Ireland, enables DCC to cover the Irish marketplace for venture capital comprehensively.

### PROSPECTS

At the year end we had not assets of IR£122 million represented by investments of IR£103 million in growing companies and cash of IR£19 million. This strong capital base leaves DCC well placed to secure continued strong growth, which the directors are confident will be achieved.

Alex Spain Chairman 3rd May 1989



Over the past year the net assets of DCC have increased by 80.6%, from IR£67.7 million to IR£122.3 million. This substantial growth results from operating profit and investment gains of IR£38.3 million and a share issue of IR£17 million.

The strong growth of DCC is a reflection of our success in identifying and backing entrepreneurs who have the vision and commitment to build major businesses. We are proud that we deal with so many energetic and hardworking entrepreneurs and managers who have contributed greatly to our success.

DCC VENTURES

During the year DCC Ventures invested IR£12,332,000 of which IR£9,684,000 was invested in Ireland and IR£2,648,000 was invested in the United Kingdom. Nineteen investments were made, of which eight were new investments, nine were add-on investments and two resulted from share exchanges. The investments of IR£100,000 and over, made during the year, are listed on pages 10 and 11.

The new investments are in a diverse and exciting range of businesses. In Ireland they include investments in Xtra-vision and the buy-out of the frozen foods division of Musgraves and in the U.K. an investment in Princeton, a rapidly growing property and construction group, and in Reedpack, a substantial management buy-out.

DCC CORPORATE FINANCE

DCC Corporate Finance in the U.K. has become a member of The International Stock Exchange and The Securities Association.

The impressive track record of DCC Corporate Finance as a sponsor of successful new issues on The Stock Exchange was further enhanced by the flotation of Capital Leasing Group plc last December. Like other companies sponsored by DCC Corporate Finance, its share price performance since flotation has been rewarding to investors. We are confident that our sponsorship of Xtra-vision plc will add further to that track record and DCC Ventures has more growing private companies in its portfolio which will make attractive new issues in the future.

DCC Corporate Finance also had another active and successful year advising and supporting client companies on acquisitions and financing.

INTERNATIONAL EXPANSION

In my review last year I stated that we were giving initial consideration to the establishment of an office in the United States or mainland Europe. We have concluded that, as we wish to invest in and support the growth of internationally minded developing companies, we need an office in both locations. To this end we opened an office in Boston in February of this year and we intend to open an office in mainland Europe by 1991.

In Boston DCC is close to New Hampshire where First NH Banks Inc., the recent Bank of Ireland acquisition, is located. We have received a lot of support from the Chairman of First NH Banks, Frank Buhl, and his management team and we believe there will be opportunities for DCC and First NH Banks to work together.

Our expanding investee companies in both Ireland and the United Kingdom will be increasingly looking to mainland Europe for expansion. Furthermore U.S. companies, including young growth companies based in the New England area in which we wish to invest, are becoming increasingly aware of

the size and potential of the European market. The establishment of an office in mainland Europe is therefore a necessary corporate development objective in order that DCC is well placed to invest in, advise and support these companies.

### DCC MANAGEMENT DEVELOPMENT

In order to facilitate our international expansion, and as a result of the divisionalisation of our activities into DCC Ventures and DCC Corporate Finance, we have made a number of senior management appointments in Ireland, the U.K. and the U.S. We have appointed Morgan Crowe as Managing Director of DCC Corporate Finance in Ireland and David Gavagan as Managing Director of DCC Ventures in Ireland. Tony Mullins has moved to our London office as Managing Director of DCC Ventures in the U.K. and joins Peter Featherman, who continues as Managing Director of DCC Corporate Finance in the U.K. Finally, George Young has moved to Boston as Executive Director of our U.S. subsidiaries. My role as Group Chief Executive and Deputy Chairman will embrace acting as Chairman and Chief Executive of the operating subsidiaries.

Ken Rue, who was our Group Finance Director, was recently appointed Managing Director of DCC Business Expansion Fund Limited and in addition he is actively involved in the corporate finance area as an executive director of DCC Corporate Finance in Ireland.

We have appointed five new associate directors of the Group. Daphne Tease takes over responsibility for Group financial control, information systems and administration from Ken Rue. Kevin Murray and Ger Whyte of DCC Ventures Ireland, Tommy Breen of DCC Ventures U.K. and Michael Scholefield of DCC Corporate Finance U.K. are the other appointees.

All of the above promotions are richly deserved and give DCC a strong management structure and team to tackle the opportunities ahead of us.

We recruited three new executives during the year. Brian Beausang, a chartered accountant who had earlier taken first place in his B.Comm. degree in U.C.D., joined us as a Senior Executive in DCC Ventures Ireland from Arthur Andersen & Co. Gemma Hennessy, a solicitor, joined us as an executive in DCC Corporate Finance Ireland from Smurfit Paribas Bank Limited. Finally Pat O'Brien, a chartered accountant, joined us as an executive in the financial control area, from Church & General Insurance plc.

THE FUTURE

We are committed to maintaining the momentum of growth within DCC and to continue to earn superior long term investment returns for our shareholders. I am confident that with the support and encouragement we receive from our institutional shareholders we will achieve these objectives.

Jim Flavin, Chief Executive & Deputy Chairman 3rd May 1989



### CHAIRMAN'S STATEMENT

We are pleased to report on a year of continuing development for DCC.

NET ASSET VALUE PER SHARE

The year to 31st March 1990 was one in which our investee companies as a group have enjoyed strong earnings growth. Paradoxically, our net asset value grew modestly. In the year to 31st March 1989, DCC achieved a 50.3% increase in net asset value per share. In the year just ended, our net asset value per share, inclusive of the proposed dividend of IR8p per share, grew by 3.3% to IR\$11.13. This result reflects a modest rating for some of our quoted investments at 31st March 1990, compared to some very high ratings at 31st March 1989.

Shareholders who have participated in all share issues since the first issue on 10th May 1976 have obtained a compound annual return, inclusive of capital growth and gross dividend income, of 23% based on a share price of IR\$11.13 (inclusive of dividend) at 31st March 1990.

OPERATING PROFIT AND INVESTMENT GAINS

The operating profit before taxation was IR£3,365,000 compared to IR£2,001,000 in the previous year, an increase of 68%. This growth resulted from increased advisory fees, dividend income and interest income and also from tight control of overheads.

Investment gains, both realised and unrealised, were IR\$2,024,000 compared to IR\$36,664,000 in the previous year. As mentioned above, stock market ratings can have a significant impact on short-term gains, while long-term gains will be determined by the underlying performance of investments.

The combined operating profit and investment gains of IR£44,054,000 in the last two years more accurately reflect the longer-term growth pattern being achieved by DCC.

DIVIDENDS

The Directors are proposing a net dividend of IR8p per share in respect of the year ended 31st March 1990 (IR7p in the year to 31st March 1989), an increase of 14.3%. The tax credit on the dividend will be IR2.0p per share.

STRATEGIES FOR THE FUTURE

The Directors recently considered a strategy paper, prepared by the Chief Executive, and supported its recommendations. The central thrust of the strategy, which is set out in more detail in the Chief Executive's Review on page 8, is based on a recognition that building substantial quality businesses is a long-term process. It takes time to develop management teams of quality and depth, capable of building large soundly based international companies. DCC will take a long-term view of its investments, will support them with an active business development and corporate finance input and with incremental investment, where we believe we can make an effective contribution as "business partners". The greater proportion of our new investment in the future is likely to be incremental investment in our quality investee companies, backing management teams which have earned our continuing trust and confidence.

ARTICLES OF ASSOCIATION

The shareholders will have received, with these financial statements, a formal notice of an Extraordinary General Meeting to be held after our forthcoming Annual General Meeting in order to, *inter-alia*, adopt a revised set of Articles of Association. The company's existing Articles, which were adopted in 1976 and amended on an ad hoc basis thereafter, have become somewhat outdated. The Directors are of the view that, having regard to the growth of DCC, the company's Articles should now be closer to a public company model.

PROSPECTS

The markets may be uncertain at this time but we can look forward to the future with confidence, based on the underlying profit growth being achieved by our investments and based on our strong balance sheet which has a net worth of just under IR£147 million including cash of IR£25 million. We are well placed to pursue attractive investment opportunities which may be thrown up by a more sober market place.

Alex Spain Chairman 7th May 1990



### CHIEF EXECUTIVE'S REVIEW

Over the past year our unquoted investments as a group achieved excellent growth through internal development and acquisition. Our quoted investments as a group also developed strongly but the market ratings of some declined, which restricted our net asset value growth.

VENTURES

During the year DCC Ventures invested IR\$16,673,000 compared to IR\$12,332,000 in the previous year. We invested IR\$14,884,000 in Ireland, IR\$1,403,000 in the United Kingdom and IR\$386,000 in the United States.

Most of our new investment was directed towards additional backing for our more rapidly growing private and public investments.

CORPORATE FINANCE

DCC Corporate Finance, which is a member of The International Stock Exchange and a member of The Securities Association, had another active and successful year.

I mentioned above that our primary investment focus in the year under review was incremental investment in our better quality investments. This was usually associated with the funding of acquisitions which, in most cases, were identified and negotiated by our corporate finance teams in the Dublin, London and Boston offices.

