



Chestvale Properties Limited

Hoddle Investments Limited

INVESTIGATION UNDER SECTION 14(1) COMPANIES ACT, 1990

FINAL REPORT

by

JOHN A. GLACKIN, SOLICITOR

(Inspector appointed by the Minister for Industry and Commerce)

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**PRINCIPAL NAMES AND DEFINITIONS USED IN THIS REPORT
AND/OR IN THE INTERIM REPORT**

| <u>Name</u> | <u>Description</u> |
|------------------------|--|
| Mr. Ahern | Michael Ahern, executive in ICC Corporate Finance Limited. |
| AIB Bank (C.I) Limited | A bank in Jersey, wholly owned by AIB plc which had a bank account in the name of J. & N. McMahon. |
| AIIM | AIIM Nominees Limited, a shareholder in UPH, as nominee for a registered property unit trust called The Allied Irish Property Fund. |
| Amarac | Amarac Limited, Amarac Holdings Establishment, an entity or nominee, associated in some way with Freezone and being the reference of an account in Bank Scandinave en Suisse, Geneva, in the name of M. Andre de Pfyffer Etude |
| Ansbacher | Ansbacher Bankers Limited, lenders to Chestvale, Delion, Freezone, Dagord and Mr. Desmond. |
| Ansley Trust | A Channel Islands trust, being the owner of Ansbacher and having among it's trustees, Mr. Moloney, M. Andre de Pfyffer and Mr. Lipper. |
| Aylesbury | Aylesbury Securities plc, a UK property company. |
| Messrs. Aylmer & White | James Aylmer and Ronan White senior executives of Woodchester Investment Bank (formerly called Trinity Bank) |
| Bacchantes | Bacchantes Limited, owner of shares in UPH in trust for Dr. Smurfit. |

| <u>Name</u> | <u>Description</u> |
|--------------------|--|
| Bankers Trust | U.S. bank which acted as representative bank of AIB Bank (C.I.) Limited |
| Bankinvest, Zurich | A Swiss bank which had lent money to Dedeir. |
| Mr. Barry | Kevin Barry, senior executive of NCB Group and director of UPH. |
| Mr. Bruner | Eric Bruner, partner in Conveyancing Department of A & L Goodbody, acted for UPH. |
| Mr. Buckley | Michael Buckley, former senior executive and managing director of NCB Group. |
| Burtons | Proposed joint venture partner of John Sisk & Son Limited, see Sisk/Burton. |
| Mr. Bourke | John Bourke, accountant and former financial adviser to the Magnier trusts. |
| Cablelink | Cablelink Limited, majority control of which was acquired by Telecom in June 1990 and the freehold of whose premises adjoining the JMOB site was acquired by Telecom in July 1990. |
| Mr. Cavanagh | Tom Cavanagh, settler and controller of Convoy Trust a charitable trust which is the registered owner of shares in UPH. |
| Chestvale | Chestvale Properties Limited |
| Clayform | Clayform Properties (Wales) Ltd, a Welsh property holding company. |

| <u>Name</u> | <u>Description</u> |
|----------------|--|
| The Companies | Chestvale and Hoddle |
| Mr. Conan | Roger Conan, secretary of Dedeir and personal assistant of Mr. Desmond. |
| Mr. Cooney | Terry Cooney, a former partner in Bastow Charleton, Chartered Accountants and tax adviser to Chestvale, Hoddle and Delion. |
| Crampton Site | Site on Shelbourne Road, Ballsbridge, Dublin 4, owned by G. & C. Crampton Limited. |
| Dagord | Dagord Limited, subsidiary of Dedeir. |
| Dedeir | Investment holding company of Mr. Desmond. |
| Delion | Delion Investment Dealings Limited, a company registered in Cyprus. |
| Mr. Desmond | Dermot Desmond, former executive chairman of NCB Group. |
| DIBOR | Dublin Inter Bank Offered Rate (of interest). |
| DM | Deutschmark |
| Mr. Doherty | Patrick Doherty, a London property developer and sole claimant of the ownership of shares in the Companies and Delion. |
| Mr. Economides | Principal of Totalserve Management Limited, secretarial company in Cyprus. |
| Emmets | R. & J. Emmet plc |

| <u>Name</u> | <u>Description</u> |
|------------------------|--|
| Mr. Finnegan | John Finnegan, principal of Finnegan Menton Estate Agents. |
| Mr. Fitzgerald | Liam Fitzgerald, Managing Director of Financial Coursewear Limited, a subsidiary of Dedeir. |
| Ivor Fitzpatrick & Co. | Solicitors to Mr. Desmond; involved in obtaining UPH as a shelf company from a company formation agency but not engaged as solicitors to the company. |
| Fitzwilliam | Fitzwilliam Trust Company, a company owned by Noel Smyth personally. |
| Freezone | Freezone Investments Limited, registered in the Isle of Man, registered owner of shares in Emmets and recipient of some of the proceeds of the sale of the JMOB site to Telecom. |
| Mr. Gilmartin | Michael Gilmartin, Senior Executive of Irish Intercontinental Bank. |
| A & L Goodbody | Solicitors to UPH, JMOB and Mr. Grace. |
| Mr. Goodman | Laurence J. Goodman |
| Mr. Grace | Tom Grace, partner in Craig Gardner Chartered Accountants and liquidator of JMOB. |
| Hamilton Osborne King | Estate Agents, acted for JMOB. |
| Mr. Hall | Eamonn Hall, a solicitor in Telecom. |
| Mr. Hannigan | Ronan Hannigan, a solicitor in Noel Smyth & Partners and former director of the Companies. |

| <u>Name</u> | <u>Description</u> |
|-------------------------|--|
| Hardwicke Limited | Proposed a joint venture with British Land plc; submitted a tender in May 1989 to acquire the JMOB site. |
| Mr. Hassett | Padraic Hassett, principal of Hassett & Associates and shareholder in UPH. |
| Ms. Hewitt | Pauline Hewitt, employee of Noel Smyth & Partners and former director of Chestvale. |
| Hill Samuel London | Hill Samuel & Co. Limited, lenders to Freezone. |
| Hill Samuel Ireland | Hill Samuel Bank (Ireland) Limited, sub-participants in loan to Freezone. |
| Hoddle | Hoddle Investments Limited. |
| ICC | Industrial Credit Corporation plc. |
| J. & N. McMahon | Name of bank accounts in AIB Bank (C.I.) Limited and in AIB, Croydon Branch, U.K. |
| Mr. Johnson | Michael Johnson, Director of Telecom elected by Telecom employees. |
| JMOB | Johnston Mooney & O'Brien Limited, former owner of the JMOB site. |
| The JMOB Site, the Site | Site comprising 5.5 acres (approximately) at Ballsbridge, Dublin 4, formerly owned by JMOB and ultimately sold to Telecom. |
| Ms. Kenny | Assumpta Kenny, solicitor formerly in Noel Smyth & Partners. |

| <u>Name</u> | <u>Description</u> |
|-----------------------------|--|
| Mr. Kenny | Kevin Kenny, partner in Ernst & Young, Chartered Accountants in Cork and tax advisers to UPH and to Mr. Cavanagh. |
| Lennon Heather & Co. | Solicitors for Mr. Probets and Freezone. |
| Mr. Lewis | Joseph Lewis, resident of Lyford Cay, Bahamas and alleged beneficial owner of shares in UPH. |
| Mr. Lipper | Jerome Lipper, an American lawyer and at one time, a trustee of Ansley Trust and chairman of Ansbacher. |
| Lipper Consortium | A consortium of investors who invested in property in London, which included Mr. Smyth, and for whom Mr. Smyth acted as solicitor. |
| Mr. Magnier | John Magnier, bloodstock owner and trustee of John Magnier family trusts for which Sulzano acted as nominee shareholder in UPH. |
| Manufacturers Hanover Trust | U.S. Bank that acted as representative bank of Ansbacher. |
| Mr. Matthews | Robert Matthews, associate director of Ansbacher. |
| Ms. Meehan | Ita Meehan, director of Telecom and Chairman of the Telecom Superannuation Fund Trustees. |
| Mezzanine Finance | Amounts of £1,000,000 and US\$1.5 million transferred to Ansbacher on 10th August 1989 and 7th December 1989 respectively. |

| <u>Name</u> | <u>Description</u> |
|--------------------------------|---|
| the Minister | the Minister for Industry and Commerce and since January 1993 the Minister for Enterprise and Employment. |
| Mr. Moloney | Gabriel J. Moloney, managing director of Ansbacher. |
| Messrs Moriarty & McIntyre | Michael Moriarty and Harry McIntyre senior executives of Bank of Ireland. |
| Mr. McCormack | Patrick McCormack, partner in Palmer McCormack, Estate Agents. |
| Mr. McDonagh | Bernard McDonagh, former Secretary, Department of Communications, Chairman of Telecom Inquiry and now Secretary of Department of Equality and Law Reform. |
| Mr. McGovern | Fergus McGovern, chief executive of Telecom Eireann. |
| Mr. McManus | J.P. McManus a bookmaker and bloodstock owner. |
| National City Dillon & Waldron | Stockbrokers, subsequently changed its name to NCB Stockbrokers. |
| NCB, NCB Group | NCB Group Limited, a group of companies in the stockbroking, moneybroking and financial services areas in Ireland. |
| Ms. O'Connor | Maire O'Connor, senior executive in NCB Corporate Finance Limited, part of NCB Group. |
| Mr. O'Connor | Tom O'Connor, partner in the conveyancing department of A & L Goodbody, acted for JMOB and Mr. Grace as liquidator of JMOB. |

| <u>Name</u> | <u>Description</u> |
|----------------------|---|
| Mr. Padraic O'Connor | Managing Director, NCB Group. |
| Mr. O'Dwyer | John O'Dwyer, a former employee of Dedeir. |
| O'Muire Smyth | Firm of architects, advisers to the Companies in relation to the JMOB site. |
| Mr. O'Neill | Dan O'Neill, Head of Telecom Property and Service Quality Department. |
| Mr. Hugh O'Neill | Solicitor formerly in Noel Smyth & Partners |
| Mr. O'Halloran | Brian O'Halloran, partner in Brian O'Halloran & Partners, architects to Telecom in relation to the JMOB site. |
| Mr. O'Nuallain | Rory O'Nuallain, senior executive of ICC. |
| Ms. O'Toole | Pauline O'Toole, senior lending manager of Ansbacher. |
| Office Site | Part of the JMOB site comprising approximately 3.5 acres on which Telecom proposed to build offices. |
| Option Agreement | An option agreement dated 15th June 1988 made between Mr. Probets and Mr. Desmond. |
| Mr. Osborne | James Osborne, Partner in Commercial Department of A & L Goodbody, acted for UPH. |
| Mr. Pairceir | Seamus Pairceir, former chairman of UPH. |
| Pegasus | Pegasus Nominees Limited, a nominee company owned by Ansbacher. |

| <u>Name</u> | <u>Description</u> |
|---------------------------|---|
| Pepper Canister Nominees | Pepper Canister Nominees Limited, a nominee company owned by Ivor Fitzpatrick & Company and registered owner of shares in UPH. |
| Mr. Probets | Colin Probets, resident of Guernsey, alleged lender of funds to Chestvale and alleged owner of Freezone. |
| Messrs Quinn and Naughton | Lochlann Quinn and Martin Naughton, beneficial owners of shares in UPH and lenders to Mr. Desmond. |
| Mr. Rothwell | Eamonn Rothwell, former senior executive of NCB Group. |
| Residential Site | Part of JMOB site comprising approximately 2 acres, sold to Telecom but subject to option to Hoddle to buy back and intended for use for residential development. |
| Sisk/Burton | Proposed joint venture between John Sisk & Son Limited and Burton Property Trust; submitted a tender to Finnegan Menton in May 1989 to acquire the JMOB site. |
| Dr. Smurfit | Dr. Michael Smurfit, former Chairman of Telecom and beneficial owner of shares in UPH through Bacchantes. |
| Smurfit Paribas | Smurfit Paribas Investment Management Limited, registered owner of shares in UPH in trust for Jefferson Smurfit Group Pension Fund. |
| Messrs. Robinson & Smyth | Richard Robinson, former chief executive and Fergus Smith, senior executive of Lombard & Ulster Bank Limited |

| <u>Name</u> | <u>Description</u> |
|---|---|
| Mr. Smyth | Noel Smyth, principal in Noel Smyth & Partners, former shareholder in Delion and former director of Chestvale, Hoddle and Delion. |
| Noel Smyth & Partners | Former solicitors for Chestvale, Hoddle and Delion. |
| Sportsfield | Sportsfield Equipment plc, a company registered in Ireland and quoted on the Smaller Companies Market of the Stock Exchange. |
| Mr. Strudwick | Roy Strudwick, principal of Ryde Developments plc, a property developer and owner of Sweepstake site at Ballsbridge. |
| Sulzano | A limited liability company, acted as nominee shareholder in UPH for John Magnier family trusts. |
| Telecom | Bord Telecom, State telecommunications company and purchaser of JMOB site. |
| Telecom Inquiry and and Telecom Report | The inquiry conducted by Mr. McDonagh in September 1989 at the request of the Minister for Tourism, Transport and Communications into all aspects of the acquisition by Telecom of the JMOB site, and the report arising from that inquiry. |
| TSB | Trustee Savings Bank Dublin having a branch and its head office at 114 Grafton Street, Dublin 2. |
| UBS | Union Bank of Switzerland. |
| UPH | United Property Holdings Limited. |

NameDescription

Mr. Walsh

Gerard Walsh, Chartered Surveyor, former managing director of Aylesbury and former acting managing director of UPH.

Mr. Waters

Tony Waters, managing director of NCB Property, part of the NCB Group.

Mr. Wintle

John Wintle, an English account and adviser to Mr. Probets.

1 INTRODUCTION

1.1 Final Report supplemental to Interim Report

This report is supplemental to the Interim Report delivered by me to the Minister for Industry and Commerce on 30th July 1992 in which I explained in detail the various transactions affecting the JMOB site as I was cognizant of them at that time. I do not intend to repeat those details ad longum but will refer to them where necessary.

1.2 Warrant

As this is my Final Report, I have made determinations in accordance with my Warrant as to who were the true persons who are or have been financially interested in the success or failure (real or apparent) of the Companies or able to control or materially to influence the policy of the Companies. For convenience purposes, I attach a copy of the Warrant of my appointment, dated 9th October 1991, at Appendix "1" to this Report.

1.3 Investigation since Interim Report

Since delivery of the Interim Report, I have continued the investigation. Verbal evidence has been obtained from some witnesses who were not

available to me before delivery of the Interim Report and I have interviewed some witnesses again. I have examined further files produced to me by various parties and have received submissions from certain parties relating to the investigation generally, the contents of the Interim Report and a draft final report on which this report is based. I list in Appendix "2" attached to this Report, the names of those persons who have adduced verbal evidence under oath, since delivery of the Interim Report.

1.4 Assistance from U.K. Authorities to the Department

In the course of my investigation, it became clear that certain evidence was to be found in the United Kingdom. I therefore requested the Department of Enterprise and Employment (formerly Industry and Commerce) to request assistance from the appropriate U.K. authorities. The Department of Trade and Industry ("the DTI") in the United Kingdom were able to obtain information which the Department of Enterprise and Employment subsequently passed on to me. The assistance provided by the DTI proved helpful.

1.5 Reasons for delay

The completion of the investigation and making of the final report has taken considerably longer than was envisaged by either the Minister

for Industry and Commerce or me when he first appointed me on the 9th October 1991.

Section 3 of the Interim Report described the many High Court actions involved up to then, four of which were appealed to the Supreme Court and at the time of my making the Interim Report, two of the Supreme Court appeals had been decided in my favour. I describe in paragraph 1.9, the further progress made in finalising the court litigation matters.

Some of these litigation matters when commenced obstructed and delayed the progress of the investigation and the obtaining by me of the evidence required to make the determination required by my warrant of appointment. The various decisions on these matters assisted me in progressing the investigation. Unfortunately, further litigation outside this jurisdiction, which indirectly related to the investigation, caused further serious delays.

The purpose of much of the litigation both in this jurisdiction and outside it seemed designed to prevent the truth being ascertained. This would have meant that many persons, who were involved at some or other stage of the transaction affected by the Companies would have been left with outstanding aspersions. I considered this unfair and decided that despite the many obstacles, I should pursue the issues to finality, if I could. The Minister agreed with this decision.

1.6 Limiting Factors in the Investigation

As noted by me in the Interim Report, I considered it important to try to trace the proceeds in and out of the Companies. My ability to do this was limited to the extent that some of the inward investment (the so called mezzanine finance) appeared to come from bank accounts in Switzerland and Jersey and some of the proceeds of sale to Telecom Eireann went to a bank account in Jersey. In addition some proceeds appear to have been distributed in the form of cash from an account of Freezone account at TSB in Grafton Street, Dublin. However I am satisfied that the evidence which I have been able to obtain, both in this jurisdiction and in the United Kingdom, is sufficiently cogent to enable me to make the determinations contained in this report.

1.7 Conflicts of evidence

In the Interim Report, I referred to a number of conflicts of evidence and to some anomalies in the evidence. I have not tried to resolve those conflicts and anomalies, save where I considered it necessary to do so to enable me to make the findings and determinations contained in this report.

1.8 Section 11(2) Companies Act 1990

Section 11(2) Companies Act 1990, when read in conjunction with Section 14(5)(c) of the same Act, provides that an Inspector may at any time in the course of his investigation, without the necessity of making an interim report, inform the Minister of matters coming to his knowledge as a result of the investigation, tending to show that an offence has been committed. I so informed the Minister during my investigation. I do not consider it appropriate in complying with the terms of my warrant to elaborate on this matter nor to make a recommendation in this report to the Minister as to whether he should refer this report to the Director of Public Prosecutions for consideration of the issues arising from it.

1.9 Litigation in Ireland

- 1.9.1 At Section 3 of the Interim Report, I outlined the proceedings that had taken place during the course of the investigation up to that time. There were four proceedings outstanding then and some progress has been made since then in bringing these to a satisfactory conclusion.
- 1.9.2 In paragraph 3.7 of the Interim Report I outlined the proceedings taken by me against the TSB. Freezone had applied to be joined as a party to those proceedings and to exercise control over the information and documentation sought by me from the TSB. The High Court had found in my favour but Freezone had lodged an appeal to the Supreme Court. This appeal is still awaiting hearing. I have requested Freezone to lodge security in this jurisdiction for legal costs as it is an Isle of Man registered company and this is a matter which I will be pursuing if the appeal is not withdrawn.
- 1.9.3 In paragraph 3.8 of the Interim Report I outlined the proceedings brought against me by Mr. Fitzgerald, the Managing Director of Financial Courseware Limited, a subsidiary of Dedeir. The hearing of the action eventually came on before the High Court on the 4th February 1993 when the proceedings against me were withdrawn and I obtained an order for my costs. Consequent upon that, the appeal to the Supreme Court against the interim order of Mr. Justice Costello

is to be withdrawn by Mr. Fitzgerald.