DCC Corporate Finance also sponsored another successful new issue on The Stock Exchange—Xtra-vision plc. DCC Ventures has several growing private companies in its portfolio which we expect will make attractive new issues.

STRATEGIES FOR THE FUTURE

DCC has developed, since 1976, into a substantial investment holding and corporate finance advisory Group, with a strong and committed management team and a developing international capability and ambition. DCC now has a different complexion than the vehicle established in 1976, which had more limited initial objectives. At that time we saw our business as making minority stake development capital investments in private companies in Ireland.

Through DCC Ventures we continue to actively seek unquoted investment opportunities and we support the development of smaller companies in Ireland with the DCC Business Expansion Funds. We have, however, expanded our horizons to include majority investments, publicly quoted investments and foreign investments. In addition, we have become an issuing house, with Stock Exchange membership, and are active in the corporate finance advisory business.

When DCC was founded in 1976, the venture capital industry in Ireland, the United Kingdom, the United States and mainland Europe was at an early stage of development. Today the situation is radically different. The industry can now be described as being at a mature stage, with a multiplicity of organisations involved in the venture capital market. This is good for entrepreneurs and, I hope, for national economies, but it will become more challenging for venture capital investors to achieve superior investment returns.

The number of interesting investment opportunities has not expanded sufficiently to meet demand from the increased number of organisations who provide venture capital. In addition, the Unlisted Securities Market attracts the attention of young growth companies, and publicly quoted acquisition vehicles are constantly searching for rapidly growing companies. DCC Ventures is better placed than most to take on this competitive, mature market. However, we have to be realistic and anticipate fewer opportunities to make attractive venture capital investments.

Recognising the market background and having regard to the strong capital base of DCC and its experienced management team with its business building and corporate finance skills, we have decided to continue a natural evolution towards becoming a long-term industrial and commercial holding company. This will be brought about over time by increasing DCC's shareholding in its better quality investments, where we have a high regard for management and where we believe we can make an effective contribution as "business partners".

We think it is correct that we should take a long-term view of our investments. We see little logic in realising an investment after three to five years and then incurring all the overhead expenditure and risk associated with making new investments. The risk profile of incremental investment is lower where we have first hand knowledge of management capabilities and of the industry in which they operate.



A long-term approach is required to build large and strong businesses. It takes time to develop management teams of quality and depth, capable of building large soundly based international companies. Such companies must have a corporate culture and values which are established over a lengthy period and which are deeply rooted. Furthermore, strong businesses should be built on equity capital and not leverage. Any student of the '80's, and indeed, earlier decades, should recognise that "wheeling and dealing" on leverage does not work. In the '90's, businessmen will have to give more attention to solid business building and sensible aquisitions, funded principally by equity. Strong balance sheets give growing companies corporate poise and confidence, which is not possible with high leverage.

In summary, we are moving to a position where we will seek to avoid having too many investments and we will increase their average size, both in value and shareholding percentage. We will take a long-term view and seek to be effective "business partners", through encouraging and assisting operating management with an active business development and corporate finance advisory input, designed to help them achieve above average growth.

We are confident that by taking this long-term business building approach we will secure for our shareholders a better return than if we did not adapt to the changing circumstances of the market and of DCC itself. It is not sufficient to continue with the policy of seeking only to make small venture capital investments and to trade them frequently. Furthermore, we believe that holding strategic stakes in some of our former private company investments which are now publicly quoted is compatible with the interests of our shareholders as direct investors in those companies. Only a small proportion of companies brought to the stock market over the last twenty years have made it into the really big league. We believe we have a relevant role to play in seeking to increase the number of young public companies in Ireland that emerge over the long term as substantial international companies. We will be providing every support and encouragement to our quoted investments to ensure that, over time, they achieve above average growth.

### MANAGEMENT DEVELOPMENT

We have continued to develop the executive team and to recruit selectively. Our divisionalisation last year into Ventures and Corporate Finance has facilitated the development of skills and concentration of focus within those areas.

The following executive promotions and changes were recently made:

Peter Featherman, who has been Managing Director of our Corporate Finance subsidiary in the U.K., now takes overall responsibility for the London office, following the return of Tony Mullins to Ventures in Dublin. Tommy Breen has been appointed a director of DCC Ventures in London and Michael Scholefield has been appointed a director of DCC Corporate Finance in London. Gerard Whyte takes over as Managing Director of DCC Business Expansion Fund Limited in Dublin from Ken Rue who has moved to Corporate Finance in Dublin.

We recruited the following new executives during the year:

Fergal O'Dwyer, a Chartered Accountant, joined us as an Associate Director in Corporate Finance Dublin and Hugh Keelan, also a Chartered Accountant, as an Executive in Corporate Finance Dublin. They were both previously with the Corporate Finance Department of Price Waterhouse in Dublin. David Sharpe, who holds an MBA, joined us as an Associate Director in Ventures Dublin from AlB Venture Capital. Karl Toland, a Chartered Accountant who was previously with KPMG Stokes Kennedy Crowley, joined Ventures Dublin as an Executive. Finally, Michael Kaplan, who is a Certified Public Accountant with an MBA in Finance from the Wharton School, joined our Boston office as Vice-President.

THE FUTURE

Our near-term objective is to place increased emphasis on quality and "business building", rather than quantity. The management team is committed to building DCC in the 1990's into a significant international company that earns superior long-term investment returns for its shareholders and makes a worthwhile contribution to society's needs.

Jim Flavin, Chief Executive & Deputy Chairman 7th May 1990 We are pleased to report on a year of strong profit growth for DCC.

Accounting **Policies** 

Having regard to D C C's role as a long-term corporate partner and the related board and corporate advisory roles, the directors have concluded that it would no longer be appropriate to exclude from the consolidated profit and loss account D C C's attributable share of profits from related companies. Since 1983 it has been the policy to include only dividend income from related companies in DCC's accounts. This year the consolidated profit and loss account includes D C C's attributable share of profits from related companies and the previous year's results have been restated.

Since 1983 we have included investments at current value in DCC's balance sheets. Unquoted investments have been valued by the directors and quoted investments have been valued at market value. The valuation process for unquoted investments has proved to be reliable over the years, based on subsequent third-party transactions in the shares of those unquoted investments and corporate sales, which have generally been at a higher valuation. The directors believe therefore that the accounting policies which we have pursued since 1983 in relation to DCC's balance sheets are correct and continue to give a true and fair

view.

Profits

Profit before taxation increased by 55% from IRE9.122 million to IRE14.098 million. Profit after taxation and minority interests increased by 71% from IR£6.339 million to IR£10.831 million. Earnings per share increased by 53% from IR53.2p to IR81.4p. These excellent figures reflect strong profit and earnings growth in DCC's related companies.

Net Asset Value

The net asset value per share, inclusive of the proposed final dividend of IR9.0p per share, declined by 4.3% from IR£11.05 per share to IR£10.57 per share over the year to 31st March 1991. This compares very favourably with a decline of 15.3% in the ISEQ index over the same period. Shareholders who have participated in all share issues since the first issue on 10th May 1976 have obtained a compound annual return, inclusive of capital growth and gross dividend income of 19% based on a share price of IR£10.57 (inclusive of dividend) at 31st March 1991.

Dividend

The directors are proposing a net dividend of IR9.0p per share in respect of the year to 31st March 1991 (IR8.0p in the year to 31st March 1990), an increase of 12.5%. The tax credit on the dividend will be IR2.0p per share.

Board

During the year we were pleased to co-opt to the Board Peter Featherman, who has responsibility for our London office. Peter joined DCC in 1986, with experience in corporate finance gained in the City, principally with SG Warburg. He is a chartered accountant and a Cambridge graduate. Tony Mullins, who joined the Board in 1983, resigned to take up the position of Managing Director of Barlo Group plc. We wish him well and thank him for his valuable contribution to DCC.

Prospects

DCC has an exceptionally strong balance sheet with net assets of IR£140 million and net cash resources of approximately IR£35 million. Our experienced executive team is motivated and committed to use this strong base to achieve profitable growth and development for DCC. The core investments, in which DCC is a corporate partner, are as a group achieving continued growth, and new investment opportunities are being pursued.

The past year was one of consolidation in the pursuit of our aim to hold a smaller number of larger core investments or corporate partnerships. Strong earnings growth, well above market average, was achieved by these core investments.

At an Extraordinary General Meeting held on 1st March 1991, shareholders approved the directors' recommendation that the name Development Capital Corporation Limited be changed to DCC Limited and that DCC Ventures Limited be changed to D C C Corporate Partners Limited. The new names have now been adopted following recent approval from the Registrar of Companies.

Name Changes

A Year of
Consolidation

The past year was characterised by a more challenging economic environment, particularly in the United Kingdom, and by weaker stock markets. It was a time for consolidation and repositioning in order to be well prepared for an economic upswing and stronger markets. We have pursued our strategy of corporate partnership with our larger core investments and invested further in companies such as Printech International plc, Reflex Investments Plc, and Wardell Roberts PLC. We have also realised our positions in some non-core or smaller investments. In total we realised IR£14,607,000 from the sale of our holdings in Capital Leasing Group plc, Duke House Properties Limited, Intepro Systems Limited, Kerry Group plc, Noctech Limited, Reedpack Limited, Technitron PLC, Texprint (International) Limited and Xtra-vision plc.