- 1.9.4 At paragraph 3.9 of the Interim Report, I outlined two separate proceedings the first of which was entitled Freezone Investments Limited -v- John A. Glackin, Gabriel Moloney and Ansbacher Bankers Limited (the High Court 1992, No. 3269), and the second, Colin Probets -v- John A. Glackin, Michael Quinn and Industrial Credit Corporation plc (the High Court 1992, No. 3502). The first of these involved an application for an interim injunction by Freezone to prevent Ansbacher furnishing to me documents requested by me and was refused by the High Court; thereafter I obtained an order for security for costs. In the second case an application on behalf of Mr. Probets seeking to prevent the ICC furnishing to me documents requested by me was withdrawn. In relation to the first action, I obtained a further order from the High Court fixing the amount of security that was to be lodged by Freezone. That order has not been complied with by Freezone although it is accepted by it that there is now no further matter at issue save the question of legal costs. Similarly in the Probets proceedings, I subsequently applied for and obtained an order for security for costs. This order has also not been complied with. I am advised that I am now entitled to seek an order striking out these proceedings and seeking an order for the full legal costs which I propose to do.

1.10 Chronology of relevant events

To assist in understanding the transactions affecting the assets of the Companies, I set out below the chronology of events, which I had set out in paragraph 1.3 of the Interim Report to which I have made some minor alternations.

Brief Chronology

| | |
|---------------------------|--|
| 12th August 1988: | UPH incorporated as Dance Investments Limited. |
| 26th August 1988: | Finnegan Menton offer (in trust) £4,000,000 by way of indicative tender for the JMOB site. |
| 24th November 1988: | New tender by Finnegan Menton of £4,400,700 for JMOB site, accepted by JMOB. |
| December 1988/March 1990: | Investors in UPH subscribed for shares. |
| 5th January 1989: | Scheduled closing date for purchase of JMOB. Not complied with. |

| | |
|----------------------------|---|
| 6th February, 1989: | Meeting of Mr. Finnegan and Mr. Walsh and discussion re plans for JMOB site. |
| 14th - 21st February 1989: | Split in UPH between NCB and Aylesbury |
| 28th February 1989: | Liquidator appointed to JMOB. |
| 14th April 1989: | Agreement reached between Mr. Desmond on behalf of UPH and liquidator of JMOB to vary existing agreement so that the purchase price was reduced to £4,000,000. |
| 28th April 1989: | Finnegan Menton sent out brochures seeking offers to acquire UPH contract for JMOB site, with UPH to retain "participation". |
| 5th May 1989: | Dr. Smurfit wrote to Mr. Finnegan and Mr. Hassett jointly and to Mr. Strudwick of Ryde International, stating that Telecom required a site for a new corporate HQ and seeking their assistance. |

| | |
|-------------------|---|
| 17th May 1989: | Mr. Smyth submitted a proposal to Mr. Desmond outlining the type of development that he thought could be carried out on the JMOB site. |
| 9th June 1989: | Dr. Smurfit proposed to Telecom board that a site be sought for a corporate HQ and a sub-committee was formed of Dr. Smurfit and Mr. Johnson. |
| 19th June 1989: | Mr. Smyth made an offer of £6.3 million for JMOB site, £4 million cash on 31/7/89 and loan note of £2.3 million payable in 1993. |
| 3rd July 1989: | A & L Goodbody solicitors for UPH were notified that agreement reached with Mr. Smyth. |
| 31st July 1989: | Time made of essence of agreement between liquidator of JMOB and UPH with closing date refixed for 11th August 1989. |
| 10th August 1989: | £1 million received in account of Noel |

Smyth & Partners at Ansbacher from UBS in Geneva. This money came through an NCB account at Bank of Ireland from an account at UBS.

11th August 1989:

Chestvale paid £4 million to liquidator of JMOB who executed a deed of conveyance of the JMOB site in favour of Chestvale. Chestvale borrowed £3 million from Ansbacher and used £1 million in Noel Smyth & Partners account. Escrow agreed until 1st September 1989. UPH had been promised a loan note for IR£2,300,000 but this was not delivered on that date. The deed of conveyance to Chestvale was executed by the liquidator of JMOB as vendor but was placed in escrow until 1st September 1989.

15th August 1989:

Mr. Finnegan showed JMOB site to Dr. Smurfit.

18th August 1989:

Dr. Smurfit sent another joint memorandum to Mr. Finnegan and Mr.

Hassett stating that he required information before the end of the year.

1st September 1989: Escrow period expired and deed of conveyance delivered to Mr. Brunner solicitor for UPH. Difficulties with tax structure of the transaction noted.

6th September 1989: Telecom Board Meeting. Before or after meeting Mr. Johnson was asked to look at the Crampton site.

September - December 1989: Agreement reached between UPH and Chestvale to reduce purchase price from £6,300,000 to £5,800,000.

16th October 1989: Mr. Finnegan sent a fee note to UPH for sale of site to Chestvale.

17th October 1989: Mr. Finnegan showed JMOB site again to Dr. Smurfit.

24th October 1989: Dr. Smurfit wrote to Telecom Pension Fund Trustees re sale of Gaiety Centre

and purchase of site for Telecom corporate HQ.

27th October 1989: Loan of £1,300,000 arranged by Messrs Quinn and Naughton for Mr. Desmond in relation to A.C.T.

Mid November 1989 Mr. Desmond offered the JMOB site to Clayform for £6,300,000 and wrote to Ansbacher to say that he had agreed to sell it for £5,800,000 to a U.K. property plc which he subsequently identified as Clayform.

29th November 1989: Mr. Desmond visited Dr. Smurfit in Blackrock Clinic and discussed the JMOB site.

Mr. Johnson visited Dr. Smurfit in Blackrock Clinic and both visited JMOB site, Crampton site and Sweepstake site.

30th November 1989: Dr. Smurfit wrote to Mr. Desmond offering £7.5 million for 4.5 acres of JMOB site.
Dr. Smurfit wrote to Fergus McGovern

enclosing copy of his letter to Mr. Desmond.

5th December 1989: Dr. Smurfit wrote to Mr. McGovern requesting him to visit the site with Mr. Desmond.

Pension Fund trustees replied to Dr. Smurfit rejecting his suggestions but proposing an alternative.

Ansbacher sanctioned a revised loan offer to Chestvale of £4.5 million and issued a facility letter confirming this but which was dated 29th November 1989.

7th December 1989 US\$1,500,000 sent to Chestvale account at Ansbacher but lodged ultimately to an account of Delion at the same bank. This money came via Banker's Trust, New York from an account in the name of J. & N. McMahon at AIB (CI) Limited in Jersey.

9th December 1989 Declarations of Trust sworn by Mr. Hannigan and Ms. Hewitt the registered holders of the two issued shares in

Chestvale to the effect that they held these shares in trust for UPH.

15th December 1989: Telecom board meeting authorised management to enter into negotiations for purchase of JMOB site.

21st December 1989: Mr. Desmond wrote to Mr. McGovern setting out purchase options.

22nd December 1989: Declarations of Trust sworn by Mr. Hannigan and Ms. Hewitt to the effect that the said two shares in Chestvale were held in trust for UPH since incorporation of Chestvale.

2nd January 1990: Executive committee meeting of Telecom notified of proposed purchase of JMOB site for a corporate HQ.

9th January 1990: Mr. Desmond wrote to Mr. McGovern stating that the best price he could obtain was £9.4 million for the entire site with a buy back option to the vendors of part for

a residential development.

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| 10th January 1990: | Telecom board meeting authorised management to enter into negotiations to acquire the JMOB site "on best terms". |
| 11th January 1990: | Mr. McGovern notified Mr. Desmond that he accepted the terms in the letter of 9th January 1990. |
| 17th January 1990: | Ansbacher agreed to advance loan of £500,000 to Mr. Desmond secured by an undertaking from Mr. Smyth to discharge the loan out of the proceeds of sale of the JMOB site to Telecom. |
| 16th February 1990: | Article published in Irish Independent suggesting the involvement of Mr. Desmond and Dr. Smurfit in consortium negotiating sale of JMOB site to Telecom. |
| 17th and 23rd February 1990: | Denials and apologies published in Irish Independent. |

20th February 1990: Mr. Desmond wrote to Mr. McGovern suggesting "shelter options" in case of failure to obtain planning permission.

12th March 1990: Dr. Smurfit, Mr. McGovern and Mr. O'Neill of Telecom Property Department met and decided to proceed without a condition that the purchase be subject to obtaining planning permission.

12th April 1990: Delion and UPH signed agreement for Delion to acquire Chestvale shares from UPH.

18th April 1990: Chestvale agreed to sell JMOB site to Delion in consideration of Delion taking over Chestvale liabilities of c.£5 million. Delion agreed to sell to Hoddle its contractual interest in the JMOB site, in consideration of Hoddle taking over Delion's liabilities to Ansbacher and paying £300,000 costs incurred by Delion. Effect of the two contracts and subsequent borrowing by Delion was to

increase the base price for tax purposes to £9,300,000.

19th April 1990: Sale by UPH to Delion of Chestvale shares completed and debenture (loan note) of Delion to UPH for £2,750,000 payable on 11th August 1994 "guaranteed" by Ansbacher, handed over to UPH.

3rd May 1990: Ansbacher lent DM24,000,000 to Delion and Chestvale; loan from Ansbacher was paid off by Delion.

7th May 1990: Hoddle executed two contracts with Telecom for sale of JMOB site for aggregate price of £9.4 million.

29th June 1990: Sale to Telecom completed as Telecom paid balance purchase money and took a conveyance of the Office Site. Telecom did not take a conveyance of the Residential Site but granted an option back to Hoddle in respect of that part of the JMOB site; the legal estate in it,

remaining in Chestvale.

19th July 1990

Request by Mr. Desmond to TSB to supply for collection on 23rd July 1990, IR£100,000 cash.

23rd July 1990

IR£100,000 withdrawn in cash by Mr. Desmond from account of Freezone at TSB, Grafton Street, Dublin.

26th July 1990

Ansbacher instructed by Mr. Desmond to pay the sum of US\$1,579,990 to account number 04-057-960 Ref. Montezuma at Bankers Trust, Church Street Station, New York and the sum of IR£2,431,170 to the account of Freezone at TSB, Grafton Street, Dublin.

30th July 1990:

Loan arranged by Messrs Quinn and Naughton repaid. Ansbacher complied with instructions given on 26th July 1990.

30th July 1990

TSB requested by Mr. Desmond to supply £400,000 cash for collection.

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| 31st July 1990 | IR£400,000 withdrawn in cash from account of Freezone at TSB, Grafton Street, Dublin. |
| 9th October 1991: | My appointment as Inspector. |
| 11th October 1991: | Balance of proceeds of sale of JMOB site to Telecom paid out of the jurisdiction to Patrick Doherty. |
| 16th October 1991: | Dermot Desmond £500,000 loan repaid to Ansbacher. |
| 29th April 1992: | UPH loan note discounted and cash paid. |

1.11 Basic questions

The brief chronology in paragraph 1.10 outlines the sequence of events which give rise to the following questions, the answers to which enable me to make the determinations required by the Warrant.

Q.(1) Was UPH financially interested in the success or failure of the Companies?

Q.(2) If so, who were the true persons who were so financially interested through UPH?

Q.(3) Who was the client of Mr. Smyth for whom he agreed to purchase the JMOB site in June 1989?

Q.(4) Who were the true persons who advanced the sum of £1,000,000 on 9th August 1989?

Q.(5) Was the client of Mr. Smyth the true person financially interested in the success or failure of Chestvale at 11th August 1989 or were the true persons different?

Q.(6) Did the true persons who were financially interested in the success or failure of Chestvale change after 11th August

1989 and if so, when and who became the true persons so financially interested?

Q.(7) Who were the true persons who advanced the sum of US\$1,500,000 to Chestvale and ultimately to Delion in December 1989?

Q.(8) Who benefitted from the payment of US\$1,579,990 from Ansbacher to the account number 04-057-960 Ref. Montezuma in New York on the 30th July 1990?

Q.(9) Who were the true persons who benefitted from payment of IR£2,431,170 to the account of Freezone at TSB?

Q.(10) Who was paid the sums of IR£100,000 and IR£400,000 in cash that were withdrawn from the Freezone account in TSB?

Q.(11) Were the true persons financially interested in the success or failure of Hoddle, the same as those of Chestvale?

Q.(12) Who were the true persons who were able to control or materially influence the policy of the Companies?

1.12 Acknowledgements

I wish to again acknowledge the patience, assistance and support offered me by my partners and colleagues in Gerrard, Scallan & O'Brien and by the counsel who represented me in Court when that was required. I would like to thank in particular Claire Callanan and my secretary Margaret Dillon for their time and effort and the conscientious way in which they performed their tasks throughout the investigation.

2.0 UPH

2.1 Status of UPH vis-a-vis the Companies

2.1.1 The original agreement between UPH and Mr. Smyth in June 1989 was for the sale on of the UPH interest in the JMOB site for £6,300,000, to be satisfied by the payment of £4,000,000 on behalf of UPH to the liquidator of JMOB and the issue of a bank guaranteed loan note to UPH for £2,300,000. UPH did not get the loan note as arranged on the due date, 11th August 1989, when they assigned their interest in the JMOB site, but did get an undertaking from Noel Smyth & Partners, Solicitors to hold the title deeds of the JMOB site in trust for it.

2.1.2 Mr. Smyth argued that until April 1990, Chestvale was a subsidiary of UPH and accordingly UPH was financially interested in the success or failure of Chestvale. Mr. Barry, a director of UPH argued that UPH had no entitlement whatsoever to any profit or loss that could be made from the subsequent resale of the site and that UPH did not benefit financially in any way from the sale of the property by the client of Mr. Smyth to Telecom Eireann. It is my opinion that neither the agreement of June 1989 nor the undertaking by Mr. Smyth, made UPH financially interested in the success or failure of the Companies, as the purpose of the requirement for the bank guarantee and then a personal undertaking by Mr. Smyth was to avoid UPH having to take any risk on

the success or failure of the Companies.

2.1.3 However this was altered in December 1989. On 9th December 1989, Mr. Hannigan and Ms. Hewitt the registered owners of the two issued shares in Chestvale, and who held the shares as nominees in their capacity as employees of Noel Smyth & Partners, each swore a Declaration of Trust to the effect that they held the share registered in their name in trust for UPH. Subsequently as required by the solicitors for UPH and at the request of Mr. Smyth, they each swore an amended Declaration of Trust on 22nd December 1989 adding that they each held the share in Chestvale in trust for UPH at all times since incorporation. Despite arguments to the contrary by Mr. Smyth and his submission on their behalf that there was good and sufficient reason for changing the said Declarations of Trust, I do not accept that the added statement in these Declarations was correct, as on balance, the evidence available to me clearly indicates that prior to 9th December 1989, the shareholders did not hold the shares in trust for UPH, but rather for the client of Mr. Smyth. Indeed, Mr. Smyth's files show draft minutes prepared in or about 11th August 1989 for a board meeting of Chestvale to approve the transfer of the two issued shares to NCB Nominees and Dedeir respectively.

2.1.4 However, the next issue is whether from the 9th December 1989, the date of the first declarations of trust, Chestvale was effectively a

subsidiary of UPH, and if so, whether UPH then became financially interested in the success or failure of Chestvale. I have examined in this regard the files of UPH, of their solicitors A & L Goodbody and of Noel Smyth & Partners, solicitors for Chestvale, and I find that the intention of all the parties as reflected in their actions after 9th December 1989 indicate that it was a subsidiary, and these actions culminated in the transfer by UPH to Delion of the shares in Chestvale on 19th April 1990. In fact, it was an essential part of the tax planning for UPH, that Chestvale be its subsidiary. Unless this transfer of 19th April 1990 was a sham (and the evidence indicates that it was not), there would have to have been a transfer of the beneficial interest in the two issued Chestvale shares from the client of Mr. Smyth to UPH, so that UPH could then transfer that beneficial interest to Delion. I find that, although there was not a formal written transfer, there was an effective transfer, so that from 9th December 1989, the date of the first declarations of trust until 19th April 1990, Chestvale was effectively a subsidiary of UPH. The formal agreement for the transfer of shares in Chestvale from UPH to Delion was signed on the 12th April 1990 and the transfer was effected on 19th April 1990.

- 2.1.5 To determine whether UPH was consequently financially interested in the success or failure of the Companies, it is necessary to analyse whether UPH was at risk that it might not receive the bank guaranteed loan note. The intention of the parties after 9th December 1989 was

that UPH would sell its interest in Chestvale, which owned the JMOB site, to Delion. Delion was to pay for this interest by furnishing a loan note to UPH for £2,750,000, payable on 11th August 1994 and which was to be guaranteed by a bank. The bank which ultimately guaranteed the loan note, Ansbacher, did not agree to do so until 22nd January 1990 and did not in fact issue the guarantee, which was effected by way of a deed of covenant, until 19th April 1990. By letter of the 22nd January 1990, Ansbacher informed Chestvale that it understood that on receipt of the sale proceeds of the JMOB site, the sum of IR£2,750,000 would be placed on deposit and liened to the bank to secure the guarantee and in the meantime, pending receipt of the said proceeds, the guarantee would be secured by the existing fixed charge over the JMOB site. This facility, offered by Ansbacher, was not accepted by Chestvale. The offer by Ansbacher of 22nd January 1990 followed the submission to it of a letter from Mr. Desmond to Telecom of 10th January 1990, endorsed with acceptance by Mr. McGovern on behalf of Telecom. If Ansbacher had not been satisfied that Telecom would purchase the JMOB site, I am satisfied that it would not have guaranteed the loan note issued by Delion and UPH would have remained financially interested in the success or failure of Chestvale. Mr. Desmond gave evidence to me that he understood that Ansbacher had agreed to guarantee the loan note as soon as they had security over cash of c. IR£2,000,000, i.e. the mezzanine finance, which was on deposit with them since 21st

December 1989, but that was not the understanding of Ansbacher according to the evidence of their officials and reflected in documents inspected by me. As noted by me in paragraphs 6.12.10 - 6.12.13 of the Interim Report, a further application was made to Ansbacher by Mr. Smyth on behalf of Delion on the 30th March 1990; a new revised facility was offered by Ansbacher on 3rd April 1990; Ansbacher received the acceptance of this facility on 10th April 1990 and issued their guarantee on 19th April 1990. Accordingly, I find that UPH was a party financially interested in the success or failure of Chestvale from 9th December 1989 until it received the bank guaranteed loan note on 19th April 1990.

- 2.1.6 After 19th April 1990, Delion was a party interested in the success or failure of Chestvale. I stated in the Interim Report that I believed that the true owner of Chestvale was also the true owner of Delion and I remain of the opinion that is the case.

2.2 The beneficial owners of shares in UPH

2.2.1 The true persons who were financially interested in the success or failure (real or apparent) of Chestvale through UPH are set out in Appendix 3 attached hereto.

2.2.2 I referred in the Interim Report at paragraph 2.3.11 to my doubts about Joseph Lewis being the beneficial owner of shares in UPH. I do not believe that Joseph Lewis was the beneficial owner of shares in UPH and in so far as his name is noted in the records, I find that he was acting as a nominee for some other person. My reasons for this finding are:

- (i) the only listed shareholder in UPH who has not satisfied me as to his shareholding is Mr. Lewis;
- (ii) I have received no evidence of any contemporaneous written communication with Mr. Lewis relating to his proposed investment in UPH;
- (iii) despite a number of requests he has failed to produce any evidence that funds invested in UPH and which came from an account in Union Bank of Switzerland in Geneva on 15th June 1989 were his;

- (iv) the name of Joseph Lewis was used under the reference L in discussions about the offshore tax basis of the transaction in September 1989 - see paragraph 7.2.16 of the Interim Report. Mr. Desmond informed me in evidence that he had suggested the use of Mr. Lewis name at that stage as he understood that an offshore resident was required for tax reasons.
- (v) Mr. Desmond also informed me in evidence that Mr. Lewis had never previously invested through him or through NCB and that the reason he asked Mr. Lewis to invest in UPH was so that Mr. Lewis might ask Mr. Desmond at some time in the future to participate in investments that might be made by Mr. Lewis.

I find this latter point particularly difficult to accept bearing in mind that, as I explain later, Mr. Desmond, as the client of Mr. Smyth, more or less contemporaneously with the above request to Mr. Lewis, bought the JMOB site from UPH. If Mr. Desmond really wanted to be seen by Mr. Lewis as doing him a favour, by getting him to invest in UPH, then it is reasonable to expect that Mr. Lewis would be involved with Mr. Desmond in the purchase from UPH, but he, Mr. Lewis, has indicated that he had no knowledge of this; Mr. Desmond has said he, Mr. Lewis, was not involved; and there is no evidence that he was. Mr. Lewis through Bahamian lawyers has insisted that he is the beneficial owner and I attach copies of my correspondence with him

and his lawyers as Appendix 4 to this report. As appears from this correspondence, Mr. Lewis has failed to produce any evidence to me.

2.2.3 The question arising then is who was the principal of Mr. Lewis. I specifically asked Mr. McManus if Mr. Lewis acted on his behalf or as his nominee in relation to the Companies or UPH. Mr. McManus denied that Mr. Lewis had so acted. Mr. McManus informed me in evidence that Mr. Lewis spoke to him about the investment in UPH before it was made and asked him what he thought. Mr. McManus informed me that he replied that he found Mr. Desmond to be very trustworthy and that his firm had a very good track record but that Mr. Lewis could make up his own mind. Nevertheless, I find that Mr. Lewis is holding the shares in UPH as nominee or in trust for Mr. McManus for the following reasons:

- (i) in a contemporaneous document referring to the shareholders of UPH, which was based on information given by Mr. Desmond to Lombard and Ulster Bank, Mr. McManus is stated to be a shareholder in UPH. I appreciate as will appear later, (see paragraph 3.21.(iii) post) that Mr. Desmond misrepresented to the banks that certain persons were participants in the transactions, but I am advised that Mr. McManus is a particularly close personal friend of Mr. Desmond and I find it difficult to accept that he would misrepresent his friend in this way, unless

it was true.

- (ii) In an interview between Mr. Smyth and Mr. Moriarty of Bank of Ireland, based on information given to him by Mr. Desmond, Mr. Smyth said that there was some overlap between the shareholders of UPH and Messrs Desmond, Magnier and McManus.
- (iii) I have made a determination that Mr. McManus did participate in the purchase by Mr. Desmond, the client of Mr. Smyth, from UPH, using the name J. & N. McMahon - see Section 5 of this report, despite his denial of such involvement.

2.2.4 I also referred in the Interim Report at paragraph 2.3.14 to the claim of Gerard Walsh to a shareholding in UPH. Mr. Walsh was specific in his evidence to me about the promise made to him by Mr. Desmond. When asked by me to explain why Mr. Desmond would have made this promise of a 10% shareholding in UPH and how it could be implemented, Mr. Walsh replied that the value at which Findlater House, the first property bought by UPH, was to be reflected in the UPH accounts, was £500,000 greater than its actual cost, because a valuation had been received which justified the increased figure. This difference was to be accounted for by a corporate finance fee of IR£500,000 to be charged by NCB to UPH, and which fee was to be

capitalised for 50% of the ordinary shares in UPH. These ordinary shares were then to be divided between Padraic Hassett, the estate agent who had introduced Mr. Desmond to the Findlater House property and who was to get 5%; Mr. Walsh who worked on the acquisition and in particular in getting bank finance for the purchase based on a higher valuation than was paid for the property who was to get 10%; and NCB who were to receive the balance of 35%.

Although not referred to in evidence by Mr. Desmond or Mr. Barry of UPH, nor in the Placing Memoranda circulated to prospective UPH shareholders, a corporate finance fee of IR£437,880 (inclusive of VAT and disbursements) was in fact charged by NCB to UPH and a fee of £61,500 (inclusive of VAT) was charged by Mr. Hassett. These fees amounting to £499,380 were capitalised in the audited accounts as part of the acquisition cost of Findlater House. Mr. Desmond in his subsequent evidence agreed that it was charged and argued that it was justified. Mr. Barry in his evidence to me stated that there was some connection between the NCB/Mr. Desmond subscription for shares and the Findlater House purchase. The capitalisation referred to by Mr. Walsh did not take place as envisaged by him but eventually in March 1990, NCB, Mr. Desmond and Mr. Hassett subscribed in cash for 50% of the ordinary shares in UPH. The share register of UPH records that these shares were allotted for cash in March 1990 and not on 31st May 1989 as stated by me in paragraph 4.5.8 of the Interim Report.

2.2.5 When asked by me why he did not pursue his claim for shares in UPH until September 1991, Mr. Walsh replied that he always believed that Mr. Desmond was holding the shares in trust for him and was not disabused of this belief until NCB made a public statement in September 1991 in response to press enquiries, in which they named the beneficial owners of the UPH shares. When Mr. Walsh saw this and saw that his name was not included, he says that he immediately contacted Mr. Desmond and demanded his shares. Mr. Desmond maintains that Mr. Walsh, in only making this claim to the shares in September 1991, without having raised the issue at any time since he left UPH in February 1989, showed his lack of bona fides. However, on balance I find the explanation of Mr. Walsh plausible and his evidence on this issue credible and consistent with the actions of relevant parties.

2.2.6 I consequently find that Mr. Walsh is entitled to 10% of the ordinary shares in UPH and that Mr. Desmond, through Pepper Canister Nominees, holds those in trust for Mr. Walsh.

3.0 Mr. Desmond

3.1 Involvement of Mr. Desmond throughout the transactions

From an early stage of my investigation and in particular on my reading the Telecom Report, it was clear that Mr. Desmond was a person who had some involvement, from the earliest stages of the transactions, when UPH first acquired an interest in the JMOB site, until the latter stages when the JMOB site was sold to Telecom Eireann.

3.2.1 Mr. Desmond's evidence of not benefitting

I interviewed Mr. Desmond on a number of occasions and while acknowledging that he did have some role in the various transactions, he stated clearly in his evidence to me on a number of occasions and in the course of affidavits sworn by him in various legal proceedings which are described by me in Section 3 of the Interim Report, that he did not benefit in any way from the transactions involving the Companies and Telecom Eireann, other than in his capacity as a shareholder in UPH and perhaps through gaining goodwill with Dr. Smurfit and with Telecom Eireann, by acting as an intermediary between Chestvale as vendor and Telecom as purchaser.

3.2.2 From the correspondence with Mr. Desmond's solicitors in relation to the making of final submissions and, or, the adducing of further evidence, while not so explicitly stated, I believe it is clear that Mr. Desmond does not accept or agree with my determinations, as they relate to him. I accordingly consider it appropriate that I make his opinion in this regard clear at an early point in this report. While repeated requests were received from Mr. Desmond's solicitors to have access to all information given to me which related to my findings concerning Mr. Desmond, and for an extension of time within which to make submissions, I did not consider that there were adequate or sufficient grounds for acceding to those requests. I am satisfied that Mr. Desmond has had a full opportunity to adduce further evidence to me and to make further submissions on the extracts from the draft report which were furnished to him on the 25th June 1993. However, save in respect of two matters, he has not done so.

3.3 UPH sale to Mr. Smyth as nominee of Mr. Desmond

3.3.1 I set out in Section 5.2 of the Interim Report, an analysis of evidence adduced to me, relating to the attempt by UPH to sell on their interest in the JMOB site after mid-April 1989 and stated in paragraph 5.2.12 that parties, who had submitted tenders to UPH, were substantial property companies. In early June 1989, Mr. Desmond, on behalf of UPH, noted an agreement subject to UPH board approval to sell the site to Hardwicke Limited / British Land for £5,750,000 plus 10% of the profits of the development, subject to a minimum of £500,000, to be received not later than the 3rd anniversary of the deal. However in paragraph 5.2.10 of that report, I stated that Mr. Smyth, at the request and on the instructions of Mr. Desmond, subsequently made a formal offer to Mr. Barry of UPH for £6,300,000, which offer was accepted. I also stated that Mr. Smyth's evidence was that on 19th June 1989, the date he made the offer and thereafter, he considered his client to be Mr. Desmond. In paragraph 5.2.15 of the Interim Report, I noted that Mr. Desmond confirmed to me in evidence that Mr. Smyth made the aforesaid offer to UPH on his, Mr. Desmond's, request.

3.3.2 Accordingly I find that the client of Mr. Smyth at 19th June 1989, when Mr. Smyth made the offer to UPH to purchase the JMOB site, was Mr. Desmond and accordingly that from the time that UPH accepted this offer at the end of June 1989, Mr. Desmond was the beneficial owner

of the agreement to acquire the interest of UPH in the JMOB site.

- 3.3.3 I considered the evidence of Mr. Barry, who was a director of UPH and Mr. Pairceir who was the Chairman of UPH at that time and am satisfied that they were not aware that Mr. Desmond was the client of Mr. Smyth, on whose behalf, the offer of 19th June 1989 was accepted; although Mr. Barry acknowledged that he was aware that Mr. Desmond had some involvement in trying to assist the financing of the purchase from UPH.

3.4

Alleged involvement of Sportsfield

3.4.1 In Section 5.3 of the Interim Report, I analysed the evidence then available to me relating to the period between 19th June 1989 and 11th August 1989 and in particular evidence relating to a proposed reverse takeover of Sportsfield by a consortium of investors led by Mr. Smyth.

3.4.2 I stated in paragraph 5.3.3 of the Interim Report that Mr. Desmond's evidence was that Mr. Smyth and his consortium, including clients of Mr. Desmond, would be acquiring the JMOB site and transferring it to Sportsfield, together with other properties that were to be transferred by various parties, for the purpose of the reverse takeover. I noted also in the same paragraph that Mr. Desmond stated in evidence that he had informed the NCB executives who were dealing with the reverse takeover of Sportsfield of this proposal and that Mr. Barry of NCB and UPH was also aware of it.

3.4.3 In subsequent paragraphs, I noted the evidence of NCB executives involved in advising Sportsfield on this transaction, each of whom and Mr. Barry, stated in evidence that they were not aware of a proposal to include the JMOB site among the properties to be transferred into Sportsfield. In the same paragraph 5.3.3, I also noted the evidence of Mr. Smyth that this proposal was something that had been considered, but that it was not something that was to happen for a considerable

length of time after August 1989.

3.4.4 In these conflicts of evidence between Mr. Desmond on the one part and Mr. Smyth and NCB executives and documentary evidence on the other, I find that I cannot accept the version given to me by Mr. Desmond and that, whereas Mr. Desmond may have had some intention of transferring his interest in the agreement with UPH on to Sportsfield at some time in the future, that this was not the intended method for financing the completion of the purchase of the JMOB site from the liquidator which was scheduled for the 31st July 1989 and which was then postponed until 11th August 1989. Rather, as described by me at some length in Section 6 of the Interim Report, the intention was to finance the purchase mainly by bank borrowings and hence the application to various banks as described in that section. It would seem that in the period from the latter part of July until 8th/9th August 1989, Mr. Desmond may have intended to act as an agent for some investors including himself. However as these "investors" were not definitely agreed at that time, I find that Mr. Desmond was the sole beneficial owner of the contractual interest to acquire the JMOB site pursuant to the agreement between Mr. Smyth and UPH of June 1989. This remained the position at least until the 8th or 9th August 1989 when according to the evidence of Mr. Desmond, he arranged for Mr. Doherty to purchase the JMOB site, with the assistance of mezzanine finance from Mr. Probets, through his company, Freezone.

3.5.1 I explained at paragraph 5.3.16 of the Interim Report that I had not had an opportunity of interviewing Mr. Doherty prior to issuing the Interim Report to the then Minister for Industry and Commerce and added that the evidence of Mr. Doherty might help to reconcile some of the conflicts of evidence outlined by me in the earlier part of Section 5 of the Interim Report. I interviewed Mr. Doherty at length on two separate days, 31st July 1992 and 4th August 1992 and received from his solicitors some further correspondence and documents.

3.5.2 The evidence given by Mr. Doherty did not reconcile the conflicts of evidence referred to in Section 5 of the Interim Report. To some extent, Mr. Doherty's evidence added to the confusion because it did not in some important respects corroborate the evidence of Mr. Desmond.

3.5.3 Mr. Desmond's evidence, as outlined in paragraphs 5.3.8 - 5.3.14 of the Interim Report, is to the effect that when Mr. Desmond realised that Mr. Smyth could not complete the transaction with UPH, he had to turn to Mr. Doherty about whom he knew very little and arrange for Mr. Doherty to take over Mr. Smyth's interest in the agreement with UPH; that he negotiated a deal between Mr. Probets as mezzanine financier and Mr. Doherty, whereby Mr. Doherty would promise in consideration

of Mr. Probets, through Freezone, lending him £2,000,000, to pay £3,000,000 in three years time with accrued interest on the £2,000,000 or to repay the £2,000,000 with the first £2,500,000 of net profits realised on the JMOB site; that Mr. Doherty was to, and did, sign a promissory note for £3,000,000; that a letter of agreement was signed by Messrs Doherty and Probets; and that accordingly Mr. Doherty was the true owner of Chestvale and that Mr. Probets via Freezone was the mezzanine financier.

3.6.1 The entire nexus of Mr. Desmond's evidence to me is based on two fundamental premises which he repeatedly stated to me in his sworn evidence and in affidavits sworn by him in court proceedings:

- (i) that he, Mr. Desmond, was not himself financially interested in any way in the success or failure (real or apparent) of the Companies nor was he able to control or to materially influence the policies of those Companies.
- (ii) that Mr. Probets owned Freezone which provided all the mezzanine finance for the purchase of the JMOB site and received the US\$1,500,000 and IR£2,431,170, paid on the 30th July 1990, out of the proceeds of sale of the site then in the account of Delion at Ansbacher, as referred to in the chronology paragraph 1.10 supra.

3.7 Mr. Probets evidence

- 3.7.1 As explained in the Interim Report, Mr. Probets failed to cooperate with the investigation when requested by me, but did produce a Statutory Declaration sworn by him on 23rd October 1991 (see Appendix 15 of the Interim Report). In this declaration, ("the Probets Declaration") Mr. Probets purported to corroborate the evidence of Mr. Desmond and declared that he agreed to provide mezzanine finance of IR£2,000,000 for the funding of the purchase of the JMOB site and added that he reached agreement with Mr. Doherty to provide him with the mezzanine finance. The Probets Declaration then stated that Mr. Probets arranged on or about 10th August 1989 for IR£1,000,000 to be transferred to Ansbacher Bank and that he understood that that was utilized to pay the deposit on the purchase of the property. He stated that on or about 7th December 1989, he arranged for US\$1,500,000 to be transferred via Bankers Trust, New York to Ansbacher Bank and that on or about 30th July 1990, the sum of IR£956,118 (circa US\$1,500,000) was transferred by Ansbacher to Bankers Trust. He stated that the original deposit of IR£1,000,000 together with interest, making a total of IR£1,131,000, was transferred on or about 30th July 1989 to an account of Freezone at TSB in Grafton Street, Dublin and that Freezone was a company of which he was the sole and absolute beneficial owner. He stated that a further sum of £1.3m was transferred from Ansbacher on or about 30th July 1989 to the same

account of Freezone in the TSB and that this sum of £1.3m was, apart from interest, the agreed return to Mr. Probets from Mr. Doherty on his arrangement for the provision of mezzanine finance. He then stated that either personally, directly or indirectly through Freezone, he and/or Freezone was the only and absolute beneficial owner of the monies invested by way of mezzanine finance in the purchase of the property and was accordingly the owner of the profit earned.

3.7.2 As Mr. Probets refused to vouch any of the declarations made by him or to give further details, I sought to establish the veracity or otherwise of the declarations made by him. I was able to establish that the amounts referred to by him were transferred on or about the dates mentioned, although I established that arrangements for the first transfer were made on 8th August 1989 and not on 10th August as declared by him. I established further that that first payment came to Ansbacher via an account in UBS in Geneva. In addition, I established that there was no payment back to the account in UBS from the Freezone account at TSB to which the monies had been transferred from Ansbacher, nor was there any transfer from an account of the Companies or of Delion at Ansbacher to the account at UBS.

3.8 Tracing of payment to account of J. & N. McMahon at AIB Bank (C.I.) Limited in Jersey

3.8.1 I then established that the payment of US\$1,500,000 which was transferred to Ansbacher in December 1989 via Bankers Trust, New York, came from an account in the name of J. & N. McMahon at AIB Bank (C.I.) in Jersey. I have also found that the payment back to Bankers Trust in July 1990 after completion of the sale of the JMOB site to Telecom Eireann went into the account of J. & N. McMahon at AIB Bank (C.I.) Limited in Jersey. As stated in paragraph 8.4.4. of the Interim Report, I was informed that J. & N. McMahon was not a real name. As the real person who controlled the J. & N. McMahon account was a person who was financially interested in the success or failure of the Companies, it was necessary to ascertain who is that person or persons. No interest, profit or compensation was paid to the account of J. & N. McMahon at AIB Bank (CI) Limited in Jersey from the Companies or Delion account at Ansbacher or the Freezone account at TSB and hence I had to ascertain how this investment or loan was rewarded. These issues are dealt with in Section 5 of this Report.