Substantial Funds for Investment The executive team is active in seeking out acquisition and development opportunities for related companies and in identifying new direct investment opportunities for DCC. With net cash resources of just under IR£35million, DCC is in a strong financial position to support the further development of its core companies and to make new investments.

Committed and Effective Corporate Partners :

It is our aim to be committed and effective corporate partners at all times. To this end it has become appropriate to increase our knowledge of relevant sectors. This sectoral knowledge is of value in seeking acquisitions on behalf of related companies, and in finding new opportunities for D C C itself. We have set up a "Sectoral Research and Acquisition Identification" unit, under the direction of George Young, for this purpose.

We are also developing links on the European continent, in order to support expansion there by our core companies.

Growth. through Partnership Our related companies are led by outstanding entrepreneurs and management teams, who have deep knowledge of their industries. DCC has complementary corporate development and financial skills. In partnership we have a successful formula for continuing growth.

### STATEMENT CHAIRMAN

The year to 31st March 1992 was a challenging one for most business sectors. The results of DCC, a broadly based group, were impacted by a difficult trading environment for some of DCC's related companies. In the circumstances, the results for the year are creditable.

### PROFIT

Profit before taxation was IR£13.533 million, compared to IR£14.098 million in the previous year. Profit after taxation and minority interests was IR£10.257 million compared to IR£10.831 million. Earnings per share were slightly lower at IR76.5p compared to IR81.4p.

This modest reduction in profit reflects primarily the impact on our related companies of the depth and length of the continuing recession in the UK and the impact of the shake-out in the computer industry internationally. However, DCC's earnings growth continues to comfortably outperform the market on both a two year and a five year historical perspective, a record which more accurately reflects DCC's growth.

DCC's five year profit before taxation and earnings per share record is as follows:

Year ended 31st March	1988	1989	1990	1991	1992
1 6at Glided 2 tet March	IR£'000	1R£'000	· IR£'000	IR£'000	IR£'000
Profit Before Taxation	• 4,828	7,145	9,122	14,098	13,533
Earnings Per Share	IR42.6p	IR50.7p	IR53.2p	IR81.4p	lR76.5p
•					

# NET ASSET VALUE

The net asset value per share, inclusive of the proposed final dividend of IR10p per share, was IR£9.50 per share at 31st March 1992 compared to IR£10.57 at 31st March 1991. This reflects the profit outcome referred to above and somewhat more modest ratings for both public and private companies at 31st March 1992 compared with one year previously. While company ratings can have a significant impact on short-term gains, long-term gains will be determined by the underlying performance of investments, about which we are optimistic.

### DIVIDENDS

The directors are proposing a net dividend of IR10p per share in respect of the year ended 31st March 1992 (JR9p per share in respect of the year ended 31st March 1991), an increase of 11.1%. The tax credit on the dividend will be IR3.3p per share.

# PUBLIC FLOTATION

We believe that the development strategy which we are pursuing and which is referred to in the Chief Executive's Review will, in time, be facilitated by a public flotation of DCC. We have, therefore, set an objective of obtaining a stock market quotation in the medium term.

# CHAIRMAN'S STATEMENT

### BOARD

Ken Rue, who had been a board member and Company Secretary since 1987, recently resigned to take up the position of Managing Director of Fodhla Printing Company Ltd. His unique combination of skills will be missed, and we wish him well. Following his departure, Daphne Tease, the Group financial controller, has been appointed Company Secretary.

### **PROSPECTS**

At the year end we had not assets of IR£127 million, including not cash balances of IR£36 million. This strong capital base leaves us particularly well placed to pursue our development objectives. Our executive team is strongly motivated to deploy our resources in a logical and sensible manner to achieve continued profitable growth and development for DCC.

Alex Spain Chairman 4th May 1992

# CHIEF EXECUTIVE'S REVIEW

The past year was characterised by a cyclical downturn in international economic activity, particularly in the recession-hit UK, which in turn led to a slow-down in the Irish economy. Notwithstanding this difficult environment, DCC's results for the year ended 31st March 1992 proved considerably resilient. This resilience reflects the high quality of the great majority of DCC's related companies.

# DCC CORPORATE PARTNERS

DCC strengthened its partnerships with a number of related companies through increasing its percentage shareholdings in Emo Oil Limited, Flogas plc, Fysses plc, HealthDrive Corporation, Printech International plc, Sharptext Group Limited and Wardell Roberts PLC. We have a high regard for these companies and will continue to make an effective contribution to their development as business partners. During the year we invested IR£10.750 million and, since the year end, IR£4.593 million, principally in these companies.

DCC accepted a cash and loan stock offer for its shareholding in Kindle Group Limited in November 1991, with an escalator payment to be received if certain profit targets are achieved by Kindle in its financial year to 30th June 1992. We expect to realise total proceeds of just under IR£10 million and a total profit of IR£8.3 million on the investment.

## DCC CORPORATE FINANCE

DCC Corporate Finance, which is a member of the International Stock Exchange and of The Securities and Futures Authority, had another active and very successful year. In addition to fund-raising assignments, DCC Corporate Finance provided extensive advice to investee companies over the past year on a range of acquisition opportunities.

Among the transactions completed during the year, DCC Corporate Finance advised on and underwrote a IR£62.5 million issue of convertible preference shares for Fyffes plc.

## DEVELOPMENT STRATEGY

DCC's directed evolution towards becoming a focused long-term industrial and commercial holding company continues. This strategy is based on the belief that DCC will earn superior returns for its shareholders over the long term by concentrating on a smaller number of larger core investments in chosen market sectors.

We will continue to capitalise on our strengths in the areas of venture capital - or, more correctly, investment capital - and corporate finance, in the Irish market. DCC has an established presence and well recognised brand name in Ireland, and we believe that as the economic climate improves, new investment opportunities will open up for larger, later stage investments, well suited to DCC's current size. This process should be facilitated by rising thresholds for public flotations.

# CHIEF EXECUTIVE'S REVIEW

Our principal activity in overseas markets is now focused on acquisitions for DCC's core investments . Over time, we will selectively acquire a limited number of new overseas-based core investments.

### THE FUTURE

Our near-term objectives are to further strengthen the partnerships which we have forged with our core companies and to deploy our cash resources in the further development of these companies and in making selective new acquisitions which are consistent with our corporate development objectives. We will further refine our sectoral focus and the executive team will increase its level of specialisation in chosen sectors.

This focused strategy will, we believe, generate superior investment returns for our shareholders over the long term, an objective to which we are all committed.

James Flavin
Chief Executive & Deputy Chairman
4th May 1992

# Chairman's Statement

The past year was one of considerable achievement in moving DCC towards becoming a focussed industrial and financial holding company.

## TRADING ENVIRONMENT

DCC's subsidiary and related companies have experienced a more favourable trading environment in recent months. Signs of economic recovery in Ireland, Britain and the US are real. Much of our year to March 1993, however, saw a continuation of the difficult trading conditions which had been experienced in the preceding year and all companies in the DCC group had to deal with the effects of economic uncertainty and weaker demand in their markets.

### PROFIT

Profit before taxation was IR£13.802 million compared to IR£13.533 million in the previous year. Profit after taxation and minority interests was IR£10.512 million compared to IR£10.257 million. Earnings per share were IR77.8p compared to IR76.5p.

This is a good result in an extremely demanding year. It bears testament to the high quality of DCC's subsidiary and related companies, and to the energy with which the management teams of these companies have confronted the difficult markets which they have faced.

# NET ASSET VALUE

The net asset value per share, inclusive of the proposed final dividend of IR11.5p per share, grew by 8% to IR£10.15 per share at 31st March 1993 from IR£9.40 at 31st March 1992.

### DIAIDEMD

The directors are proposing to increase the net dividend by 15% to IR11.5p per share in respect of the year ended 31st March 1993 (IR10.0p per share in respect of the year ended 31st March 1992). The tax credit on the dividend will be IR3.2p per share.

# PUBLIC FLOTATION

Last year we reported that the directors had set an objective of obtaining a stock market listing for DCC in the medium term. This continues to be our firm plan.

DCC's subsidiary
and related
companies have
experienced a more
favourable trading
environment in
recent months.



Alex Spain, Chairman

Signs of economic recovery in Ireland, Britain and the US are real.

## ARTICLES OF ASSOCIATION

Shareholders will have received, enclosed with this Annual Report, a formal Notice of an Extraordinary General Meeting to be held after our forthcoming Annual General Meeting in order to amend the share transfer provisions contained in DCC's Articles of Association. Under the current Articles, the Board is required to determine the fair value of any shares being transferred before a transfer may proceed. The Directors are of the view that, as DCC continues to move towards flotation, the share transfer provisions should be eased and the potentially lengthy procedure for establishing fair value should be removed from the Articles.

### PROSPECTS

The shape of DCC has evolved significantly over the past twelve months with the result that we are now focussed on the development of a smaller number of high quality subsidiaries and related companies in DCC's core sectors.