3.8.2 For the declaration of Mr. Probets that he either directly or through Freezone, was the only and absolute beneficial owner of the monies invested by way of mezzanine finance and the profits earned on it, to

be correct, Mr. Probets would have to be the real J. & N. McMahon and the true owner of Freezone.

3.9 Tracing of payment to account of Lochlann Quinn and Martin Naughton at Irish Intercontinental Bank Limited

3.9.1 In my Interim Report and in particular in Section 8, I explained that the sum of £2,431,170 from the proceeds of sale of the JMOB site to Telecom Eireann was transferred to an account in the name of Freezone at TSB, Grafton Street. I explained in paragraphs 8.6.3 - 8.6.5 of the Interim Report that the sum of IR£1,300,000, part of the aforesaid sum of IR£2,431,170 was transferred immediately to an account at Irish Intercontinental Bank in the names of Lochlann Quinn and Martin Naughton, to comply with a personal obligation of Mr. Desmond to discharge the debit balance in that account. Mr. Desmond argued that this did not make him a beneficiary of part of the proceeds of sale because it merely increased the amount that he owed to Freezone. I do not accept Mr. Desmond's argument in this regard and find that this payment of £1,300,000 did make Mr. Desmond a beneficiary of part of the proceeds of sale of the JMOB site to Telecom.

3.9.2 I find however that, save for their interest through UPH, neither Mr. Quinn nor Mr. Naughton were financially interested in the success or failure of the Companies, because the obligation of Mr. Desmond to repay the loan did not in any way relate to the sale of the JMOB site, nor did the security which he had given for the loan. Equally I find that

Messrs. Quinn and Naughton were not able to control or materially influence the policy of the Companies.

- 3.9.3 At paragraph 8.6.5 of the Interim Report, I stated that according to the evidence of Mr. Quinn, Mr. Desmond in September 1991 had denied any connection between the repayment of the £1,300,000 and the proceeds of sale of the JMOB site to Telecom. Mr. Quinn subsequently notified me that he did not ask Mr. Desmond how he repaid it and that his question to Mr. Desmond was in October 1991 and was whether the loan was used in the acquisition or financing of the JMOB site, to which Mr. Desmond replied that there was no connection whatsoever. Mr. Quinn is satisfied that the relevant description of his evidence in paragraph 8.6.5 was accurate but that Mr. Desmond's answer was correct in a factual sense in that there was not a denial. He added that Mr. Desmond omitted to say to Mr. Quinn how the loan was repaid.

3.10 Loan of £500,000 from Ansbacher to Mr. Desmond in January 1990

3.10.1 In Section 6.10 of the Interim Report, I explained that in mid January 1990, Mr. Desmond obtained a loan for IR£500,000 from Ansbacher which was secured by a letter of undertaking written by Mr. Smyth as solicitor on behalf of Mr. Desmond, to repay the said loan out of the proceeds of sale of the JMOB site to Telecom Eireann. Mr. Desmond had given a letter to Mr. Smyth on 17th January 1990 which irrevocably instructed Mr. Smyth to give the undertaking and which included confirmation that the undertaking extended to repay the loan out of the £2,000,000 which was "liened" and hypothecated" in Ansbacher, (then in a Delion account) in support of and guaranteeing the Chestvale loan facilities at that time, so that in the event of there being insufficient proceeds from the sale of the JMOB site, that he, Mr. Smyth, was authorised to utilise part of the monies, liened and hypothecated, when released, to discharge Mr. Smyth's undertaking to Ansbacher. A copy of the letter of instructions by Mr. Desmond and the letter of undertaking by Mr. Smyth each dated 17th January 1990 were attached as Appendix 11 to the Interim Report.

3.10.2 I noted also in paragraphs 6.10.9 - 6.10.14 of the Interim Report that the loan was not repaid out of the proceeds of sale of the JMOB site when that sale closed, but was repaid indirectly out of the proceeds of sale by Freezone of its shares in Emmets and that Ansbacher

continued to rely on the undertaking of Mr. Smyth until the loan was actually repaid.

3.10.3 Mr. Desmond suggested in a submission to me of 14th September 1992, that Mr. Smyth's undertaking was given as comfort to Ansbacher, so that in the event of Mr. Desmond not repaying the loan, then "Colin Probets monies could be used (i.e. money he introduced as collateral for the JMOB loan)". He argued that if Ansbacher were directly concerned about the proceeds of the JMOB sale to Telecom, that they would have used the funds to repay the loan; that as the funds were distributed to Freezone and Delion, who applied them without recourse to Mr. Smyth's undertaking prior to repayment of Mr. Desmond's loan; and that as Ansbacher did not have a lien over the funds after the sale; that the loan was not contingent on Mr. Smyth's undertaking nor did Mr. Desmond use the proceeds from the JMOB sale to repay the loan.

3.10.4 In his oral evidence to me, Mr. Desmond said that he did not instruct Mr. Smyth to repay the loan out of the proceeds of sale of the JMOB site; that the letter of instructions to Mr. Smyth from Mr. Desmond was drafted by Mr. Smyth; that Mr. Smyth misunderstood Mr. Desmond's instructions to him and that he, Mr. Desmond, must have signed the letter without reading it. Mr. Smyth was adamant in his evidence to me that the letters of 17th January 1990 were drafted by him exactly in accordance with Mr. Desmond's instructions to him. Mr. Smyth's

evidence and the fact of Mr. Desmond signing the letter of instructions as well as the contemporaneous actions by Ansbacher in getting advice on the security and drafting their internal credit application form make it impossible for me to accept Mr. Desmond's submission that the undertaking was intended to be limited to the "mezzanine finance".

3.11 Ansbacher Credit Application 003/20

- 3.11.1 An Ansbacher internal memo of 21/3/1990 described by me in paragraph 9.5.4 of the Interim Report and a copy of which was contained in Appendix 17 of that report implies that Ansbacher understood then that Mr. Desmond had control over the proceeds of sale of the JMOB site and of the £2m (or US\$3m) deposit in the account of Delion at Ansbacher.
- 3.11.2 The Ansbacher Credit Application 003/20 dated 22/3/1990 described at paragraph 9.5.6 of the Interim Report, which dealt with a loan of £814,000 to Freezone, provided for repayment of the loan by Mr. Desmond out of the surplus of £10,000,000 from his project at the Custom House Docks and of £5,000,000 from the JMOB site.

The manager of the loans department of Ansbacher, Ms. O'Toole, stated in evidence that she did not remember connecting this application with the memorandum of the previous day but understood that these surpluses would be available to Mr. Desmond.

3.12 Instructions to Mr. Smyth on the policy of the Companies

3.12.1 The evidence of Mr. Smyth, which was not contradicted by any witness was that all instructions as to the operation of the Companies, which were effected by him, were given to him by Mr. Desmond. Mr. Desmond in his evidence stated that before giving such instructions to Mr. Smyth, he received instructions from Mr. Doherty. Mr. Doherty in his evidence in response to a question by me

"Was there anything in that six months (referring to the period up to 29th June 1990 when Telecom paid for the site) where they (referring to Mr. Desmond and Mr. Smyth) had to ask for your decision or opinion or views or opinions?"

replied

"No, it was just getting on with the drawings (referring to drawings for residential units on the site) there was nothing."

and when pressed by me

"... but there was nothing that you can, there was nothing discussed with you during that period"

replied

"Nothing of significance, no"

3.13 Determination re financial interest of Mr. Desmond and control by Mr. Desmond of the policy of the Companies

3.13.1 I accordingly make a determination based on the foregoing that Mr. Desmond was a person financially interested in the success or failure of Chestvale from August 1989, when as a shelf company, it was nominated to take the purchase of the JMOB site. I also make the determination that he controlled it during the same period.

3.13.2 As Hoddle was merely part of a tax avoidance mechanism or scheme for Chestvale and had no other purpose, I am satisfied that its beneficial owners are the same as those of Chestvale. I find accordingly that Mr. Desmond was financially interested in the success or failure of Hoddle and that he controlled it from the time in December 1989 when it was allocated by Mr. Smyth to take a role in the tax avoidance scheme.

3.13.3 I describe in paragraph 7.6(x) post, a payment to Mr. Doherty which came through Mr. Probets. I do not accept that the payment came from Mr. Probets own funds, but rather from Mr. Desmond and accordingly make the determination that Mr. Desmond is, because of the arrangement in relation to that payment, financially interested in the success or failure of the Companies since 18th November 1991.

3.14 Other findings relating to Mr. Desmond

3.14.1 As set out in Sections 4 and 6 post, I have found that Mr. Desmond was also financially interested in the success or failure of the Companies by virtue of being the true beneficial owner of Freezone and the person who controlled the account at UBS, Geneva through which the advance of £1,000,000 was made to Chestvale on 9th August 1989.

3.14.2 In making the determinations that Mr. Desmond was a person financially interested in the success or failure of the Companies and that he controlled them, there are a number of other aspects of Mr. Desmond's evidence on which I have had to make findings of fact. These findings are as follows:

- (i) That while acting as an agent and conducting the negotiations with interested third parties, on behalf of UPH, to dispose of its contractual interest in the JMOB site, between April and July 1989, Mr. Desmond purchased the said interest from UPH, without disclosing to UPH that he was doing so and without disclosing to UPH what he knew about Telecom's interest - See paragraphs 5.2.5 - 5.2.15 of the Interim Report and paragraph 3.3 supra.

- (ii) That whereas the possible involvement of Sportsfield with the JMOB site, by transferring the property into that company in consideration of the issue of shares, in conjunction with a proposed reverse takeover involving Mr. Smyth and others, may have been mooted among a limited number of persons; the advisers to Sportsfield, Mr. Desmond's colleagues in NCB, were not aware of this, it was not part of the formal proposal put by Mr. Smyth to Sportsfield and its advisers on 28th July 1989 and there was never any serious intent that Sportsfield would acquire the property at the end of July or even at the beginning of August 1989, and in fact it could not have done so at best for many months after that - See paragraphs 5.3.3 - 5.3.10 of the Interim Report and paragraph 3.4.4 *supra*.
- (iii) That Mr. Desmond misrepresented to certain banks and to Mr. Smyth, knowing that Mr. Smyth would make similar representations to banks, about the involvement of Mr. Goodman, Mr. Magnier and Dr. Smurfit in UPH and in the Companies, even though he knew that Mr. Goodman was involved in neither and that Messrs Magnier and Smurfit were not involved in the Companies - See paragraphs 6.3.4, 6.3.5, 6.4.3 to 6.4.6, 6.5.2, 6.5.11 and 6.6.9 of the Interim Report.
- (iv) That Mr. Desmond told Trinity Bank and Lombard and Ulster

Bank about the possibility of a sale to Telecom in July 1989 - see paragraph 6.2.12 and 6.3.6 of the Interim Report.

- (v) That Mr. Desmond induced the editor of the Irish Independent to publish an apology in February 1990 in relation to an article published by them on the previous day alleging his involvement in the JMOB site, when he knew that the original article was substantially correct and that he was not entitled to an apology - See paragraphs 10.14.9 - 10.14.16 of the Interim Report.

- (vi) That Mr. Desmond misrepresented to Mr. Smyth in September 1989, the proposed role of Mr. Bourke who was then a financial adviser to the Magnier family trusts. He informed Mr. Smyth that Mr. Bourke would be involved in refinancing the purchase of the JMOB site, while knowing that that was not the true role of Mr. Bourke and that Mr. Bourke was asked to consider only the tax aspects of the transactions on behalf of UPH - See paragraphs 6.7.5 and 6.7.8 of the Interim Report.

Incidentally Mr. Bourke was described at the introduction to the Interim Report as an employee of John Magnier/Coolmore Stud. He should have been described as a former financial adviser to the Magnier trusts.

- (vii) That having become aware of Dr. Smurfit's interest in acquiring

a site for a Corporate Headquarters for Telecom, he (Mr. Desmond) discussed the JMOB site with Dr. Smurfit and by letter of the 1st December 1989 informed Dr. Smurfit that he could not advise Telecom on the transaction. He added that "we disposed of the property to Chestvale and if I can influence the Chestvale people in any way, I would be delighted to do so". However he misrepresented his status by not telling Dr. Smurfit that he, Mr. Desmond, was financially interested in the success or failure of Chestvale and that he effectively controlled it. He accordingly assumed a position of influence with Dr. Smurfit, knowing that Dr. Smurfit relying on his, Mr. Desmond's, apparent and declared independence, would be likely to rely on him, which he did - see paragraph 10.10.2 of the Interim Report".

- (viii) That Mr. Desmond informed Mr. McGovern, the Chief Executive of Telecom at a meeting on 20th December 1989 convened to discuss the JMOB site that he, Mr. Desmond, was an intermediary and thereby induced Mr. McGovern to deal with him as a bona fide intermediary. However he deliberately failed to disclose to Mr. McGovern (i) his personal financial interest in the success or failure of the company that owned the site; (ii) the fact that he effectively controlled that company; and (iii) the fact that only a few weeks earlier he tried to sell the same property for £6.3m. These omissions put Mr. Desmond in a

position where a conflict of interest was inevitable whether or not he subsequently acted bona fide - See paragraphs 10.11.8 and 10.12.4 of the Interim Report and paragraph 8.1.3 supra.

- (ix) That in his letter of 20th February 1990 to Mr. McGovern, described at paragraph 10.14.18 of the Interim Report, Mr. Desmond deliberately misled Mr. McGovern by stating that "I am not sure how far negotiations have gone..." when he was fully aware through briefings from Mr. Smyth.
- (x) That on 28th June 1990, Mr. Desmond executed a personal indemnity in favour of Mr. Smyth as Mr. Smyth had to assume personal liability to Telecom on foot of warranties and indemnities. Mr. Smyth had been required by Telecom to give these warranties at the closing of the sale on behalf of the three companies, Chestvale, Hoddle and Delion, but he refused to do so without having a counter indemnity from the person whom he considered as his principal. Mr. Desmond did not seek a counter indemnity from any other party and remained ultimately liable personally on foot of the various warranties given to Telecom.
- (xi) On 26th July 1990, Mr. Desmond telephoned Mr. Moloney, Managing Director of Ansbacher and instructed him to make

three payments from the Delion accounts (see the chronology in paragraph 1.10 supra). Mr. Desmond promised Mr. Moloney to get written authority for those payments from the person who held the bank mandate but he did not do so and Ansbacher did not get written confirmation until the Delion accounts were closed in October 1991.

4.0 Determination of ownership of Freezone

4.1 General

- 4.1.1 The balance of the payment (£1,131,170) to the Freezone account at TSB remaining after the immediate transfer of £1,300,000 to the Irish Intercontinental Bank account, described at paragraph 8.5.8 of the Interim Report, was effectively merged in the existing balance in the account at TSB and save for the large cash withdrawal on 31st July 1990 referred to in paragraph 5.4 post, that account continued to be operated after receipt of those funds, as it was prior to it. I am satisfied therefore that the beneficial owners of Freezone are persons who are or were financially interested in the success or failure (real or apparent) of the Companies, as it received for its own account some of the benefit from the sale of the assets of those Companies.
- 4.1.2 I referred in the Interim Report at paragraph 9.1.10 to Mr. Wintle an English accountant. Mr. Wintle has explained to me that he was not involved at any time with any of Mr. Probets interests in Ireland and I accept that explanation.

4.2. Option Agreement dated 15th June 1988

4.2.1 At Section 9.2 of the Interim Report, I described an Option Agreement dated 15th June 1988 made between Mr. Probets of the one part and Mr. Desmond of the other part, whereby Mr. Probets granted an option to Mr. Desmond, entitling him to call on Mr. Probets to transfer to Mr. Desmond or his nominee for the sum of £1, the beneficial interest in the entire issued share capital of Freezone and which option could be exercised at any time within ten years from the date of the agreement.

I explained the circumstances under which I received this agreement and the evidence given to me by Mr. Desmond when I asked him to explain the agreement.

4.2.2 I have considered again the verbal evidence of Mr. Desmond referred to by me at paragraph 9.2.2 of the Interim Report and the letter from Mr. Desmond's solicitor quoted by me in paragraph 9.2.3 of Interim Report. As I stated in the aforesaid paragraph 9.2.3, the points made in the letter did not address the point made by me, that the Option Agreement was, on the face of it, unconditional. Since that date, no additional evidence has been adduced to me to substantiate the evidence given by Mr. Desmond and the submission made by his solicitor, to the effect that the option was merely a security to Mr. Desmond in the event of Mr. Probets death, and that as the option was

never exercised, its existence cannot be used to show that the true owner of Freezone was Mr. Desmond. Equally, no further evidence has been proffered to explain why, if the Option Agreement did not purport to transfer any beneficial interest to Mr. Desmond and was conditional on the death of Mr. Probets, an assignment of the Option Agreement was given as security by Mr. Desmond to Lochlann Quinn and Martin Naughton to secure a personal loan to Mr. Desmond of £1,300,000 as explained by me in paragraph 8.6.4 of the Interim Report. I find that I cannot accept the evidence and submissions of Mr. Desmond on this issue, and consequently find that the Option Agreement was unconditional and was enforceable on its stated terms.

- 4.2.3 Since the delivery by me of my Interim Report on 30th July 1992, I have received in evidence a copy letter written by Mr. Conan, Secretary of Dedeir, on behalf of Freezone, to Hill Samuel London on the 10th day of July 1991 which states inter alia:

"The agreement for sale of our interest in the shares of R. & J. Emmet held by Freezone is being effected by the assignment of an option over the Freezone shares and the commitment by the Purchaser to advance £6m to Freezone to settle your loan and provide for a payment of the balance to Horatio, an Isle of Man company controlled by us. This mechanism is necessary so as not to breach (sic) Stock Exchange rules on the acquisition of

large share stakes. As you know the rights to control Freezone are held through an option mechanism with Colin Probets. The purchaser has now insisted that Colin Probets be a party to the deal and that he indemnify them against any claims that he might make. Colin has always been publicly stated to be the beneficial owner of the Freezone shares. We are convinced and have been advised that his involvement is not necessary...".

This reinforces my finding in relation to the aforesaid Option Agreement of 15th June 1988.

4.3 Loan of £8,000,000 from Hill Samuel Bank

4.3.1 In Section 9.4 of the Interim Report, I described extracts from a file received by me from Hill Samuel Ireland and which represented part of the file of Hill Samuel London.

Since the Interim Report was delivered by me, I have received a copy of the entire files of Hill Samuel London relating to its loan of STG£8,000,000 to Freezone which was drawn down in April 1988. The files date from December 1987, when the suggestion of a loan of this nature was first made, until July 1991 when the loan was repaid in full. A copy of these files was produced to me and oral evidence adduced from certain executives of Hill Samuel London. It is absolutely clear from the files and confirmed by oral evidence, that the executives in Hill Samuel London understood that Mr. Desmond was the beneficial owner of Freezone.