Our capital base remains exceptionally strong with net assets at the year end of IR£136 million, including net cash balances of IR£21 million. We will continue to deploy judiciously our cash resources, as attractive opportunities arise, in developing further our market positions in our chosen sectors.

The economic outlook is brighter than for some time past. We are confident about the growth prospects for the DCC group in the current and future years.

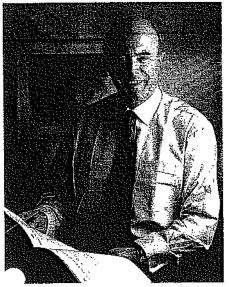
ALEX SPAIN Chairman 18th May 1993

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# Chief Executive's Review

During the past year
we took a number
of significant steps
in our directed
evolution into a
focussed industrial
and financial holding

company.



Flavin, Chief Executive & Deputy Chairman

We increased DCC's shareholding to a majority interest in Printech International plc, Sharptext Group Limited, Wardell Roberts PLC, and, since the year end, in Emo Oil Limited.

# A YEAR OF ACHIEVEMENT

During the past year we took a number of significant steps in our directed evolution into a focussed industrial and financial holding company. We increased DCC's shareholding to a majority interest in Printech International plc (73%), Sharptext Group Limited (83%), Wardell Roberts PLC (80%) and, since the year end, in Emo Oil Limited (75%). These increased shareholdings, together with our majority stake in Fannin Limited (77%), mean that DCC now has a subsidiary company in each of its core sectors, namely Food, Energy and Waste Oil Management, Healthcare, Print and Publishing and Office Automation.

Over the last 12 months DCC also increased its shareholding in a number of important related companies, namely in Fyffes plc to 11%, in Flogas plc to just under 30%, in Allied Foods Limited to 26% and in HealthDrive Corporation to 44%. Since the year end, it was announced that the DCC group would acquire a 29.9% interest in Kingston Oil and Gas plc (to be renamed Greenway Holdings plc), subject *inter alia* to the approval of Kingston shareholders. This is a strategically important new investment as Greenway will become the largest recycler and distributor of waste oils in the UK as a result of the merger of the UK waste oil management activities of Emo Oil with those of Greenway.

The total amount invested during the year in the above subsidiary and related companies was IR£22 million.

At the same time as increasing our percentage shareholdings in core investments in core sectors, we have continued to reduce selectively our total number of investments.

We have a high regard for all of DCC's subsidiaries and related companies and we shall continue to make an effective contribution to their development as corporate partners, both through the continuing sectoral specialisation of the DCC executive team and through the application of our corporate development and financial skills.

In the companies where we have become majority shareholders, we are in the process of fusing the DCC strategic skills with the operational expertise and industry knowledge of the management teams which lead these companies.

We are also developing our group accounting function from that of an investment company to one of an industrial holding company with centralised financial control and reporting.

#### DCC CORPORATE FINANCE

During the past year DCC Corporate Finance, which is a member of the International Stock Exchange and of The Securities and Futures Authority, was again actively involved in advising subsidiaries and related companies on a range of transactions. The skills, expertise and experience of the DCC Corporate Finance team are additionally a valuable resource as we chart and implement DCC's own development strategy.

### DEVELOPMENT STRATEGY

It is our belief that DCC has progressed through the initial stages of its directed evolution into a focussed industrial and financial holding company in a manner that augurs well for continued development. DCC's divisional specialisation in Food, Energy and Waste Oil Management, Healthcare, Print and Publishing and Office Automation provides a spread of risk across basic business sectors; at the same time, the markets served by a number of DCC group companies within these sectors offer exposure to interesting growth areas for the future. DCC will further refine its sectoral focus over the coming year, and will continue to increase its knowledge of, and management specialisation within, its chosen sectors.

With regard to venture/development capital activity, we recognise the value of the DCC brand name in the Irish market and of our own experience and expertise in this area. We will selectively seek development capital and MBO opportunities in high quality, growth companies in our five core sectors. We expect that some of these will in time result in acquisition opportunities for our core divisions.

Our principal activity in overseas markets continues to be focussed on acquisitions for DCC's core investments. Over time, we will selectively acquire a limited number of new overseas based core companies.

# Grahman's Stevensor

The successful completion of DCC's recent public listing on the Dublin and London Stock Exchanges represents a significant landmark in the continuing development of the Company. We welcome all of DCC's new shareholders, who have added further strength to the Company's shareholder base.



Alex Spain, Chairman

### Results

We are pleased to report the achievement of very good results by DCC in the past financial year. Profit before taxation for the year ended 31 March 1994 was IR£22.179m compared with IR£14.873m for the year ended 31 March 1993, an increase of 49.1%. Adjusted earnings per share (after deducting net exceptions credits and adding back goodwill amortisation) were IR19.56p compared with IR15.65p in the previous year, an increase of 25.0%. Turnover (including share of associates' turnover) increased by 36.7% from IR£245.498m to IR£335.572n

### Dividend

A total dividend of IR5.0p (net) per share has been paid in respect of the year ended 31 March 1994. This represents a 117% increase on the net dividend of IR2.3p per share paid in the previous year. The dividend was paid to sharehold

by way of two interim dividends. The first interim dividend of IR1.104p per share was paid to shareholders on the register at 16 November 1993 and the second interim dividend of IR3.896p per share was paid to shareholders of the register at 22 April 1994.

The tax credit attaching to the total dividend amounts to IR1.16p per share.

All of the fully paid ordinary shares now in issue following the Company's listing will rank pari passu in respect of future dividends.

If the Company had been listed on The Stock Exchange for the whole of the year ended 31 March 1994, the Directors would have recommended a net dividend of IR5.6p per share in respect of the year and the tax credit attaching to the dividend would have been IR1.28p.

### Board

Mr. Michael Meagher resigned from the Board on 4 January 1994 following the placing of the 20% shareholding held by Bank of Ireland in the Company. The Directors would like to thank Michael Meagher for his substantial contribution since the formation of the Company in 1976.

### Corporate Governance

DCC has for many years adhered to public company standards of reporting and corporate governance. DCC's board structures are in compliance with the operative provisions of the Code of Best Practice published by the Committee on the Financial Aspects of Corporate Governance. Remuneration and Audit Committees have been established with formally delegated duties and responsibilities. The Audit Committee comprises the non-executive Directors and the Remuneration Committee comprises the non-executive Directors and the Chief Executive. The Chief Executive does not participate in any decisions of the Remuneration Committee concerning himself.

### Prospects

The continued growth and evolution of DCC over the past twelve months has seen the Company emerge as one of Ireland's leading industrial holding companies. We are poised for further growth and have the balance sheet strength to enable us to pursue development opportunities in our chosen sectors with confidence.

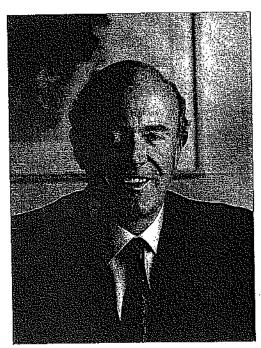
The Directors believe that these development opportunities and the better economic conditions generally in Ireland and Britain will provide a firm basis for future growth and that the combination of the financial and corporate development skills of the DCC central management team with the industry expertise at operating level will continue to be a key feature in the success and development of the Group.

Alex Spain Chairman 26 May 1994

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### A Year of Growth and Development

The year to March 1994 was one of significant growth and development for DCC, culminating in the Company's public listing on the Dublin and London Stock Exchanges following the year end. The listing marks an important milestone in the Company's history, and ranks DCC amongst Ireland's larger quoted industrial companies.



Ilm Flavin, Chief Executive & Deputy Chairman

Over the past year DCC achieved excellent growth, both through organic development in our operating companies and through further acquisitions, which have strengthened DCC's position in certain of its chosen sectors. The Group's results were assisted by the improved economic trends and increased consumer confidence in its major markets, Ireland and the UK.

The Food, Energy, Print & Publishing and Computer Products
Distribution sectors all recorded good profit growth during the
year. In the Healthcare sector growth was held back, due in large
measure to certain of the Group's businesses in this sector being
at a development stage. These businesses are expected to generate
improved results in the current year.

### Acquisitions

The major acquisition made during the past year was in the Energy sector, where DCC acquired a controlling shareholding in Flogas plc

by way of a partial offer in August 1993. Following the successful conclusion of this offer, the Group now controls 60.3% of Flogas. Also in the Energy sector, DCC increased its interest in Emo Oil Limited during the year to 75%. The Group also acquired a 29.7% interest in the quoted British waste oil recycling company, Greenway Holdings plc, following the merging of Emo Oil's British waste oil operations with Orcol Fuels Limited, Greenway's waste oil recycling subsidiary.

In the Healthcare sector, DCC increased its interest in three of its Healthcare companies, Fannin Limited, M. Casey Limited and HealthDrive Corporation since the year end. The Group now controls 83.7% of Fannin, 51% of M. Casey and 47.5% of HealthDrive.

The total amount invested by DCC in acquisitions during the year and since the year end was IR£33.4m.

### Strong Balance Sheet

In the three years to 31 March 1994, an acquisition programme of IR£76.8m was undertaken by DCC in developing its business base in its core sectors of Food, Energy, Print & Publishing, Computer Products Distribution and Healthcare. In approximately the same period (allowing for different year ends), Group companies undertook capital investment of IR£37.1m. Following this acquisition and capital expenditure programme, totalling IR£113.9m, which

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was undertaken without recourse to shareholders during that period, DCC's net borrowings at 31 March 1994 were only IR£1.5m, representing just 1.8% of shareholders' funds. These figures bear testament to the high quality of the profits and cash flows generated by the operating companies within the DCC Group.

### Management

During the past year we continued to build on the synergies between the DCC executive team and the management teams which lead DCC's operating subsidiaries. The process of fusing DCC's strategic skills with the operational expertise and industry knowledge of these management teams has continued in a very encouraging way. We are confident that this partnership formula will provide the basis for well structured growth and development in DCC's sectoral operations.

### DCC Corporate Finance

DCC Corporate Finance, which is a member of The International Stock Exchange and of The Securities & Futures Authority, was involved in a number of projects during the past year on behalf of the Group and on behalf of third party clients.

DCC Corporate Pinance has extensive advisory experience in acquisitions, mergers, disposals and financial structures. The skill base of the corporate finance team continues to be a valuable resource in the implementation of DCC's own development strategy.

### The Future

DCC is well positioned to benefit from the positive economic climate in our major markets, Ireland and the UK, where the outlook is brighter now than for some time past. We look forward to DCC's future as a listed company with confidence and with a continuing resolve to deliver superior long-term investment returns to our shareholders.

James Flavin Chief Executive & Deputy Chairman 26 May 1994



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### TELEFAX MESSAGE

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Mr John Relly / Terry O'Driscoll	
00 - 353 - 1 - 6765 792	
Mr Feter van der Hoeven / Andrew Casley	)
Coopers & Lybrand, Amsterdam	
June 1, 1995	······································
DGC International Holding B.V.	

As discussed with Esther Oprinsen, we send you a copy of the English version of DCC's draft ruling. The Dutch translation of this version was sent to the tax authorities today.

Solutions for Basiness

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Coopers & Lybrand (Vinderland) is a Detich civil partnership formed by limited liability companies insorperated under Outch law, Coopers & Lytnand

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### PRIVATE AND COMPIDENTIAL

1. On behalf of the above companies we respectfully ask your attention for the following. The matters set out below relate to the application of the participation exemption during and after an internal reorganisation within the DCC group involving DCC International Holdings 8.V. and to possible future acquisitions.

### DCC Pla

- 2. DCC Plc (DCC) began as a venture capital company but by the early 1990's many of its earlier investments had matured well and the company completed a planned transition into an Industrial Holding company by 1994. It is incorporated under the laws of the Republic of Ireland where it is both resident and registered. Copies of the 1995 and 1994 accounts are snclosed.
- The company's business is making strategic investments and assisting the companies in which it invests to develop their potential. Its aim is to increase or astablish the market position and profit earning capacity of its subsidiaries and associates by participating directly in the management and strategic decisions of these companies. To this end, DCC would normally seek Board representation and would often acquire or build gradually a majority stake in its investments pp. 8-17 of the 1994 accounts show useful examples of the investment profile. The company focuses on the following sectors:
  - (i) food;
  - (ii) services to the computer industry;
  - (111) energy and waste oil management;
  - (iv) healthcare.



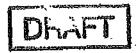
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4. By specializing in these four sectors, DCC is able to ensure that the skills of its staff relate specifically to the industry sectors in which its subsidiaries and associates are active, thus enhancing the value of their involvement with those businesses. Typically, DCC would concentrate on developing a detailed working knowledge of the business activities of a subsidiary or associate, advising on which areas to develop, where management energy should be focused and how to effect these objectives. In addition, DCC Corporate Finance assists subsidiary and associated companies make acquisitions and disposals by advising on acquisition or divestment strategy, identifying targets and assistance with implementation.

### Plans for Development

- 5. DCC now finds that its structure, which to date has been well suited to its role as a venture capitalist, needs to be refined to take into account its growing success and maturity and transition into an Industrial Holding company. There are a number of factors involved:
  - (a) 'DCG's business is becoming more international as it is reaching its natural limits within the Republic of Ireland;
  - (b) as a mature business it needs to reorganise its existing activities which have largely been contained within one company, DCC pic itself, into a form more suitable for its management and operations;
  - (c) it seeks to consolidate its existing activities by developing its strengths and concentrating on longterm development; and
  - (d) It seeks to make further acquisitions in mainland Europe, the UK and North America.
- 5. For these reasons a number of changes are about to take place.
- 7. DCC will refine its existing Irish structure to take account of the different operational roles and activities it performs: corporate finance autivities are already contained within two separate subsidiaries (one in Ireland and one in the UK); other activities of DCC Plc will be transferred into subsidiaries primarily to enhance the efficient management and operation of each.
- 8. In addition, DCC intends to develop the role of its existing Dutch subsidiary, DCC International Holdings BV, both broadening its role within the group's existing activities and ensuring that it is in a position to play a more significant role as further acquisitions are made in Europe and the US.





-3-

### DCC International Holdings BV

- 9. DCC International Holdings BV (DCC BV) is a company incorporated under Dutch law, it is resident in Amsterdam. The shares in DCC BV are held by DCC Fig (100% of the A shares) and DCC Limited (the single outstanding & share).
- 10. DCC Limited is incorporated under the laws of the lale of Man where it is resident. It is a 100% subsidiary of DCC Plc and, for many years, was the group's principal non-Irish investment vehicle. As part of the reorganisation outlined above, the group intends to scale down or eliminate its use of this company.
- 11. DCC BV was incorporated in 1992 to hold the group's UK-investments under a single UK Holding company, DCC Holdings (UK) Ltd, of which it owns 100%. The intention was also that it should hold the group's investment in HealthDrive Corporation, a US mobile healthcare company.
- 12. Some IRP 23 million of the group's cash funds are held in DCC BV on interest free loans from Ireland and these are ear-marked for future acquisitions. In addition, the group is currently renegotiating its banking facilities which will include a further IRP 60 million for future acquisitions.
- i3. The group is actively looking for putential targets although, at present, nothing specific has been identified. Whilst each future acquisition will need to be considered on its individual merits, senior management see a clear role for DCC BV as the intermediate holding company for any non-Irish businesses in which it makes acquisitions.

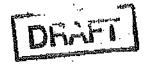
### The Repressisation

- 16. As part of the reorganisation outlined above, the group intends to transfer some of its shareholdings to DCC BV.
- 13. First, DCC Limited will transfer its 40.6% participation in HealthDrive Corporation to DCC BV as a result of which the Dutch company will nem 47.3%.
- 16. HealthDrive Corporation is a company organised and existing under the laws of the State of Massachusetts. As its name indicates, it is active in the healthcare business which is one of the DCC group's four business sectors. It is subject to tax in the USA on its profits. The DCC group \_ plays an active role in the strategic direction and management of the company.



- 17. Second, DCC RV will acquire the group's participation in another associated company, Pyffes Pic, in which the group currently owns 11% of the ordinary share capital and 8% of the convertible preference shares. The DCC group has had a participation in Fyffes Pic since 1981 ...
- 18. Pyffes Pic is a company incorporated under the laws of the Republic of Ireland where it is also resident. It is quoted on the International Stock Exchange in London and on the Stock Exchange in Dublin. The company is a major distributor of benanas and fresh produce and has activities in North America, the UK and mainland Europe as well as Ireland. The company is subject to tax on its profits in Ireland and is not subject to a special tax regime (is the Dublin Financial Services Centre or the Shannon Free Zona).
- 19. DCC Pic accounts for its participation in Syffes Pic as an 'associated company' which, under UK and Irish accounting standards, means that it exercises a "significant influence" over it. The company's auditors have accepted this testment which normally follows once a shareholding arcased 202
- 20. The DCC group participates in the management of Fyffes Plc in a number of ways. First, through its representation on the Board of Fyffes Plc, as DCC's founder and Chief Executive, Mr James Flavin, has been on the Board of Fyffes Plc for many years and is also a member of the audit committee and compensation committee. Second, through the involvement of DCC Corporate Finance which has assisted Fyffes Plc on significant transactions since 1981. In 1981 DCC advised Fyffes Plc on its flotation on the Unlisted Securities Market in Dublin and London and in 1987 DCC arranged the listing of Fyffes on the Stock Exchange. In 1986 Fyffes Plc acquired a significant UK competitor, and was actively assisted throughout by DCC. In 1991 Fyffes Plc raised equity of IRP 62.5m and DCC advised on the transaction and underwrote the issue i.e. DCC agreed to purchase all the shares which were not purchased by the public. A copy of Fyffes Plc's 1994 accounts are enclosed. You will note that DCC Corporate Finance in listed as the company's principal financial adviser.
- 21. In order to transfer the participation in Fyffes Plc as discussed in paragraph 17 above a number of steps have been or will be taken. Two diagrams are attached for your ease of reference.
- 22. First, Marjove Limited has been incorporated under the laws of the Republic of Ireland and is resident there. DCC BV has subscribed for 100% of the B shares in Marjove. The owner of the A shares is DCC Properties Limited. a 100% subsidiary of DCC Plc, incorporated under the laws of the Republic of Treland and resident there. The A shares have limited rights to a return of capital with the effect that DCC BV will be entitled to any undistributed surplus on a winding up.
- 23. Marjove will incorporate Lotus Green Limited as its 100% subsidiary, again under the laws of the Republic of Ireland. Lotus Green will receive an interest free lose from DCC plc with which it will purchase the groups's participation in Fyffes Plc.