4.3.2 One of them gave evidence that perhaps Mr. Desmond was not at all times the sole beneficial owner, but that he was the majority beneficial owner and that Mr. Probets had been mentioned at some stage as having been a partner of Mr. Desmond. However the oral evidence and the file notes of their meetings with Mr. Desmond indicate that these executives were informed by Mr. Desmond, that in early 1988 he had bought out his partner's interest in Freezone.

According to the Hill Samuel file and to the evidence of the executives, nothing occurred after early 1988 when the loan was approved and drawn down, which would indicate any other change in the ownership of Freezone.

- 4.3.3 The loan to Freezone was approved by Hill Samuel, based on the belief of the executives of Hill Samuel that Mr. Desmond was the beneficial owner of Freezone, and the bank sought and was granted security for the loan, involving the unlimited personal guarantee of Mr. Desmond and the pledge of his personal assets. These security requirements were based on this belief and the bank executives perceived the loan as a loan to Mr. Desmond, but through the vehicle of his company, Freezone. In addition, when the bank sought detailed information from Mr. Desmond relating to his personal affairs on an ongoing and regular basis throughout the period of the loan, this was readily given by Mr. Desmond, who explained to the bank in considerable detail his personal finances, his political contacts, his personal plans for expansion of his personal interests and where relevant, the disposal of such interests. At no time did Mr. Desmond seek to suggest or imply to the bank executives that he was not the real beneficial owner of Freezone and at no time during the course of the loan, did Mr. Desmond seek to have included in the security for the bank, the assets of Mr. Probets or of any other party, even when he was under considerable pressure between 1989 and 1991 from that bank to

provide additional security, because of delays in capital repayments to the bank.

4.4 Operation of Freezone Account in TSB

4.4.1 The IR£8,000,000 loan drawn down by Freezone from Hill Samuel in April 1988 was applied immediately by paying £1,500,000 to Woodchester Finance Limited ("Woodchester") and the remaining £6,500,000 to an account opened in the name of Freezone at TSB, Grafton Street, Dublin 2.

4.4.2 The IR£1,500,000 paid to Woodchester was used to repay a loan granted by that bank to Mr. Desmond pursuant to a facility letter dated 6th January 1988. This facility letter stated that the loan was to assist Mr. Desmond in financing the purchase of shares in Emmets. This could coincide with the statement by Mr. Desmond to the Hill Samuel executives at the end of 1987 and beginning of 1988 that he bought out his partner in Freezone (which owned at that stage all the shares in Emmets). However the loan, when drawn down by Mr. Desmond was paid to a National City Dillon & Waldron account at Bank of Ireland, College Green. The loan to Mr. Desmond was secured by a guarantee from Freezone, together with a charge over 20% of the shares of Emmets and 27.5% of the shares of NCB owned by Mr. Desmond.

4.4.3 Of the £6,500,000 lodged to the Freezone account at TSB, the sum of £2,030,000 was paid to Bankinvest Zurich which appears to represent repayment on behalf of Dedeir (which is Mr. Desmond's private

investment holding company) of a loan granted earlier to Dedeir.

- 4.4.4 A further sum was paid from the Freezone account of IR£700,000 to Smurfit Paribas Bank, which represented repayment of a loan by that bank to Dagord, a subsidiary of Dedeir. This loan had been drawn down in March 1987 to fund the acquisition by Mr. Desmond of shares in NCB from ex-employees of that company and by NCB of the balance of shares in National City Dillon & Waldron, Stockbrokers. This loan had been secured by, inter alia, a guarantee from Emmets, a pledge over 20% of the shares in Emmets by Freezone, a pledge over shares in NCB and Dedeir by Mr. Desmond and the personal guarantee of Mr. Desmond. It is quite clear from the bank's own internal documentation which was produced to me at my request, that the loan was perceived by the relevant executives in Smurfit Paribas Bank, as a loan to Mr. Desmond himself. This internal documentation clearly states that "Through Isle of Man investment channels (Freezone Investments Limited) Mr. Desmond has invested in the purchase of 100% of R. & J. Emmet & Company Limited ...".
- 4.4.5 A further sum of £750,000 was paid to Bank of Ireland, Corporate Loans Department, Baggot Street, which represented repayment of a loan by that bank to Dedeir.
- 4.4.6 A sum of £2,800,000 was paid to ICC which represented repayment of

a loan apparently granted by ICC to Colin Probets in June 1987. This loan was explained by me at paragraph 9.6 of my Interim Report. I explained in paragraph 9.6.2 of that report, that an application was made to ICC by Mr. Desmond for a loan to Mr. Probets to enable him to acquire from Freezone, shares in Emmets for £2,200,000. However as stated in paragraphs 9.6.9 and 9.6.10 of the Interim Report, Mr. Probets did not acquire shares in Emmets. It was then suggested to ICC by an executive in NCB, that Mr. Probets had in fact acquired shares in Freezone and through that, had acquired an interest in the Emmet shares.

4.4.7 If the shares in Freezone were acquired at that time by Mr. Probets from the then owner of the Freezone shares, it is necessarily the case that prior to that, Mr. Probets did not own all of Freezone, contrary to statements by him in the Statutory Declaration referred to at paragraph 3.7 supra, that he was at all times the entire beneficial owner of Freezone.

4.4.8 In addition, if the shares were being acquired by Mr. Probets, the vendor of the shares to him should have received the purchase money of STG£2,200,000. However I have established that (i) of the loan of STG£2,200,000 obtained from ICC at that time, STG£378,000 was used to repay to Irish Bank of Commerce, a short term loan from them to Mr. Probets, which in turn had been used to repay an earlier loan to

Mr. Probets by Robert Frazer & Partners Limited, an English merchant bank and (ii) the balance of STG£1,798,956.07 (after deduction of fees etc.) was paid to the account of National City Dillon & Waldron on 8th June 1987 and received by them on behalf of Freezone.

4.4.9 I am satisfied that Mr. Probets did not purchase shares in Freezone with the ICC loan and that the ICC loan which was personally guaranteed by Mr. Desmond, instead of being a loan to Colin Probets of STG£2,200,000, was really a loan to Freezone, a small part of which was paid to an account of Mr. Probets. Accordingly, the Hill Samuel loan was used at least partly to refinance the existing Freezone loan from ICC.

4.4.10 The subsequent operation of the Freezone account in TSB was conducted by Mr. Desmond, and Mr. Probets did not ever have signing authority on the account. There was a large number of debits on the account and most of these can be identified as personal payments of Mr. Desmond. There were some transactions on the account relating either directly or indirectly to Mr. Probets, in the form of debits and credits, but these are not transactions indicating a proprietary interest by him in the account, but rather show that Mr. Probets lent money to Freezone direct, some of which was repaid through the account and that he also lent money to Dedeir via Freezone. By contrast, as stated by me at Section 9.3.4 of the Interim Report, four parties who received

payments, or the indirect benefit of payments from the Freezone account, stated to me in evidence that the payment, as far as they were concerned, was from Mr. Desmond rather than from Freezone or from any other party.

4.5 ICC

- 4.5.1 As described in paragraphs 4.4.6 - 4.4.9 supra and in Section 9.6 of the Interim Report, ICC purported to grant a loan to Mr. Probets in June 1987. In the course of assessing the credit risk and subsequently during the course of the loan, a number of points arose which throw some light on the ownership of Freezone. The contemporaneous notes prepared by an ICC executive of a meeting with Mr. Probets and Mr. O'Dwyer, an employee of Dedelr Limited disclosed that before the loan was approved, Mr. Probets or Mr. O'Dwyer told representatives of ICC that Mr. Probets had fronted for Freezone in the past, which company involved an Irish millionaire and that as reward for that, he was given an option to acquire from Freezone, 40% of its shares in Emmets. I specifically pressed the person who prepared those notes on their accuracy and in particular the use of the term "Irish millionaire" and he replied that it was either that or something very similar. When I put the issue to Mr. Desmond and asked him if he knew who the millionaire was, he replied that there was nobody involved in Freezone except for himself and Colin Probets (and Hill Samuel in relation to their loan). Mr. O'Dwyer made an unsworn submission to me that he does not recall that he or Mr. Probets "made or could have made such a statement". However, despite Mr. O'Dwyer's submission, I accept that the record of ICC is substantially correct.

4.5.2 As stated by me at paragraph 9.6.7 to 9.6.11 of the Interim Report, even though a meeting of the directors of Emmets, held on the 5th June 1987, the minutes of which were signed by Mr. Desmond and Mr. O'Dwyer as directors, noted and approved the transfer of shares in the company from Freezone to Mr. Probets, instructed the issue of a share certificate to Mr. Probets and then arranged for the delivery of that share certificate to ICC as security for the loan; the records of Emmets do not indicate that this transaction actually took place and in all drafts of the prospectus and indeed the final version of the prospectus issued to the public, on the offer of shares to the public and the listing of Emmets on the USM of the Stock Exchange, Mr. Probets did not appear as a shareholder but was merely noted as the beneficial owner of the shares registered in the name of Freezone. Mr. O'Dwyer has submitted to me that he is satisfied that this transaction was entirely proper. I accept that Mr. O'Dwyer believed this at the time, as he would not have been privy to all relevant information.

4.5.3 Although they had no proof of it at the time, the ICC executives seem to have operated on the basis that Freezone, up to June 1987, was owned by Mr. Desmond and required Mr. Desmond to personally guarantee the loan by ICC to Mr. Probets.

4.6 Loan to Freezone by Ansbacher

- 4.6.1 As described by me in paragraph 9.5.6 of the Interim Report and referred to in paragraph 3.11.2 supra, Ansbacher approved a loan of £814,000 to Freezone and this was documented in Credit Application 003-20 dated 22nd March 1990. This document described the beneficial owner of Freezone as Dermot Desmond. The document was prepared by Ms. O'Toole, Manager of the Loans Department in Ansbacher Bank and approved by Mr. Moloney, the Managing Director of that bank. Ms. O'Toole informed me in the course of her evidence that Roger Conan of NCB had informed her that Mr. Desmond had an interest in Freezone and when I asked her if she "converted" that to "beneficial owner", she replied in the affirmative. The other Ansbacher Credit Applications inspected by me which related to Chestvale and which are described at paragraphs 6.6.9 and 6.8.11 of the Interim Report noted the shareholders rather than the beneficial owners.
- 4.6.2 The security sought by the bank for the loan was a lien over 814,000 shares in Emmets and the personal guarantee of Mr. Desmond, supported by a put option in favour of the bank for Mr. Desmond to purchase the said shares back from the bank on 31st December 1990, for a sum that would ensure that the bank were repaid their loan and interest from, inter alia, the sale of the JMOB site. This Credit Application approval form was issued on the 22nd March 1990, the day

following the Ansbacher internal memorandum referred to at paragraph 3.11.1 supra and as stated by me in that paragraph, Ms. O'Toole, the manager of the loans department of Ansbacher understood that Mr. Desmond had control over the proceeds of sale of the JMOB site.

- 4.6.3 Mr. Moloney, according to his evidence, met Mr. Desmond on a fairly regular basis when, inter alia, loan proposals were discussed. If Mr. Moloney did not believe at the time that Mr. Desmond was the beneficial owner of Freezone, it is reasonable to assume that he would have amended the reference in the credit application form to the beneficial ownership and the JMOB site but he did not do so.

4.7 Findings that Mr. Desmond is the true beneficial owner of Freezone and consequently was financially interested in the success or failure of the Companies

4.7.1 As appears from paragraphs 4.2 to 4.6 supra, there is very clear evidence that Mr. Desmond held himself out as the beneficial owner of Freezone at all relevant times, that he acted at all times as such beneficial owner and controlled the assets and liabilities of Freezone as his own. The transactions described in these paragraphs are consistent only with Mr. Desmond being the true beneficial owner of Freezone and are not capable of any other interpretation. I am of the opinion that Mr. Desmond was the beneficial owner at all relevant times and based on the evidence adduced to me both verbal and written, make a finding to this effect. I am satisfied that the true ownership of Freezone by Mr. Desmond was effected through the mechanism of allowing Mr. Probets appear as the beneficial owner of the company, even though the registered owners of the shares in the company were two chartered accountants in the Isle of Man. Each of these chartered accountants executed a declaration that they held the issued shares as nominee for Mr. Probets, but from approximately the time that these declarations were executed, Mr. Desmond held the option from Mr. Probets dated 15th June 1988, enabling him to acquire the shares of the company for the nominal amount of £1.

4.7.2 Accordingly I determine that Mr. Desmond was a person who was financially interested in the success or failure (real or apparent) of the Companies by virtue also of his being the true beneficial owner of Freezone.

5.0 J. & N. McMahon

5.1 General

- 5.1.1 As explained in paragraph 8.4.3 of the Interim Report and in paragraph 3.8.1 supra, the "second tranche of mezzanine finance" of US\$1,500,000 was paid from an account in the name of J. & N. McMahon at AIB (C.I.) Limited in Jersey and as further explained in paragraph 8.4.4 of the Interim Report, I was informed that J. & N. McMahon were not real people.
- 5.1.2 I was aware at the time of making the Interim Report that the money came through Bankers Trust to Manufacturers Hanover Trust for the account of Ansbacher.
- 5.1.3 I was also aware that the payment by Ansbacher on 30th July 1990 of US\$1,579,990, part of the proceeds of sale, was for account number 04-057-960 Ref: Montezuma and that the address for that account was c/o AIB Bank (C.I.) Limited, Jersey.
- 5.1.4 As stated by me at paragraph 8.6.2 of the Interim Report, the evidence of Mr. Desmond, confirmed by an averment of Mr. Probets in his Statutory Declaration, was that a payment was made to Bankers Trust, New York, in July 1990 and that that represented repayment of the monies received from there in December 1989. I am satisfied that that

part of their evidence is correct and consequently that the US\$1,579,990, paid out of the Delion account at Ansbacher and referred to above, went to AIB Bank (C.I.) Limited in Jersey and that it was for the account of J. & N. McMahon.

- 5.1.5 As stated in paragraph 3.8.1 supra, the issue then was who controlled the J. & N. McMahon account. I had written to AIB Bank (C.I.) Limited seeking this information but they had refused to furnish that on grounds of client confidentiality and informed me that their client would not authorise them to do so.

5.2 Connection with Bank Account in the U.K.

5.2.1 I was aware from documentary evidence, that shortly before the amount of US\$1,500,000 was paid to Ansbacher in December 1989, there was a proposal that the shortfall in the amount of collateral security required by Ansbacher, before it would increase and continue its loan to Chestvale, would be satisfied by a guarantee from AIB in the U.K. It occurred to me that there might be some connection between the account in Jersey and an account in an AIB branch in the U.K. As I anticipated continuing lengthy delays, in obtaining information from AIB Bank (C.I.) Limited in Jersey, I decided to alter my approach to the problem.

5.2.2 AIB identified three accounts in the U.K. which were in the name of John and Noreen McMahon and in a written document stated that the sole signatory authorised to operate those accounts was John P. McManus. Two of these accounts were at AIB, Croydon Branch, London. I have received documentary evidence from AIB, Croydon Branch, which shows that on 7th December 1989, the Manager of AIB, Croydon, wrote to the General Manager of AIB (C.I.) Limited in Jersey referring to a telephone conversation earlier that day which confirmed "our mutual clients instructions to transfer telegraphically the sum of US\$1.5m to

Bank: Manufactures (sic) Hanover Trust

4 New York Plaza

New York, NY10015

Account: Ansbacher & Company Limited Bankers

Account No.: 544723397

Reference Chestvale."

The letter is endorsed "Instruction Confirmed" and initialled "JMCM". This coincides with the information relating to the transfer of funds described by me in paragraph 8.4.3 of the Interim Report and referred to at paragraphs 3.8.1 and 5.1.1 supra and I am satisfied that this is the second tranche of mezzanine finance referred to earlier.

5.3 J.P. McManus

5.3.1 Mr. McManus was a person who had been named with Mr. Desmond and Mr. Magnier, by Mr. Desmond and Mr. Smyth to various Dublin banks, as a proposed investor in Chestvale. He admitted in his evidence to me that there was an approach to him by Mr. Desmond in relation to the JMOB site. In response to a question by me as to whether he ever considered buying a townhouse on the JMOB site, he stated that Mr. Desmond mentioned the idea of having a luxury apartment in Ballsbridge and that he told Mr. Desmond he would seriously consider it. He said that it surprised him to learn that Mr. Desmond had made representations to banks in relation to the financing of the JMOB site and that he used, his, Mr. McManus' name as a partner. Finally he denied that he ever gave a loan to UPH or to Mr. Desmond or Mr. Smyth or Mr. Doherty to finance any investment they may have made in the JMOB site or that he gave any loan that was directly or even indirectly related to the JMOB site.

5.3.2 Solicitors on behalf of Mr. McManus made submissions to me based on the extracts from the draft report which I sent to him on 25th June 1993 ("the McManus Submissions"). In relation to the letter of the 7th December 1989 from AIB Croydon, referred to at paragraph 5.2.2 supra, the thrust of the submission was that there was insufficient evidence to ground my provisional findings. There was however no

denial of an interest in the account referred to nor was there any explanation to counter that provisional finding.

Accordingly, despite the denials of Mr. McManus and the Submissions made on his behalf I find that Mr. McManus invested US\$1,500,000 by way of advance to Chestvale through the account in the name of J. & N. McMahon in AIB (CI) Limited in Jersey. I also find that Mr. McManus was repaid the advance when on 30th July 1990, the sum of US\$1,579,990 was paid to Bankers Trust as described in paragraph 5.1.3 supra. Accordingly I make a determination that Mr. McManus was a true person financially interested in the success or failure of Chestvale.

5.4 Cash Withdrawals from Freezone Account at TSB

5.4.1 As I explained in the chronology in paragraph 1.10 above, sums of IR£100,000 and IR£400,000 in cash were withdrawn from the account of Freezone at TSB on 23rd July 1990 and 31st July 1990 respectively. Mr. Desmond gave evidence to me that this money was withdrawn in cash by him at the request of Mr. Probets and given personally to Mr. Probets. Mr. Desmond was unsure of when he handed over the cash to Mr. Probets, but confirmed that it was a few days after the 31st July. He told me that he kept the cash in a "tennis holdall" in a safe in his office. This evidence was given to me with the explanation that, as Mr. Probets owned Freezone, it was merely Mr. Probets taking his own asset in cash.

5.4.2 However, I do not accept Mr. Desmond's evidence in this regard for two principal reasons:

- (i) I find it very difficult to believe that Mr. Desmond who was a stockbroker, and who was a moneybroker, and who would have been very conscious of the interest earning capacity of IR£500,000 even over a short period of time, as well as of the security risk of holding cash in his own office, would actually do that;

- (ii) I have found for other reasons that Mr. Probets did not own Freezone and accordingly there was no reason for Mr. Probets to get this money in cash or otherwise, at least for the reasons outlined by Mr. Desmond.