(62.5?)

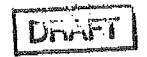


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- 24. Once the steps described in paragraphs 22 and 23 have been completed Marjove will be liquidated and the shares in Lotus Green will be transferred to DCC BV as its share of the liquidation proceeds.
- 25. It is the intention that Lotus Green will move its residence to the Netherlands. A final corporate income tax return will be filed in Ireland and the company will rent an office in Amsterdam. Lotus Green will be registered with the Dutch Chamber of Commerce and with the Dutch tax authorities. It's Board of Directors will consist of residents and non-residents of the Netherlands. Enard meetings and shareholders meetings will be held in the Netherlands only.
- 26. Should Lotus Green become resident in the Natherlands, the non-payment of interest on the loan from DCC Plc will be considered as a benefit granted by the parent company in its capacity as shareholder and will be reported as an informal capital contribution in Lotus Green. The notional interest on the loan will therefore be subject to an annual capital duty charge at 17. Under Article 13 paragraph 1 of the Dutch Corporate Income Tax Act the (notional) interest cost reported by Lotus Green will not be deductible as it relates to a participation in a foreign company.

### Tax Treatment

- 27. On behalf of DCC BV and, should it become resident in the setherlands. Lotus Green, we request you to confirm that on the basis of the facts set out above, the following tax treatment will apply:
  - with businesses in the four sectors listed in paragraph a shove as portfolio investments as set out in Article 3 paragraph 2 of the Dutch Corporate Income Tax Act 1969, nor shares in other intermediary holding companies which themselves participate directly or indirectly for more than 70% of total investments in such businesses. In particular, DCC BV will not be considered to hold its shares in HealthDrive Corporation, DCC Holdings (UK) Ltd, Marjove Ltd and Lotus Green Ltd as inventory or as portfolio investments as set out in Article 13 paragraph 2 of the Dutch Corporate Income Tax Act 1969. Provided that the other conditions of Article 13 of the Dutch Corporate Income Tax Act 1969 are met, the participation exemption will apply accordingly.
  - (ii) Lotus Grean Ltd will not be considered to hold the shares in Byffes Plo as inventory or as a portfolio investment within the meaning of Article 13 paragraph 2 of the Dutch Corporate Income Tax Act 1969. Provided that the other conditions of Article 13 Dutch Corporate Income Tax Act 1969 are met, the participation exemption will apply accordingly.



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### 27. (continued)

- (111) If and as long as DCC BV, and Lotus Green if applicable, continue to act as holding companies to which (1) and/or (11) above apply, they will report as a contribution to taxable profit in respect of their holding activities at least 25% of the costs related to the management activities undertaken in the Netherlands.
- (iv) This ruling will hold for a maximum period of 4 complete financial years as from the date set out below. This ruling may subsequently be extended for further periods not exceeding 4 years unless this would conflict with legislation or case law at the time.
- (v) An extension under (iii) above will not be granted if such extension would conflict with the prevailing ruling policy at that time. If this should be the case, an extension will nevertheless be granted for a maximum period of 2 complete financial years starting with the date of publication of that new ruling policy.
- (vi) This ruling may be terminated at any time if it is shown that incorrect or incomplete information has been presented to the tax authorities in the Netherlands or any other country regarding the activities of DCO BV or Lotus Green or their tax treatment in the Netherlands.

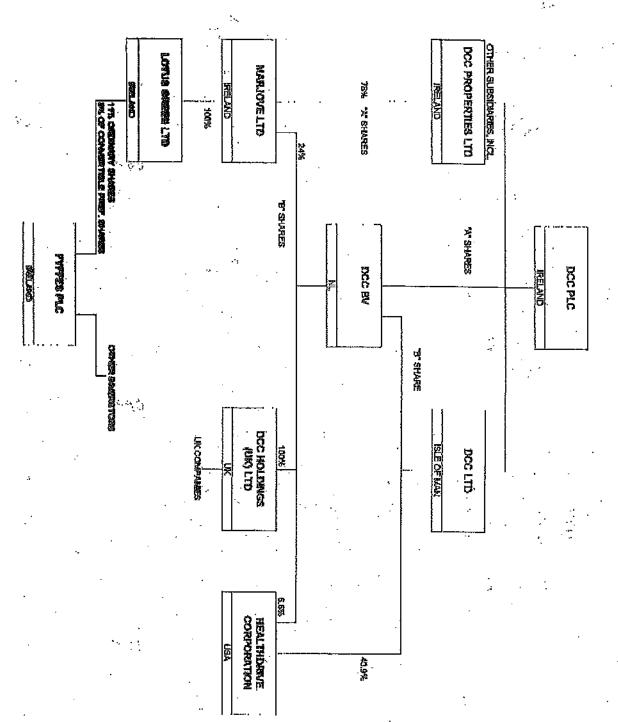
If you agree to the above, we kindly request you to sign the enclosed copy of this letter and return it to us.

Yours sincerely

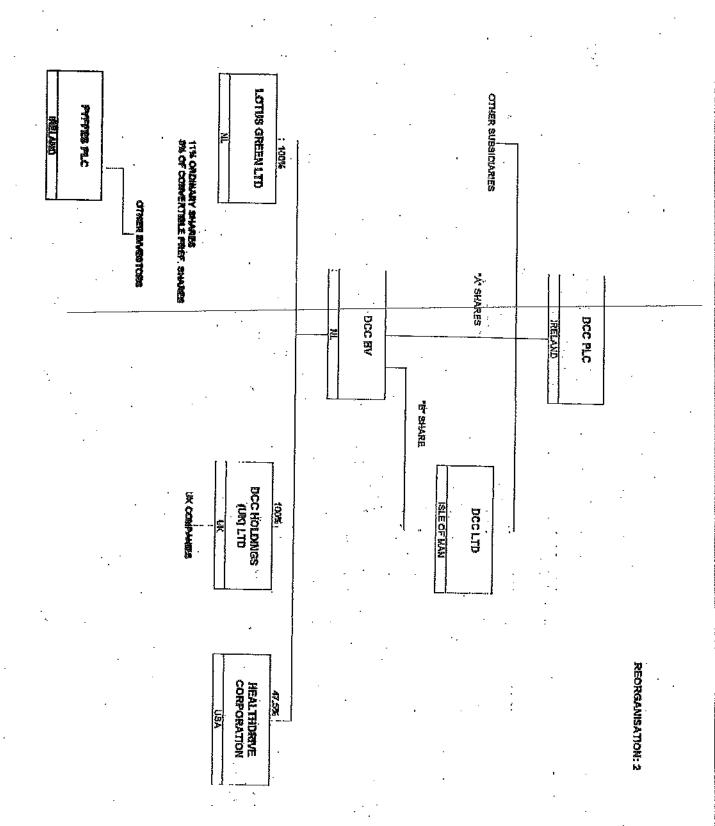
COOPERS & LYBRAND

Peter G.A. van der Hoeven

For approval



REGREANISATION: 1





### Memorandum

To:

File

From:

Gerard Whyte

Date:

5 December 2008

Re:

Legal Advice to DCC plc Board

We reviewed the minute books of DCC plc for all Board Meetings held between January 1980 and September 2000.

The only references to the Board considering legal advice were as follows:

D-4:	Matter
Date 111000	Legal advice from Arthur Cox & Co. presented to meeting by the
28 April 1983	Secretary re lease of premises, sub-letting of premises and sale of lease
1	Secretary re lease of premises, sub forming of premises,
	holding in former premises.  Legal advice from Arthur Cox & Co. presented to meeting by the
3 June 1983	Legal advice from Affinir Cox & Co. presented to meeting by
	Secretary re sale of lease holding in former premises.
28 February 1985	Mr. Bergin of Arthur Cox & Co. attended meeting and outlined his
	views in relation to proposed legal proceedings against Craig Gardner &
	Co.
2 September 1992	Legal advice from Alvin Price of William Fry in relation to professional
	indemnity insurance and D&O insurance was outlined to the meeting by
	Mr. Florin
14 December 1992	Mr Brendan Heneghan of William Fry attended meeting of sub-
14 15000111001 1552	l agressitte of Directors which was held in connection with the proposed
	offer for Printech International plc by Ochil plc, a subsidiary of DCC
	I timited
21 December 1992	Mr. Alvin Price and Mr. John Larkin of William Fry attended meeting of
21 December 1772	by a committee of Directors which was held in connection with the
•	proposed offer for Wardell Roberts ple by Oare ple, a subsidiary of the
	GOMPONI.
01.75 11007	LAA Dranden Heneghan and Ms Caterina Gardner of William Pry
21 December 1992	1 - 4 - 4 d d monting of sub-committee of Directors Willon Was new III
	connection with the proposed offer for Printech International plc by
ļ	Ochil plc, a subsidiary of DCC Limited.
	Mr Alvin Price and Mr John Larkin of William Fry attended meeting of
5 January 1993	sub-committee of Directors which was held in connection with the
	proposed offer for Wardell Roberts plc by Oare plc, a subsidiary of the
	company.
5 August 1993	Mr Alvin Price and Mr Brendan Heneghan of William Fry attended two
	meetings of sub-committee of Directors which was held in connection
	with the proposed offer for a portion of the share capital of Flogas plc
	and Flogas UK plc by Powerimpact plc, a subsidiary of the company.