- 5.4.3 The issue then arises as to who received the cash of IR£500,000 in July 1990. I have found that the two persons who were financially interested in the success or failure of the Companies at this time were Mr. Desmond and Mr. McManus. I have found, as explained in Section 6, that Mr. Desmond made an investment of £1,000,000 by way of advance to Chestvale in August 1989 and that he received this payment with interest through the payment to Freezone of £1,131,170 on 30th July 1990 and that he got an additional payment being a share of the profits of £1,300,000 also paid to Freezone at the same time. In addition, he had the benefit of the deposit of DM2,133,658 which was part of the proceeds of sale to Telecom and which remained in a Delion deposit account until October 1991 - see paragraphs 8.5.8 and 8.5.10 of the Interim Report.
- 5.4.4. I am satisfied, on a basis that I believe is reasonable, that Mr. McManus was promised by Mr. Desmond as his consideration for the advance a share of the profits and that this was either agreed in advance or during the period between 29th June 1990 when the money was received from Telecom, and 19th July 1990 when the request was

made to Ansbacher for the first cash withdrawal of £100,000. I can find no evidence that any other person received any of the cash of £500,000 and find accordingly that it was received by Mr. McManus.

- 5.4.5 The McManus Submissions included a submission that this conclusion is inconsistent with my apparent finding that Messrs. Quinn and Naughton advanced £1,300,000 to Mr. Desmond without any agreement for interest, profit or compensation and they referred to paragraphs 8.6.4, 9.3.1 and 9.3.2 of the Interim Report. I did not in fact make such a finding in relation to Messrs Quinn and Naughton because I was aware that interest on the loan by Irish Intercontinental Bank Limited to them, was actually paid as it fell due by Mr. Desmond. In addition, Mr. Desmond had acknowledged in writing to Mr. Quinn on 18th October 1989 that "I have not covered any arrangements to recognise yourself and Martin's support. Let me assure you that I will develop something that reflects my appreciation of this initiative."

In fact, Mr. Quinn in his evidence informed me that sometime after September 1991 when asking Mr. Desmond if his money had been used in the purchase of the JMOB site said that because of how they had helped him out, he had a proposal to allow them acquire additional shares in UPH at the same price that he had acquired them from other NCB executives and implied that this was a favourable price. Mr. Quinn added, in his evidence to me, that he had never

followed through on it.

- 5.4.6 Consequently, rather than being inconsistent with my conclusions in relation to Messrs Quinn and Naughton, my finding is absolutely consistent with it and lends further support to my finding that Mr. Desmond did promise "a reward" and did give £500,000 to Mr. McManus out of the proceeds of sale of the JMOB site.

6.0 Payment to Ansbacher from Account at UBS, Geneva in August 1989

6.1 Legal position in Switzerland

6.1.1 I sought information from UBS, Geneva relating to this payment through Bank of Ireland International and NCB Group but the information was refused because the remitter of the payment would not give consent to its disclosure to me.

6.1.2 The powers available to me under the Companies Act 1990 did not empower me to insist on getting information requested by me from UBS in Geneva. I had sought legal advice from lawyers in Switzerland as to whether there were any provisions of Swiss law which would entitle me to this information. I had noted a recent change in Swiss law which on a preliminary perusal appeared to give me sufficient powers, but was advised by the Swiss lawyers that this change only benefitted enquiries from the U.S. and resulted from revisions to a Switzerland/U.S. treaty. I was also advised that the courts in Switzerland would not assist me in directing the Swiss bank to give me the information sought by me.

6.2 Determination that Mr. Desmond controlled the account at UBS

6.2.1 However, despite this, I have determined that the true person who advanced the first tranche of IR£1,000,000 "mezzanine finance" on 10th August 1989 was Mr. Desmond. The reasons for this determination are:

- (i) I have made a finding that Messrs Desmond and McManus were financially interested in the success or failure of the Companies. I have made a finding that Mr. McManus invested US\$1,500,000 by way of advance to Chestvale and I believe that it is reasonable to assume that Mr. Desmond made an investment also.
- (ii) Mr. Smyth understood that Mr. Desmond was to invest money himself - See paragraph 6.6.5 of the Interim Report.
- (iii) As stated in paragraph 8.3.2 of the Interim Report, Mr. Padraic O'Connor, the current managing director of NCB Group confirmed to me that £1m was received into an NCB account at Bank of Ireland, College Green on 9th August 1989 and that this came from Bank of Ireland International and was transferred immediately to Ansbacher. Bank of Ireland International confirmed that the money came from UBS. Mr. O'Connor was

not aware of the payment in and out of the NCB account before I drew it to his attention. He informed me that NCB had no beneficial interest in this sum and that all instructions regarding the receipt and transfer of the funds were given by Mr. Desmond.

- (iv) I have traced all payments out of the proceeds of sale of the assets of the Companies (see Section 8.6 of the Interim Report and the earlier paragraphs of this Report) and cannot find any repayment of that first advance. I have concluded therefore that it was not repaid directly, but that Freezone got the benefit of it, through the lodgment to the Freezone account at TSB of £2,431,170 from the proceeds of sale. As I have made a determination that Mr. Desmond was the true owner of Freezone, I conclude that it was he who was the true person who made the advance to Chestvale through UBS in August 1989.

6.2.2 I am somewhat reinforced in this by evidence adduced by the Hill Samuel executives referred to in paragraph 4.3.1 supra. Their evidence included documents which showed that on two occasions when they were expecting payments on foot of the outstanding Freezone loan, they understood that Mr. Desmond was arranging those payments from "a source" in Switzerland. In addition, as explained at

paragraph 4.4.3 supra, Mr. Desmond's company Dedeir had earlier had dealings with another Swiss bank, Bankinvest, Zurich.

- 6.2.3 In making the finding in relation to the source of this money, I am conscious of the reference "J.L." that appeared on the payment details as described in paragraph 8.3.3 of the Interim Report and that this reference is intended to have a meaning for the recipient of the funds. No explanation has been forthcoming in relation to it and I appreciate that it could refer to Mr. Lewis. However I am satisfied that Mr. Desmond was the true person who made this advance.

6.3 Averments of Mr. Probets false and misleading

One effect of this determination and the determinations made by me in relation to the true ownership of Freezone and the controller of the J. & N. McMahon account is that the averments made by Mr. Probets in his statutory declaration of the 23rd October 1991 and in the proceedings issued by him and Freezone against me (see paragraph 3.6.5 - 3.6.9 of the Interim Report and paragraph 1.9 supra) were false and misleading.

7.0 Patrick Doherty

7.1 The Extent of Mr. Doherty's involvement with the Companies

7.1.1 Having made the various determinations and findings set out in previous sections, the only issue outstanding is whether, and to what extent, Mr. Doherty was a true person financially interested in the success or failure of the Companies or able to control or materially to influence their policies.

7.1.2 I have no doubt that at least since mid September 1991, Mr. Doherty was financially interested in the success or failure (real or apparent) of the Companies and I am satisfied that in October 1991 he received all the profits of the Companies that remained in the Companies from the disposal of their assets, after payment of all loans, interest, profit shares, costs and expenses incurred by the Companies and Delion up to mid September 1991, of which he was then aware. This was when he had paid into his own account at AIB Bank (C.I.) Limited in Jersey the sum of STG£763,916.47 which represented the sum of DM2,133,656.59 remaining in the account of Delion in Ansbacher. I have, with the cooperation of Mr. Doherty, traced the movement of funds from his account in Jersey and am satisfied that they were used for the benefit of Mr. Doherty.

7.2 The essence of Mr. Doherty's evidence

7.2.1 The essence of Mr. Doherty's evidence is that sometime in July or early August, when he knew that Mr. Smyth could not complete the purchase of the JMOB site because the Sportsfield reverse takeover had fallen through, he approached Mr. Desmond and expressed his interest in buying it, on the basis that Ansbacher would lend £4m secured on the site and Mr. Desmond would procure an advance of £2m from a mezzanine financier; that Mr. Desmond arranged these matters without telling Ansbacher or Mr. Smyth, who was really involved as the true owner; that he entered an agreement with Mr. Probets and executed a promissory note in his favour; that after that, he took very little, if any role, in the Companies and left everything to Mr. Smyth and Mr. Desmond and that it was only in or after September 1991, when he publicly declared his interest in the property, that he learned of the details of the transactions which the Companies had entered into since August 1989.

7.2.2 Through his solicitors, Mr. Doherty has made submissions to me based on the draft extracts of the final report which I sent to him on the 25th June 1993 ("the Doherty Submission").

7.3 Analysis of Mr. Doherty's evidence

7.3.1 Mr. Doherty attended before me for interview on 31st July 1992 and 4th August 1992 and since that date has produced to me certain documents which are relevant to the investigation, despite my having been informed on a number of occasions prior to that by his solicitors that he did not have any such documents in his possession or under his control.

7.3.2 Having analysed the verbal evidence of Mr. Doherty and the documents furnished by him or on his behalf, it appears to me that:

- (i) Mr. Doherty was very confused on, and did not understand, a number of very important issues relating to the Companies and the transactions entered into by them.
- (ii) There were a number of important facts relating to the transactions between May 1989 and September 1991 of which he was not aware.
- (iii) There are a number of anomalies in his evidence, if it is the case that he was the beneficial owner of Companies from 10th August 1989, as stated by him in evidence.

7.4 Apparent confusion and lack of understanding by Mr. Doherty

7.4.1 The confusion and lack of understanding by Mr. Doherty as appears from his evidence was in relation to the following issues:

- (i) the timing and sequence of events from May 1989 to July 1990, when most of the proceeds of sale of the assets of the Companies were distributed;
- (ii) the nature and effect of the promissory note allegedly issued by Mr. Doherty to Mr. Probets on the 9th or 10th August 1989 ("the Promissory Note") and of the loan note issued by Delion to UPH on the 19th April 1990 ("the Loan Note");
- (iii) the manner in which the finances for the purchase of the JMOB site by Chestvale were structured.
- (iv) the parties who were supposedly interested in buying the property from Chestvale. According to the evidence of Mr. Doherty, every month there was somebody new and he referred to Burtons as an example, whereas in fact Burtons had terminated their enquiries by mid July 1989;
- (v) the negotiations between Mr. Doherty and Mr. Desmond on

behalf of Mr. Probets in July 1990 on the profit share from the sale of the assets of the Companies to Telecom Eireann.

7.5 Lack of awareness of aspects of the transactions

7.5.1 According to his own evidence to me, Mr. Doherty was not aware of the following relevant and important aspects of the various transactions between May 1989 and July 1990 concerning the Companies:

- (i) He was not aware until September 1991, that the second tranche of mezzanine finance i.e. the amount of US\$1,500,000 was only received by Chestvale in December 1989.
- (ii) He was not aware until the Telecom Inquiry in late September 1991, that a Loan Note was issued by Delion to UPH for the purchase of the shares in Chestvale.
- (iii) He was not aware until some time after September 1991 that Chestvale was sold by UPH to Delion in April 1990.
- (iv) He did not know that the consideration payable by Chestvale to UPH for the UPH interest was reduced from £6,300,000 to £5,800,000 and said that he was merely aware from Mr. Desmond that there had been some money saved.
- (v) He did not know that Mr. Desmond had raised a personal loan

of £500,000 from Ansbacher in January 1990 secured by an undertaking to repay it out of the proceeds of sale of the JMOB site.

- (vi) He did not know what was being paid out of the accounts of Chestvale and Delion during the period, as he left all of that to Mr. Smyth, even though he says that at that stage he had had a falling out with Mr. Smyth and had not wanted Mr. Smyth to act as his solicitor.
- (vii) He did not know how much Ansbacher was paid by way of fees and interest for their involvement in the Companies and which amount as stated by me in paragraph 8.6.1 of the Interim Report was £674,234, nor did he know the amount of fees payable to Mr. Smyth.
- (viii) Even though the sale to Telecom of the JMOB site, the only asset of the Companies, was completed at the end of June 1990, he did not know what his profit from the transaction was, until September 1991.
- (ix) He was not aware that there was any potential tax liability arising from the transactions until after September 1991 even though this was known by Mr. Smyth and Mr. Desmond before June

1990 when the sale to Telecom was completed.

- (x) He had no knowledge of the movements on the bank accounts of Chestvale or Delion including the various borrowings by Chestvale and Delion, which were outlined by me at paragraphs 8.5.1 - 8.5.10 of the Interim Report.
- (xi) He was not aware of the pressure by Ansbacher between September 1989 and November 1989 for repayment of the loan of £3,000,000 which Ansbacher had advanced as a one month bridging loan to Chestvale on 11th August 1989, as explained by me in paragraphs 6.7.1, 6.7.2 and 6.7.5 to 6.7.7 of the Interim Report.
- (xii) He had no knowledge of discussions with Telecom in the period between July 1990 and September 1991 relating to removal of asbestos, planning, rezoning and the apportionment of the JMOB site between office and residential which was actually in dispute during some of this period and said that he was happy to leave it all to Mr. Smyth.

7.6 Anomalies appearing from evidence of Mr. Doherty

7.6.1 The following anomalies appear from the evidence of Mr. Doherty and these are not explained or contradicted:

- (i) Mr. Doherty's loans from Ansbacher increased after July 1990 to a figure in excess of £7,000,000 on which he was paying interest at full commercial rates. Yet he did not use the money, which was in excess of DM2,000,000 and which was on deposit in the account of Delion between July 1990 and September 1991, to reduce his borrowings and interest charges. The Doherty Submission on this point is that my perception of Mr. Doherty's dealings with that bank is both factually inaccurate and shows an ignorance of the commercial context as between companies with which Mr. Doherty was associated and the bank. I accept that of course this may be the case but no evidence was produced to me in the Doherty Submission to explain the anomaly.
- (ii) He said that no detailed costings or projections were discussed with Mr. Probets in his capacity as mezzanine financier, even though he says that that would have been normal when negotiating mezzanine finance with a mezzanine financier and accordingly it appears that neither Mr. Doherty nor Mr. Probets

could have formed a reasonable assessment as to how much profit there would be to distribute. The Doherty Submission suggests that a brochure prepared by Mr. Smyth was ignored by me. This brochure was specifically considered by me but it does not, and does not even purport to give detailed costings or projections.

- (iii) He maintains that the loan note given to UPH by Delion for the shares in Chestvale had nothing to do with him.
- (iv) Mr. Doherty had never been a client of NCB nor had he ever heard of Mr. Probets prior to August 1989.
- (v) He says that he was never asked by Mr. Desmond for his opinion or decision on any aspect of the Telecom negotiations between the beginning of January 1990 and the end of June 1990 when the sale was closed.
- (vi) Neither Mr. Smyth as solicitor, Ansbacher as banker, nor O'Muire Smyth as architect, knew that Mr. Doherty was the real owner of the JMOB site after 11th August 1989, even though he was a client of each of theirs in respect of different transactions and despite the fact that he admitted that he was a personal friend of Mr. Moloney the Managing Director of Ansbacher Bank

and was a partner with Mr. Smyth and Ansley Trust, the owner of Ansbacher Bank in certain property transactions. The Doherty Submission reiterates Mr. Doherty's evidence that anonymity in relation to the transaction was required by him and that his conduct of his affairs had this in mind. The Submission adds Mr. Smyth's ignorance of Mr. Doherty's status in relation to the property is a natural corollary of this course of dealing and that I presented this as a sinister and anomalous matter. I accept that I presented it as anomalous but did not and do not suggest that it is in any way sinister.

(vii) The contents of the alleged Promissory Note and Letter Agreement between Messrs Doherty and Probets in the following ways:

- (a) The Letter Agreement dated 9th August 1989 is on Freezone Investments Limited notepaper and is signed by Mr. Probets for and on behalf of himself and Freezone and the profit share is specifically stated to be for the account of Freezone but Mr. Doherty said that he was not aware of the involvement of Freezone.
- (b) The Letter Agreement refers to a loan of IR£2,000,000, of which only £1,000,000 was paid at that time, but the

Promissory Note signed by Mr. Doherty on the 9th or 10th August 1989 is for £3,000,000, plus interest on £2,000,000, and there is an acknowledgement by Mr. Doherty that his Promissory Note is "for value received".

(c) The Letter Agreement refers to "the IR£2,000,000 advanced here" but only £1,000,000 was advanced at that time, the second £1,000,000 was not advanced until December 1989.

(d) Even though Mr. Doherty was guaranteeing a profit of IR£1,000,000 and the Promissory Note was for IR£3,000,000, made up of the £2,000,000 advance and £1,000,000 profit, the Letter Agreement stated that the Promissory Note would only be returned on full payment of IR£4,500,000.

(e) The profit share as defined in the Letter Agreement provides that the first IR£2,500,000 of profit "after all costs and after repayment of funds i.e. IR£2,000,000" was to be transferred for the account of Freezone. In a major development as was anticipated at that time, with capital expenditure likely to be in excess of

£20,000,000, this is extremely vague and indeed unusual.

- (f) Condition 2 of the Letter Agreement refers to the funds being held "in separate deposit accounts". This was not done and at most, there was one deposit account holding the funds from the end of December 1989.
- (g) Condition 3 specifically states that the development of the site would be the sole responsibility of Mr. Doherty and that all decisions relating to the purchase, design, development and disposal would be his sole responsibility, whereas it would appear from the evidence that Mr. Doherty took no role whatsoever in relation to this, at least prior to September 1991. The Doherty Submission suggests that this conclusion is entirely false and misleading but does not contain or refer to any evidence which shows otherwise.
- (h) The Promissory Note is a promise to pay Colin Probets, whereas the Letter Agreement requires payment of the profit to be transferred to the account of Freezone.

- (i) The Promissory Note is a promise to pay "the sum set out in the schedule on the day appointed in the said schedule" but the schedule specifies a principle sum together with interest, without stating the rate of interest applicable and the only date referred to is the date from which interest was to be calculated i.e. 9th August 1989. There was no date specified on which the monies would be due, although the promissory note is itself dated 31st August 1992.
- (j) Despite the fact that the signature provision requires a witness, no witness has signed his name to the Promissory Note.
- (k) The Letter Agreement established what profit would be available to the mezzanine financier, but a later paragraph provided that Mr. Desmond had authority to negotiate the profit calculation. This does not seem to have been necessary unless it was foreseen from the beginning that the property was to be sold long before the promissory note expired; but the evidence does not otherwise reflect such foresight.
- (l) Despite the fact that it was a critical document in the

investigation, and despite the fact that as early as 16th October 1991, I had served a notice on Mr. Doherty requesting him to produce or to procure the production to me of any books or documents in his possession or power, which notice was followed by a further notice on 27th April 1992, to which I received a response from the solicitors for Mr. Doherty enclosing the Letter Agreement dated 9th August 1989 but stating that Mr. Doherty had no other books or documents in his custody relating to the Companies which could assist me, and which statement was reiterated in a letter of 13th May 1992 but elaborated on to provide that the only documents were the said document of 9th August 1989, the Option Agreement regarding the purchase of the residential site, company secretarial documents and copies of other documentation which had been furnished to me from the files of Messrs Noel Smyth & Partners, and that Mr. Doherty did not at any time since May 1989 hold any other books or documents relating to the Companies; a copy of the Promissory Note was only produced to me by Mr. Doherty and his solicitor during his attendance on 4th August 1992.