	Exact ended meeting of sub-committee of
12 August 1993	Mr Alvin Price of William Fry attended meeting of sub-committee of Directors which was held in connection with the proposed offer for a
	Directors which was held in connection with the performance of the share capital of Flogas plc and Flogas UK plc by
	portion of the share capital of Piogas pio and 199
`[	Powerimpact plc, a subsidiary of the company.
8 May 1994	Powerimpact plc, a subsidiary of the company.  Mr Alvin Price, Mr Brendan Heneghan, Mr D. McDonald and Ms T.  Mr Alvin Price, Mr Brendan Heneghan, beld in connection with the
O Might 1994	
	Kenny of William Fry attended incoming to the Market in Straight S
	approval of all matters relating to application for the series approval of all matters relating to application for the series approval of all matters relating to application for the series approval of all matters relating to application for the series approval of all matters relating to application for the series approval of all matters relating to application for the series approval of all matters relating to application for the series approval of all matters relating to application for the series approval of all matters relating to application for the series approval of all matters relating to application for the series approval of all matters relating to application for the series approval of all matters relating to application for the series approval of all matters relating to application for the series approval of all matters relating to application for the series approval of all matters relating to application for the series approval of all matters relating to applications and the series approximate and the series approximate ap
	Inter alia, the Directors considered a memorandum resonant inter alia, the Directors considered a memorandum resonant interest under the William Fry setting out the Directors' ongoing responsibilities under the William Fry setting out the Director confirmed that he had read
	when of The Stock Exchange, Each Director of The Stock Exchange Excha
	and understood the Memorandum.
1004	
11 May 1994	Mr Alvin Price and Mr Brendan Heneghan of Whiteh Mr D. Byers of McCann Fitzgerald attended meeting of sub- Rice and Mr D. Byers of McCann Fitzgerald attended meeting of sub-
	of all matters relating to application for listing by DCC.  of all matters relating to the meeting from S.J. Berwin & Co. to
	of all matters relating to application for fisting by BCC.  A memorandum was produced to the meeting from S.J. Berwin & Co. to  A memorandum was produced to the meeting from S.J. Berwin & Co. to
	A memorandum was produced to the meeting nome of the Directors setting out potential civil and criminal liability under the Directors setting out potential civil and criminal liability under
}	the Directors setting out potential civil and committee English law associated with Listing Particulars. The Committee English law associated with Listing Particulars. The Committee
ţ	English law associated with Listing Fattletidis. The considered the memorandum and indicated their understanding of it.  considered the memorandum and indicated their understanding of it.
	At this meeting, the Directors concurred with views expressed by Mr
31 July 1995	At this meeting, the Directors concurred with views dispersions. At this meeting, the Directors concurred with views dispersions. At this meeting, the Directors concurred with views dispersions. At this meeting, the Directors concurred with views dispersions. At this meeting, the Directors concurred with views dispersions. At this meeting, the Directors concurred with views dispersions.
	Alvin Price of William Fry in his letters in Telation to Galing which had provisions on the notification of interests and insider dealing which had provisions on the notification with the transfer of Fyffes plc to a new
	provisions on the notification of interests and hister described been circulated, in connection with the transfer of Fyffes plc to a new been circulated, in Court
<b>\</b>	been circulated, in conficence
	subsidiary within the Group.

YEAR ENDED 31 MARCH 1995	IR£'000	%
Flogas (as a subsidiary company)	6,750	24.2%
Ochil/Printech	4,591	16.5%
Fyffes	3,322	11.9%
Micro P	2,470	8.9%
Manor Park	1,705	6.1%
Emo	1,587	5.7%
Robt. Roberts	1,413	5.1%
Fannin Healthcare	1,011	3.6%
Kelkin	900	3.2%
Virtus	861	3.1%
Greenway Holdings	547	2.0%
Sharptext	515	1.8%
Allied Foods	432	1.6%
John Hinde	356	1.3%
KP (Ireland)	324	1.2%
Heitons	315	1.1%
Healthilife	234	0.8%
Broderick (as an associate company)	205	0.7%
HealthDrive	163	0.6%
Capco	126	0.5%
Gem Distribution	24	0.1%
	27,851	100.0%
Central	(1,936)	
Profit	25,915	-
	0	1

### QUOTED SUBSIDIARIES/ASSOCIATES AT 30 JUNE 1995

	Balance Sheet IR£'000	%	Market Cap IR£'000	. %
Flogas plc	26,299	16.5%	36,945	25.7%
Fyffes plc	22,926	14.4%	40,333	28.0%
Heitons plc	6,379	4.0%	8,029	5.6%
Greenway plc	4,405	2.8%	5,507	3.8%
Reflex pic	432	0.3%	393	0.3%
	60,441	38.0%	91,206	63.4%
DCC net worth/market cap	159,112	100.0%	143,857	100.0%

## DCC International Holdings BV

09/06/1997	25/08/1995	
Date of resignation	Date of appointment	George Young:

# Board meetings held while George Young was a Director

Date of meeting	Purpose of meeting	Attendance by George Young
25/08/1995	Regular Meeting	Yes
26/10/1995	Regular Meeting	NO O
09/02/1996	Regular Meeting	No
04/04/1996	Regular Meeting	No
02/05/1996	Regular Meeting	No
23/07/1996	Regular Meeting	No
27/08/1996	Committee Meeting re PP	No
19/09/1996	Regular Meeting	No
12/12/1996	Regular Meeting	No
22/04/1997	Regular Meeting	20

### 

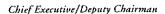
### Consolidated Profit and Loss Account

for the year ended 31 March 1995

		199	<b>?</b> 5	199	4
	Notes	IR£'000	IR£'000 -	IR£'000	IR£'000
Turnover	1				720 205
- Subsidiary undertakings			280,170		238,387
- Share of turnover of associated undertakings	1		124,571		97,185
Total turnover	1		404,741		335,572
Turnover - subsidiary undertakings		•		. 5 7 6	•
Continuing operations		268,024		157,132	220.007
Acquisitions		12,146	280,170	81,255	238,387
Cost of sales			(213,93 <u>1</u> )		(177,860)
· ·			66,239		60,527
Gross profit	2		(47,686)		(43,631)
Net operating costs			18,553		16,896
Operating profit - parent and subsidiary undertaking	,-		7,362		4,471
Share of operating profit of associated undertakings	•		25,915		21,367
Operating profit	÷	24,843		14,790	
Continuing operations	3 /	1,072	)	6,577	
Acquisitions	3/	25,915	/	21,367	
		_20,710	/		•
Net interest payable and similar charges -	6		(871)		(637)
parent and subsidiary undertakings	o		(4.17		
Share of net interest receivable and	7		423		1,033
similar income - associated undertakings	,	-			
Profit on ordinary activities before exeptional ite	ems				21,763
goodwill amortisation and taxation			25,467	4 = 3.40	21,703
Continuing operations		, 24,441		15,348	
Acquisitions	. 3	1,026		6,415	
,		25,467	(4.00)	21,763	(140)
Goodwill amortisation			(182)		(140)
Profit on disposal of financial					<u> 556</u>
assets, net of provisions	8		<del>_</del>		
			2E 20E		22,179
Profit before taxation	9		25,285		(4,380)
Taxation	10		(4,310)		(4,500)
			20,975		17,799
Profit after taxation	44		(4,987)		(4,551)
Minority interests	11		(4,707)		
	12		15,988		13,248
Profit for the financial year			(4,478)		(3,438)
Dividends ·	13	•	(4-11-0)		
	12	, ·	11,51 <u>0</u>		9,810
Profit retained for the year	12	-			
	14	4	IR22.15p		IR19.56p
Earnings per ordinarý share			IR22.40p		IR19.56p
Adjusted earnings per ordinary share	14	4	1KZZ.40P	•	,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,

Alex Spain, Jim Flavin, Directors

The notes on pages 31 to 57 form part of these financial statements. Auditors' Report page 22.





PERSONAL JFF/cl 30<sup>th</sup> April 1998

Mr Neil McCann Chairman Fyffes plc The Ramparts Dundalk Co Louth

Dear Neil

I am now replying to your letter of 20th March which was in response to mine of 6th March.

In relation to the Model Code for Directors Dealings I am authoritatively advised that DCC does not come within the spirit of that Code.

As a separate matter the decision-making process for the purchase or sale of shares by the DCC Group in Fyffes is not under my control. Indeed I am not even a member of the Board of the company that would make any decision on a sale of the Group's existing holding. However, as a practical matter if it is possible for me to inform you on any decision in advance of any dealing I will do so. It is worth noting that I did telephone you in connection with the Group's intention to take the scrip issue of shares in lieu of dividend.

In relation to DCC's intention re its shareholding I have indicated on many occasions over the last few years that we believed it would have been possible to structure a transaction which would have appeal for shareholders at large while at the same time offering a more interesting long-term arrangement for the McCann family and DCC. In my view it is regretful that we never got passed the starting blocks on that concept and the opportunity has probably passed. We are then left with a choice of remaining as a 10% shareholder or exiting. We do not have a definitive view on this but are tending towards the sale direction largely because our continuing involvement no longer seems to have appeal for you. This is both surprising and disappointing to us. If we are to sell the exit price will of course be critically important and we would only sell if and when we believe the price fairly reflects the value of Fyffes.

I would like to comment on the second part of your penultimate paragraph which stated "Before Christmas you complained to me about the Fyffes performance being poor and I felt that you were not distinguishing between our trading and our share performance. In fact, you indicated that it was becoming an embarrassment to have to defend Fyffes, particularly at important semi public meetings".



.../2

This does not reflect my view of Fyffes and I am most anxious to put the record straight. I have been a consistent staunch proponent and defender of Fyffes over very many years and its excellent out performance compared to its peers in the industry. It is true that there were times during 1997 when this became increasingly difficult as the share price languished and before the market was aware of the good results to 31st October 1997.

On a personal level I would like to say that I have huge respect for your unfailing tenacious commitment to the business and your extraordinary drive and energy. It has been a great privilege to know you over the last nineteen years, albeit at times rocky and difficult. If we are to exit (which is not my first preference) I think we should do it with very good grace all round.

With every good wish

Yours sincerely

Jim Flavin

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### STOCK EXCHANGE ANNOUNCEMENT

22 February 2007

### **Planned Board Changes**

On 26 May 2006, in a Stock Exchange announcement, DCC plc informed the market that the Chairman, Alex Spain, intended to retire as Chairman and from the Board in advance of the annual general meeting in 2007. He will retire on 30 June 2007.

In that Stock Exchange announcement, it was noted "The Nomination Committee keeps Board renewal, structure, size and composition under regular review, including the skills, knowledge and experience required. The Committee has particular regard to the leadership needs of the organisation, both executive and non-executive, and therefore gives full consideration to succession planning for the chairman and chief executive."

In considering succession planning for the retiring Chairman, Alex Spain, and the role of the Chief Executive, Jim Flavin, the Nomination Committee has been significantly influenced by the following considerations:

- The DCC business model has generated superior investment returns for shareholders since flotation in 1994. However the diversity of the business model, while reducing risk, makes DCC more complex from a management perspective. Each of its five market sector divisions need to be as competitive and informed as singly focused company competitors. In addition, group added value must be constantly sought and achieved through group synergies, procurement initiatives, management development, best practice, etc. Consequently day-to-day operational leadership and the achievement of operational excellence is more demanding in DCC.
- The Chief Executive, Jim Flavin, has recommended that it is now timely to bring increased focus to DCC's overall strategic direction to ensure that it is best positioned for sustainable long-term growth. The Board is in full agreement with this recommendation. This strategic review should be carried out without too much distraction from day-to-day operational matters.
- As the founder of DCC, Jim Flavin has played a very hands-on role as Chief Executive/Deputy Chairman. Since its foundation in 1976, he has been the central driving force, leading a highly skilled and committed executive team. He is willing and motivated to play a continuing important and active role in the further growth and development of DCC.

Arising from these considerations the Nomination Committee, having consulted with the non-executive directors who are not on the Committee, with major shareholders and with the Irish Association of Investment Managers, recommended to the Board that, on the retirement of Alex Spain as Chairman,

- Jim Flavin should take over the chairman's role and, for a three-year transition period, should be an executive chairman with primary responsibility for strategy development.
- Tommy Breen, DCC's Chief Operating Officer, should be promoted to the position of Group Managing Director. In this role, he should take on significant elements of Jim Flavin's current chief executive responsibilities and should have primary responsibility for day-to-day operational matters.

Tommy Breen, who is an Economics graduate of Queen's University Belfast and a Chartered Accountant, joined DCC in October 1985. During his period with DCC he has gained broad experience and knowledge of the DCC Group. He has served at a senior management level as managing director of three of DCC's five divisions, namely DCC Energy, DCC SerCom and DCC Environmental Services, and became Group Chief Operating Officer in July 2006.

### **Corporate Governance**

In accordance with provision A.4.1 of the Combined Code on Corporate Governance ('the Code'), the majority of the members of the Nomination Committee are independent non-executive directors and the Chairman of the Board, who is also chairman of the Nomination Committee, did not chair the meeting dealing with the appointment of his successor. The Committee was also in compliance with Code provision A.4.3 in relation to the preparation of a detailed job specification.

Following the retirement of Alex Spain, the Board will have six non-executive directors and three executive directors. These six non-executive directors are Tony Barry, Róisín Brennan, Michael Buckley, Paddy Gallagher, Maurice Keane and Bernard Somers. Collectively they have extensive board experience in leading public companies and have deep knowledge of corporate governance best practice. The Board believes they are all fully independent.

In making their recommendation the Nomination Committee, having consulted with the non-executive directors who are not on the Committee, have sought to carefully balance the requirements of the Code with what they believe to be in the best interests of shareholders.

The Committee also considered Code provision A.2.1 relating to the division of responsibilities between the chairman and the chief executive. In setting out a detailed statement of the role and responsibilities of the executive chairman, the Committee has defined the distinctive but complementary role of the executive chairman to the role and responsibilities of the group managing director, which the Committee set out in a separate comprehensive statement.

The Nomination Committee also considered Code provision A.2.2 and believe for the reasons set out earlier in this statement that it is appropriate and in shareholders' interest that the chief executive should become chairman. Major shareholders have been consulted in advance as required by this Code provision. The Irish Association of Investment Managers has also been consulted.

The Board is in compliance with Code provision A.1.3. As required by this provision, the non-executive directors, led by the senior independent director, will meet without the executive chairman present at least annually to appraise his performance and on such other occasions as are deemed appropriate.

### **Board Decision**

At a meeting of the full Board it was unanimously decided to accept the recommendation of the Nomination Committee and accordingly on 1 July 2007 Jim Flavin will become Executive Chairman and Tommy Breen will become Group Managing Director.

### For reference:

Jim Flavin, Chief Executive/Deputy Chairman Telephone: +353 1 2799400

### **Note to Editors**

DCC plc is a sales, marketing and business support services group focused on the energy, IT and entertainment products, healthcare, food and beverage and environmental markets. DCC's shares are listed on the Irish and London Stock Exchanges. DCC's market capitalisation is approximately €2.2 billion.

DCC plc Annual General Meeting 2007 FINAL PROXY SUMMARY 01/12/2009 12:46

04:71 6007/71/10	. 04.										;	1		
Resolution	Matter	Total Votes cast	Votes for Chairman	Discretion Chairman	Total For	% For	Total Against	% Against	Total Voting Shares	Total Voting Shares (80,413,675) % of Total % For % Against	Shares (80, % For %	413,675) 6 Against	Withhold No Instruction	Instruction
- 2 3 3 3 2 2 4 4 3 3 5 6 5 6 6 6 6 6 6 6 6 6 6 6 6 6 6 6	Accounts Dividend Jim Flavin Maurice Keane Bernard Somers Tony Barry Paddy Gallagher Auditors Remuneration Authority to allot shares Authority to allot shares Authority to purchase own shares Setting re-issue price	53,176,868 54,576,119 54,517,839 54,569,039 54,566,999 54,575,611 54,576,119 54,576,119 54,576,119 54,576,119	53,166,630 54,566,085 54,415,630 54,516,361 54,502,686 37,609,171 37,612,858 54,549,059 54,535,148 54,549,846 54,546,518	10,009 10,009 10,009 10,009 12,392 10,009 10,213 10,213 10,213	53,176,639 54,576,094 54,226,330 54,526,370 54,512,695 37,621,563 37,622,867 54,559,272 54,559,315 54,559,315 54,556,731	100.00% 100.00% 99.93% 99.92% 68.95% 68.95% 99.97% 99.95% 99.95%	229 25 25 92,200 42,669 56,344 16,945,816 16,944,132 16,339 30,758 25,264 3,000 18,188	0.00% 0.00% 0.17% 0.10% 31.05% 31.05% 0.03% 0.06% 0.05% 0.05%	80,413,675 80,413,675 80,413,675 80,413,675 80,413,675 80,413,675 80,413,675 80,413,675 80,413,675 80,413,675 80,413,675 80,413,675	66.13% 67.87% 67.80% 67.86% 67.86% 67.86% 67.87% 67.87% 67.87%	66.13% 67.87% 67.88% 67.81% 67.79% 46.79% 67.85% 67.85% 67.84% 67.86%	0.00% 0.00% 0.11% 0.05% 0.07% 21.07% 0.02% 0.03% 0.00%	1,399,251 57,680 7,080 7,080 8,740 9,120 9,120 1,200 1,200	8,495,808 8,495,808 8,496,408 8,495,808 8,495,808 8,495,808 8,495,808 8,495,808 8,495,808 8,495,808 8,495,808 8,495,808