- (viii) In relation to the offer to Clayform referred to in paragraph 6.8.5 of the Interim Report, Mr. Doherty stated that he was not told of any price nor was there any discussion with him as to price, but as he felt that Mr. Probets wanted to get out of the deal, he was prepared to allow the property to be sold. In fact, the price at which the JMOB site was offered by Mr. Desmond to Clayform, would have resulted in Mr. Doherty having less than £1,000,000 with which to meet the Promissory Note of £3,000,000 plus interest.
- (ix) Mr. Doherty did not give, nor was he asked to give, a counter indemnity to Mr. Desmond when Mr. Desmond counter indemnified Mr. Smyth arising from indemnities or warranties given by Mr. Smyth to Telecom on the closing of the sale in June 1990.
- (x) Mr. Doherty received a payment of US\$2,159,300 which was more or less equivalent to £1,300,000 on 18th November 1991, which was lodged to an account at Bank Sarasin in Switzerland. Mr. Doherty informed me that he received the payment from Mr. Probets and at my request he agreed to show me the cheque from Mr. Probets. In fact what he received and showed me was a bank draft drawn on AIB Bank (C.I.) Limited in Jersey payable to Mr. Probets for US\$2,159,300 but endorsed by him. There

was initially confusion on the part of Mr. Doherty as to the reason for this payment, who actually made the payment, into whose account the payment was lodged and who controlled that account. It eventually transpired that the money was paid to cover potential liabilities of the Companies, of which Mr. Doherty said he was unaware at the time in July 1990 when he says he agreed the profit split with Mr. Probets and that if these liabilities, which were mainly tax, did not crystallise, the £1,300,000 would be repaid to Mr. Probets.

7 : Important failure of Mr. Doherty's evidence to reconcile with evidence of Mr. Desmond

- 7.7.1 Besides these confusions, lack of knowledge and anomalies, Mr. Doherty's evidence did not reconcile with that of Mr. Desmond in a number of respects but particularly in relation to the period between January 1990 and end of June 1990 when Mr. Doherty said that neither his opinion nor decision was asked for by Mr. Desmond on any aspect of the negotiations with Telecom. This was the period when Mr. Desmond suggested to Mr. McGovern in a letter of 22nd February 1990 that Telecom should purchase the property subject to planning permission, which was followed by the consideration of a series of options to shelter the risk for Telecom; the details of the option to buy back the residential section were being considered; the completion date was delayed and interest was to be charged to Telecom; an issue arose as to whether Telecom should buy the company Chestvale or its asset, the JMOB site; a further issue arose as to whether Telecom should be given an indemnity by the beneficial owners, and when given by Mr. Smyth, whether Mr. Smyth should get a counter indemnity from the beneficial owners. Mr. Desmond said that he consulted with Mr. Doherty at all times. As quoted in paragraph 3.12 supra, Mr. Doherty did not agree with that.

7.8 Findings in relation to Mr. Doherty

- 7.8.1 Whether or not Mr. Doherty was a true person financially interested in the success or failure of the Companies between July 1989 and September 1991, (and for the reasons set out in paragraph 7.8.2 post I find that he was not) I find that he was not able to control or materially influence the policy of the Companies during this period, as the many matters of significance which arose during the period were not referred to him and accordingly I make a determination to that effect.

The Doherty Submissions include a statement that "it is clear from the evidence that he was personally instrumental in determining the terms of the purchase (from UPH) and that in accordance with his normal practice he then left the detailed application of those terms to Mr. Desmond to finalise in conjunction with the professional advisers. All the matters raised by me in paragraph 7.5 are matters of detail which were dealt with in this way and had no material effect on the terms he had agreed for the purchase to proceed.

Mr. Doherty was not a party to this detail because it did not involve any material departure from the terms of the agreement he had negotiated. It is Mr. Doherty's established practice to rely on his advisers to deal with matters of detail and it is wrong to conclude that any lack of

knowledge on his part on the finer aspects of the transaction is material".

Having considered again the provisions in paragraph 7.5, I do not accept the suggestion that these are all merely items of detail. The submission on this point does not persuade me to alter the determination made in this paragraph.

- 7.8.2 In considering whether Mr. Doherty was financially interested in the success or failure of the Companies prior to mid September 1991, I have to take into account, those matters described by me at paragraphs 7.2 to 7.7 supra; the Doherty Submissions which include a comment that Mr. Doherty does not accept the conclusion proposed by me on 25th June 1993 that he was not the beneficial owner and controller of the Companies at all times after 10th August 1989; and the lack of credibility generally in the evidence of Mr. Desmond and the Statutory Declaration of Mr. Probets which purport, inter alia, to prove that Mr. Doherty was so interested.

I have found no evidence that any person contests the claims of Mr. Doherty to beneficial ownership of the shares of the Companies.

Nevertheless I find that he was not financially interested in the success or failure of the Companies prior to mid September 1991, but that at that time, the interest he acquired entitled him

to all the remaining assets of the Companies which included profits earned by the Companies prior to that.

- 7.8.3 The issue as to whether or not he was so financially interested or able to control or materially influence the policy of the Companies does not affect the other determinations made by me in this report.

8.0 Telecom Personnel

8.1 Findings In relation to Telecom Personnel

- 8.1.1 I have examined again all documents and evidence adduced to me and am satisfied that none of the Telecom Eireann executives or directors other than its Chairman, Dr. Smurfit, were financially interested in the success or failure (real or apparent) of the Companies or able to control or materially to influence the policy of the Companies.
- 8.1.2 In paragraph 10.13.5 of the Interim Report, I stated that it was arguable whether the acceptance by Mr. McGovern, the Chief Executive of Telecom, on the 11th January 1990 of the letter of Mr. Desmond of 9th January 1990, was in compliance with the mandate from the board that the management should "enter negotiations with the relevant party to acquire the site at on best terms.". I received further evidence and submissions on this point and accept that the board of Telecom Eireann are satisfied that, as the minute of the board meeting did not record in all detail the mandate given by the board, their actual mandate to the management was complied with by the Chief Executive, Mr. McGovern.
- 8.1.3 In paragraph 10.11.8 of the Interim Report and paragraph 3.14.2(viii) supra, I referred to a meeting between Mr. McGovern and Mr.

Desmond on 20th December 1990. I pointed out there, that Mr. McGovern had stated that while he could not recall the specifics of the conversation with Mr. Desmond, he was clear that Mr. Desmond conveyed the impression that he had at that time, no contact or involvement whatsoever in the site. I have had further submissions on behalf of Mr. McGovern on this point, to the effect that Mr. McGovern as Chief Executive of Telecom Eireann dealt with Mr. Desmond in the negotiations as a bona fide intermediary for the following reasons:

- (i) The Chief Executive had no reason to believe otherwise and at their meeting on 20th December 1989 in the Chief Executive's office, Mr. Desmond confirmed his status as an intermediary.
- (ii) Mr. Desmond was the head of a large and respected financial services firm which had an established reputation as an intermediary in financial and other business transactions.
- (iii) Telecom had had previous dealings with Mr. Desmond and his firm in other significant business matters and had found them completely satisfactory and trustworthy in such matters.

I am satisfied with and accept Mr. McGovern's submissions on this point.

8.2 Findings in relation to Dr. Smurfit

- 8.2.1 I am satisfied that, save insofar as Dr. Smurfit was the beneficial owner of shares, through an Isle of Man company Bacchantes Limited in UPH, which I have found was financially interested in the success or failure of Chestvale between 9th December 1989 and 19th April 1990, he was not financially interested in the success or failure (real or apparent) of the Companies nor did he control or materially influence the policy of the Companies.
- 8.2.2 Dr. Smurfit's name was used at various stages in July 1989 and afterwards by Mr. Desmond, particularly in his efforts to raise finance for the purchase by Chestvale. Dr. Smurfit gave evidence and has submitted that he had no knowledge or awareness of this use of his name and did not consent to it. I accept this evidence.
- 8.2.3 In relation to paragraphs 10.6, 10.8 and 10.9.9 of the Interim Report, which refer to the Telecom Eireann Superannuation Committee and the Telecom Eireann Pension Fund Trustees, one of the witnesses has since altered his evidence and explained that alteration to my satisfaction. In addition, another witness has since made submissions to me which has satisfied me as to the validity of Dr. Smurfit's reasons for swapping the chairmanship of the two board committees referred to, and that his action as Chairman of the Superannuation Committee

was in keeping with all existing procedures.

- 8.2.4 I have not found any evidence to show that Dr. Smurfit was involved in, or aware of the management or affairs of U.P.H.

9.0 Summary

9.1 Determinations as to persons who were financially interested

My determinations as to the persons who were financially interested in the success or failure (real or apparent) of the Companies are as follows:

- (i) Mr. Desmond between early August 1989 when Chestvale was first allocated to him by Noel Smyth & Partners and mid September 1991; and from 18th November 1991 to date.
- (ii) Mr. Doherty from mid September 1991 to date.
- (iii) Mr. McManus from 7th December 1989 to 30th July 1990.
- (iv) The beneficial owners of the shares in UPH as set out in Appendix 3 of this report, from 9th December 1989 to 19th April 1990.

9.2 Determinations as to control

My determinations as to the persons who were able to control or to materially influence the policy of the Companies are as follows:

- (i) Mr. Desmond from early August 1989 to mid September 1991.
- (ii) Mr. Doherty from mid September 1991 to date.

JOHN A. GLACKIN

7TH JULY 1993

APPENDIX 1

PARAGRAPH 1.2

Warrant of Appointment of Inspector

The Minister for Industry and Commerce, Mr Desmond J O'Malley, TD, in exercise of the powers conferred on him by section 14 of the Companies Act, 1990, being of the opinion that there are circumstances suggesting that it is necessary in the public interest, hereby appoints Mr John A. Glackin as Inspector under the said section to investigate and report on the membership of Chestvale Properties Ltd and Hoddle Investment Ltd and otherwise with respect to these companies for the purposes of determining the true persons who are or have been financially interested in the success or failure (real or apparent) of these companies or able to control or materially to influence the policy of these companies. Without prejudice to the generality of the foregoing, the investigation shall extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of the investigation.

Given under the Official Seal of
the Minister for Industry and
Commerce this 9th day of October
1991

Sean Dorgan

Sean Dorgan

A person authorised by the
Minister for Industry and Commerce
to authenticate the Official Seal
of the Minister.

APPENDIX 2

PARAGRAPH 1.3

APPENDIX 3
PARAGRAPH 2.2.1

APPENDIX 3
PARAGRAPH 2.2.1

| | DATE OF SUBSCRIPTION | DATE OF ALLOTMENT | BENEFICIAL OWNERS |
|---|----------------------|-------------------|---|
| AIIM Nominees Limited (600,000 Preference Shares) | 1.6.89 | 31.5.89 | Allied Irish Property Fund for Tax Exempt Pension Schemes and Charities |
| Glen Investments Limited (1,500,000 Preference Shares) | 15.5.89 | 31.5.89 | Martin Naughton and Lochlann Quinn |
| Smurfit Paribas (400,000 Preference Shares) | 20.1.89 | 31.5.89 | Smurfit Group Pension Fund |
| Sulzano Limited (60,000 Preference Shares) | 24.5.89 | 31.5.89 | John Magnier Family Trusts |
| Convoy Trust Limited (360,000 Preference Shares) | 12.5.89 | 31.5.89 | A charitable trust of which Tom Cavanagh is the settlor and controller. |
| Aurum Nominees Limited (60,000 Preference Shares) | 21.6.89 | 31.5.89 | Joseph Lewis (held as nominee or in trust for J.P. McManus). |
| Sulzano Limited (40,000 Preference Shares) | 24.5.89 | 31.5.89 | John Magnier Family Trusts. |
| Convoy Trust Limited (240,000 Preference Shares) | 12.5.89 | 31.5.89 | A charitable trust of which Tom Cavanagh is the settlor and controller. |
| Aurum Nominees Limited (40,000 Preference Shares) | 21.6.89 | 31.5.89 | Joseph Lewis (held as nominee or in trust for J.P. McManus). |

| REGISTERED OWNERS | DATE OF SUBSCRIPTION | DATE OF ALLOTMENT | BENEFICIAL OWNERS |
|---|----------------------|-------------------|---|
| Bacchantes Limited (100,000 Ordinary Shares) | 17.1.89 | 31.5.89 | Dr. Michael Smurfit |
| Sulzano Limited (25,000 Ordinary Shares) | 24.5.89 | 31.5.89 | John Magnier Family Trusts |
| Convoy Trust Limited (150,000 Ordinary Shares) | 12.5.89 | 31.5.89 | A charitable trust of which Tom Cavanagh is the settlor and controller. |
| Aurum Nominees Limited (25,000 Ordinary Shares) | 21.6.89 | 31.5.89 | Joseph Lewis (held as nominee or in trust for J.P. McManus) |
| Aurum Nominees Limited (100,000 Ordinary Shares) | 23.5.89 | 31.5.89 | Lochlann Quinn and Martin Naughton |
| AIIM Nominees Limited (100,000 Ordinary Shares) | 1.6.89 | 31.5.89 | Allied Irish Property Fund for Tax Exempt Pension Schemes and Charities |
| Padraic E. Hassett (50,000 Ordinary Shares) | 9.3.90 | 6.3.90 | Padraic E. Hassett |
| Pepper Canister Nominees (254,070 Ordinary Shares) | 6.3.90 | 6.3.90 | Dermot Desmond but of which 99,998 are held in trust for Gerard Walsh. |
| NCB Group Limited (195,910 Ordinary Shares) | 6.3.90 | 6.3.90 | NCB Group Senior Executives but all these shares were transferred to Pepper Canister nominees on 25th october 1990. |

APPENDIX 4
PARAGRAPH 2.2.2

INSPECTOR
JOHN A. GLACKIN,
Appointed by Warrant of the Minister for Industry
and Commerce dated the 9th day of October 1991

INSPECTOR'S OFFICE
4th Floor,
69/71 ST. STEPHEN'S GREEN, DUBLIN
Tel: 78 06 99 Fax: 78 58 43

OUR REF: JAG/MD

YOUR REF:

DATE: 6 December 1991

Joseph Lewis, Esq.
Aurum Nominees (333013)
c/o NCB Group
48/53 Lower Mount Street
Dublin 2

Re: Chestvale Properties Limited
Hoddle Investments Limited ("the Companies")

Dear Sir,

I was appointed Inspector under Section 14, Companies Act 1990 in respect of Chestvale Properties Limited and Hoddle Investments Limited on the 9th October 1991 and I enclose a copy of my Warrant.

The purpose of the Warrant is to determine the true persons who are or have been financially interested in the success or failure (real or apparent) of these Companies or able to control or materially to influence the policy of these companies. As you will note from the Warrant the investigation is to extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of the investigation.

Evidence adduced by me so far in the investigation indicates that Chestvale Properties Limited was a subsidiary of United Property Holdings Limited ("UPH") at some time since the date of the formation of UPH.

According to further evidence available to me, it would appear that you are either the registered shareholder of shares in UPH or alternatively the beneficial owner thereof and accordingly you may have been financially interested in the success or failure of Chestvale. I believe that you are a person who may be in possession of information relevant to my investigation for the purposes of Section 14(5)(a) Companies Act 1990.

Accordingly I enclose a list of interrogatories relating to your shareholding in UPH and should be obliged if you would complete this and return to me as early as possible.

If you have any queries in relation to same, do not hesitate to revert to me.

Yours faithfully,

AURUM NOMINEES (333013)

1. I understand that you are or were the holder of the following shares in United Property Holdings Limited:

25,000 Ordinary Shares of £0.10 each.

60,000 "A" fixed rate Redeemable Preference Shares of £1.00 each.

40,000 "B" fixed rate Redeemable Preference Shares

Please confirm if this is the case and if not give details otherwise.

2. Please indicate when you were first approached to invest in UPH.

3. Please indicate who approached you.

4. Please indicate what if any documentation was submitted to you at that time or at any subsequent time and please furnish copies.

5. Please indicate the date or dates on which you subscribed for share capital in the company.

6. Were you aware then that neither the Memorandum nor the Articles of Association of the Company state the rights attaching to the various classes of preference shares.

7. Please indicate your understanding of the terms on which the shares and where relevant any preference shares were issued to you.

PAGE 2

3. Please indicate whether you signed a Subscription Agreement or any other agreement when subscribing for the shares.
9. Please indicate whether any such document was submitted to you but was not signed by you.
10. If the answer to the previous question is yes, please indicate the reason for not signing it.
11. If any other document such as a Placing Memorandum was referred to in such Subscription Agreement, please indicate if you did actually receive such other document.
12. Please indicate the subscription price per share payable by you and whether this was paid in full.
13. Please confirm whether you received a Share Certificate or Share Certificates and if so when.
14. Please indicate if any approach was made to you for the purchase of your shareholding in UPH.
15. If the answer to the previous question is in the affirmative, please give details.

Are you still the registered owner of the above shareholding in UPH, and if not indicate when and to whom you sold the shares.

PAGE 3

17. Are you acting as a nominee or trustee for a third party.
18. If the answer to the previous question is in the affirmative, please indicate the beneficial owner for whom you are holding the shares.
19. Were you informed about any relationship between UPH and Chestvale Properties Limited.
20. If so, please give details of when, who informed you and what information did you get.
21. Were you informed about any relationship between UPH and Hoddle Investments Limited.
22. If so, please give details of when, who informed you and what information did you get.
23. When were you informed of the purchase by UPH of the Johnston Mooney & O'Brien site.
24. When were you informed of the proposed sale on by UPH of its interest in the Johnston Mooney & O'Brien site.
25. Were you informed of the terms of that proposed sale by UPH.

PAGE 4

26. Were you offered the opportunity to participate in the sale on by UPH of that interest.
27. When were you informed of the proposed purchase by Telecom Eireann of the Johnston Mooney & O'Brien site.
28. Were you informed of the terms of that proposed purchase.
29. When were you informed of the completion of the purchase by Telecom Eireann of the Johnston Mooney & O'Brien site.
30. Have you received any dividend from UPH.
31. Have you attended any general meetings of the members of UPH.
32. When did you become aware of the names of the other shareholders in UPH.
33. Are you aware who are or have been the true persons financially interested in the success or failure (real or apparent) or able to control or materially to influence the policy of Chestvale Properties Limited and/or Hoddle Investments Limited.
34. Are you aware of the existence of any arrangement or understanding which though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the determination of who are or have been the said true persons.

STRICTLY PRIVATE & CONFIDENTIAL

Mr. John A. Glackin,
Inspector's Office,
4th Floor,
69/71 St. Stephen's Green,
Dublin 2.

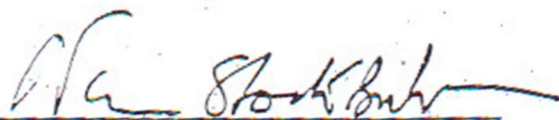
Our Ref JKL-2035

10 December, 1991

Dear Sir,

I refer to your correspondence marked for the attention of Mr Joseph Lewis which was delivered to us yesterday. The said correspondence has been sent on to Mr. Lewis for his personal attention.

Yours sincerely,



NCB STOCKBROKERS



NCB

PERSONAL
INVESTMENTS

NCB PERSONAL INVESTMENTS
TRADING HOUSE, 4th FLOOR, 69/71
ST. STEPHEN'S GREEN, DUBLIN 2. TELEPHONE 01-409 1141
FAX 01-409 1142. TELEX 9109 NCBSE
REGISTERED IN IRELAND NO. 100001
REGISTERED OFFICE IN IRELAND

PERSONAL
INVESTMENTS

- Share Dealing
- Unit Funds/Trusts
- Lump Sum Investments
- Portfolio Management
- Nominee Service
- Valuations
- BES
- Property Investment

LIFE &
PENSIONS

- Corporate Pensions
- Personal Pensions
- Business Protection
- Life Assurance
- Mortgages & Loans
- Savings Plans
- Inheritance Tax Planning
- Disability Insurance

INSPECTOR
JOHN A. GLACKIN,
Appointed by Warrant of the Minister for Industry
DUBLIN 2.
and Commerce dated the 9th day of October 1991

FILE COPY

INSPECTOR'S OFFICE
4th Floor,
69/71 ST. STEPHEN'S GREEN

Tel: 78 06 99 Fax: 73 56 43

OUR REF: JAG/MD

YOUR REF:

DATE: 3 February 1992

Joseph Lewis, Esq.
Lewis House
P.O. Box N7776
Lyford
Cayman
New Providence
Bahamas

Re: Chestvale Properties Limited
Hoddle Investments Limited ("the Companies")

Dear Sir,

I refer to my letter to you of the 6th December last enclosing a list of interrogatories relating to your shareholding in United Property Holdings Limited.

NCB notified me on the 10th December that they had passed on to you the letter which I had written to you and sent to you care of their offices.

I have not as yet had any response and should be obliged if you should deal with the interrogatories as a matter of urgency at this stage.

I should also be obliged if you would arrange to attend before me for examination at the earliest possible date and should be obliged if you would contact me with a view to arranging a mutually convenient time.

Yours faithfully,



John A. Glackin

INSPECTOR

ALEXIOU, KNOWLES & CO.

ATTORNEYS-AT-LAW
P.O. BOX N-4805
NASSAU, BAHAMAS.

FAX: 809-328-8395
PHONE: 809-323-5600

TELEFAX

DATE: FEBRUARY 5, 1992

TO: INSPECTOR JOHN A. GLACKIN - INSPECTOR'S OFFICE -
DUBLIN, IRELAND - 78-56-43

FROM: EMANUEL M. ALEXIOU

RE: CHESTVALE PROPERTIES LIMITED
HOODLE INVESTMENTS LIMITED

PAGES SENT EXCLUDING THIS PAGE:

Dear Mr. Glackin,

Your letter of the 6th of December, 1991 together with its annexures have been forwarded to me by our client, Mr. Joe Lewis.

It is our view that Mr. Lewis is under no compulsion to answer any of the interrogatories that are being put to him. However, it is not his wish to be obstructive in any way with your investigation and in this regard has therefore instructed us to confirm to you the following:

1. That Aurum Nominees (333013) did acquire shares in United Property Holdings Limited for him.
2. Our client has never received a dividend from United Property Holdings Limited.
3. Our client has never been involved and has no knowledge of the operations of United Property Holdings Limited.

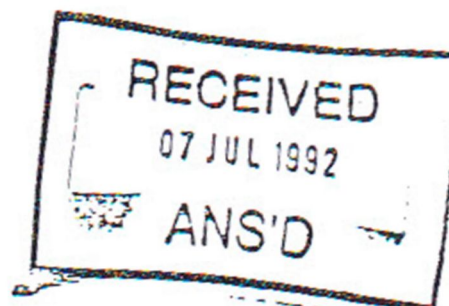
Yours faithfully,
ALEXIOU, KNOWLES & CO.


Emanuel M. Alexiou

EMA/cl

ALEXIOU, KNOWLES & CO.

COUNSELLORS & ATTORNEYS AT LAW
NOTARIES PUBLIC
FREDERICK STREET, SUITE 505
NASSAU, BAHAMAS
TELEPHONE 3031
FAX 303 128 8005



MANUEL M. ALEXIOU BA
HERCKA KNOWLES B COMM
FREDERICK STREET, SUITE 505
NASSAU, BAHAMAS

TELEPHONE 3031
303 6558 303 447
303 3 03 303 4038
303 4505 303 0558
TELEX 30 44 03 20 229
CABLE: ALEX OR LEGES

AIR MAIL

OUR REF
YOUR REF

June 29, 1992

Inspector John R. Blackin
Inspector's Office
4th Floor
69/71 St. Stephen's Green
DUBLIN 2.

Dear Sir:

Re: Chestvale Properties Limited
and Hoodle Investments Limited

As you know from previous communications, we act on behalf of Mr. J. Lewis of Lewis House, P.O. Box N-7776, Lyford Cay, Bahamas.

Our client, despite having no legal obligation to do so, has co-operated with your enquiry. Our client co-operated with the investigation on the clear understanding that all matters relating to him would remain confidential. We also expressly requested you to communicate with us regarding these matters. This regrettably has not been the case. It now appears that without any reference to our client you have induced NCB Brokers Limited to breach the duties of confidentiality owed by them to our client and requested them to obtain information in relation to the payment of Stg103,563 from Mr. Lewis' account at Union Bank of Switzerland in Geneva, on 15th June, 1989 to Ulster Bank.

NCB Brokers, in compliance with your request, wrote directly to the Union Bank in Switzerland, without any reference to our client, stating that the information requested was required by the Inspector appointed by the Minister for Industry and Commerce in the course of an investigation being carried out by him. This naturally has caused our client grave embarrassment

. . . 2/

ALEXIOU, KNOWLES & CO.

page 2

and damage. If you had the courtesy to make reference it is directly you could have been provided with the information requested without causing any such embarrassment or damage and our client would have confirmed that the monies were transferred on his instructions in order to pay for his shareholding in U.S.H.

Your appointment as an Inspector does not entitle you to infringe our client's legal rights or cause him any damage or embarrassment. We must ask for your assurance that there will be no repetition of these actions. If we do not obtain such assurance we must advise our client to take the appropriate legal action.

Yours faithfully,
ALEXIOU, KNOWLES & CO.


Emanuel M. Alexiou

INSPECTOR

JOHN A. GLACKIN,

Appointed by Warrant of the Minister for Industry
and Commerce dated the 9th day of October 1991

INSPECTOR'S OFFICE

4th Floor,

69/71 ST. STEPHEN'S GREEN, DUBLIN 2

Tel: 78 06 99 Fax: 78 56 43

OUR REF: JAG/MO

YOUR REF:

DATE: 3rd July 1992

Alexiou, Knowles & Co.
Frederick Street Steps
P.O. Box N4805
Nassau
Bahamas

By Fax: 00-1-809-32 88395

Re: Chestvale Properties Limited
Hoddle Investments Limited ("the Companies")
Your Client: J. Lewis

Dear Sir,

I refer to your letter of the 29th ult. received by fax on the 1st inst.

Unfortunately you suffer from a misconception in relation to your client's obligations. Your client does have a legal obligation to cooperate. The only issue is whether I am in a position to enforce that obligation.

I do not accept that your client has cooperated with the investigation nor do I accept that you or your client are entitled to impose any conditions as to confidentiality or otherwise as to how I conduct the investigation. I have to date, and will continue, to conduct the investigation fairly and in accordance with law.

If your client does wish to cooperate with the investigation, he should do so in the following manner:

1. Authorise the bank in Switzerland to furnish to me the following information in relation to the account:-
 - (i) The name of the bank and the address of the branch from which the transfer was made.
 - (ii) The name of the account holder.
 - (iii) A bank statement

- (iv) A statement as to whether the funds were transferred into the account within 90 days of 15th June 1989 from another account or accounts and if so, details of the relevant credits to the account and in particular the name of the bank and the account holder from which the credits emanated.
2. Mr. Lewis should then answer the detailed list of questions which I submitted to him with my letter of the 6th December 1991. In this regard, the selective information furnished by him in your letter of 5th February 1992 is unsatisfactory and may be commented on by me as such in any report I may make pursuant to Section 11, Companies Act, 1990.
3. Finally, your client should furnish a detailed statement of any and all involvements, actual or proposed which he had with the Johnston Mooney & O'Brien site at Ballsbridge, Dublin 4, whether directly, through Chestvale Properties Limited or through any other entity. This statement should also indicate the nature of any interest actual or proposed by Mr. Lewis in such site, company or entity and there should be exhibited with such statement, any memoranda, correspondence or other documents concerning this.

I await an immediate response, failing which I will assume that the cooperation professed is not forthcoming and I will be obliged to proceed in due course.

Yours faithfully,

John A. Glackin

INSPECTOR

INSPECTOR

JOHN A. GLACKIN,

Appointed by Warrant of the Minister for Industry
and Commerce dated the 9th day of October 1991

INSPECTOR'S OFFICE

4th Floor,

69/71 ST. STEPHEN'S GREEN, DUBLIN

Tel: 78 08 99 Fax: 78 56 43

OUR REF: JAG/MF

YOUR REF:

DATE 25th March 1993

Alexiou Knowles & Company
Frederick Street Steps
P.O. Box N4805
Nassau
Bahamas

Re: Chestvale Properties Limited
Hoddle Investments Limited ("the Companies")
Your Client: J. Lewis

Dear Sir,

I refer to previous correspondence in this matter and in particular my letter of the 3rd of July last in response to yours of the 29th of June.

I note that I have not had any response to my letter of the 3rd of July.

If the account referred to by you in your letter of the 29th June was an account of which your client was the beneficial owner, I would have expected him to produce the requested authority and information to me.

I invite him again to do so. If he persists in failing to do so, I consider myself at liberty to infer from that that he is not the true beneficial owner of the account and hence of the shares in United Property Holdings Limited registered in Aurum Nominees and that he is merely acting as an agent or nominee for some third party.

I would hope to hear from you in this regard in the next fourteen days.

Yours faithfully,



APR 2 1993 FRI 15:22 ALEXIOU

ALEXIOU, KNOWLES & CO.
ATTORNEYS-AT-LAW
P.O. BOX N-4805
NASSAU, BAHAMAS.

FAX: 809-328-8395
PHONE: 809-323-5600.

TELEFAX

DATE: APRIL 2, 1993
TO: INSPECTOR JOHN A. GLACKIN - DUBLIN - 78-56-43
FROM: EMANUEL M. ALEXIOU
RE: CHESTIVALE PROPERTIES LIMITED
PAGES SENT EXCLUDING THIS PAGE:

Dear Inspector Glackin,

We acknowledge receipt of your telefax of the 25th of March, 1993.

We would like to refer you to our letter to you of the 5th of February, 1992 wherein you were advised as to who owned the shares.

Yours very truly,
ALEXIOU, KNOWLES & CO.


Emanuel M. Alexiou

EMA/cl

INSPECTOR

JOHN A. GLACKIN,

Appointed by Warrant of the Minister for Industry
and Commerce dated the 9th day of October 1991

INSPECTOR'S OFFICE

4th Floor,

69/71 ST. STEPHEN'S GREEN, DUBLIN

Tel: 78 06 99 Fax: 78 58 43

OUR REF: JAG/MQ

YOUR REF:

DATE 6 April 1993

Alexiou Knowles & Co.
Attorneys at Law
P.O. Box N4805
Nassau
Bahamas

Re: Chestvale Properties Limited
Hoddle Investments Limited ("the Companies")

Dear Mr. Alexiou,

I acknowledge receipt of your fax of the 2nd inst.

As I have made clear in earlier correspondence, I am not satisfied with the response in the letter of 5th February 1992 and hence our subsequent correspondence.

I repeat again the fourth paragraph of my letter to you of the 25th ult.

Yours faithfully,

John A. Glackin

INSPECTOR

APPENDIX 4
PARAGRAPH 2.2.2

INSPECTOR
JOHN A. GLACKIN,
Appointed by Warrant of the Minister for Industry
and Commerce dated the 9th day of October 1991

INSPECTOR'S OFFICE
4th Floor,
69/71 ST. STEPHEN'S GREEN, DUBLIN
Tel: 78 06 99 Fax: 78 58 43

OUR REF: JAG/MD

YOUR REF:

DATE: 6 December 1991

Joseph Lewis, Esq.
Aurum Nominees (333013)
c/o NCB Group
48/53 Lower Mount Street
Dublin 2

Re: Chestvale Properties Limited
Hoddle Investments Limited ("the Companies")

Dear Sir,

I was appointed Inspector under Section 14, Companies Act 1990 in respect of Chestvale Properties Limited and Hoddle Investments Limited on the 9th October 1991 and I enclose a copy of my Warrant.

The purpose of the Warrant is to determine the true persons who are or have been financially interested in the success or failure (real or apparent) of these Companies or able to control or materially to influence the policy of these companies. As you will note from the Warrant the investigation is to extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of the investigation.

Evidence adduced by me so far in the investigation indicates that Chestvale Properties Limited was a subsidiary of United Property Holdings Limited ("UPH") at some time since the date of the formation of UPH.

According to further evidence available to me, it would appear that you are either the registered shareholder of shares in UPH or alternatively the beneficial owner thereof and accordingly you may have been financially interested in the success or failure of Chestvale. I believe that you are a person who may be in possession of information relevant to my investigation for the purposes of Section 14(5)(a) Companies Act 1990.

Accordingly I enclose a list of interrogatories relating to your shareholding in UPH and should be obliged if you would complete this and return to me as early as possible.

If you have any queries in relation to same, do not hesitate to revert to me.

Yours faithfully,

AURUM NOMINEES (333013)

1. I understand that you are or were the holder of the following shares in United Property Holdings Limited:
25,000 Ordinary Shares of £0.10 each.
60,000 "A" fixed rate Redeemable Preference Shares of £1.00 each.
40,000 "B" fixed rate Redeemable Preference Shares

Please confirm if this is the case and if not give details otherwise.
2. Please indicate when you were first approached to invest in UPH.
3. Please indicate who approached you.
4. Please indicate what if any documentation was submitted to you at that time or at any subsequent time and please furnish copies.
5. Please indicate the date or dates on which you subscribed for share capital in the company.
6. Were you aware then that neither the Memorandum nor the Articles of Association of the Company state the rights attaching to the various classes of preference shares.
7. Please indicate your understanding of the terms on which the shares and where relevant any preference shares were issued to you.

PAGE 2

3. Please indicate whether you signed a Subscription Agreement or any other agreement when subscribing for the shares.
9. Please indicate whether any such document was submitted to you but was not signed by you.
10. If the answer to the previous question is yes, please indicate the reason for not signing it.
11. If any other document such as a Placing Memorandum was referred to in such Subscription Agreement, please indicate if you did actually receive such other document.
12. Please indicate the subscription price per share payable by you and whether this was paid in full.
13. Please confirm whether you received a Share Certificate or Share Certificates and if so when.
14. Please indicate if any approach was made to you for the purchase of your shareholding in UPH.
15. If the answer to the previous question is in the affirmative, please give details.

Are you still the registered owner of the above shareholding in UPH, and if not indicate when and to whom you sold the shares.

PAGE 3

17. Are you acting as a nominee or trustee for a third party.
18. If the answer to the previous question is in the affirmative, please indicate the beneficial owner for whom you are holding the shares.
19. Were you informed about any relationship between UPH and Chestvale Properties Limited.
20. If so, please give details of when, who informed you and what information did you get.
21. Were you informed about any relationship between UPH and Hoddle Investments Limited.
22. If so, please give details of when, who informed you and what information did you get.
23. When were you informed of the purchase by UPH of the Johnston Mooney & O'Brien site.
24. When were you informed of the proposed sale on by UPH of its interest in the Johnston Mooney & O'Brien site.
25. Were you informed of the terms of that proposed sale by UPH.

PAGE 4

26. Were you offered the opportunity to participate in the sale on by UPH of that interest.
27. When were you informed of the proposed purchase by Telecom Eireann of the Johnston Mooney & O'Brien site.
28. Were you informed of the terms of that proposed purchase.
29. When were you informed of the completion of the purchase by Telecom Eireann of the Johnston Mooney & O'Brien site.
30. Have you received any dividend from UPH.
31. Have you attended any general meetings of the members of UPH.
32. When did you become aware of the names of the other shareholders in UPH.
33. Are you aware who are or have been the true persons financially interested in the success or failure (real or apparent) or able to control or materially to influence the policy of Chestvale Properties Limited and/or Hoddle Investments Limited.
34. Are you aware of the existence of any arrangement or understanding which though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the determination of who are or have been the said true persons.

STRICTLY PRIVATE & CONFIDENTIAL

Mr. John A. Glackin,
Inspector's Office,
4th Floor,
69/71 St. Stephen's Green,
Dublin 2.

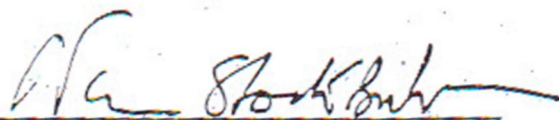
Our Ref JKL-2035

10 December, 1991

Dear Sir,

I refer to your correspondence marked for the attention of Mr Joseph Lewis which was delivered to us yesterday. The said correspondence has been sent on to Mr. Lewis for his personal attention.

Yours sincerely,



NCB STOCKBROKERS



NCB

PERSONAL
INVESTMENTS

NCB PERSONAL INVESTMENTS
TRADING HOUSE, 4th FLOOR, 69/71
ST. STEPHEN'S GREEN, DUBLIN 2. TELEPHONE 01-409 1111
FAX 01-409 1112. TELEX 9109 NCBSE
REGISTERED IN IRELAND NO. 100000
REGISTERED OFFICE IN IRELAND

PERSONAL
INVESTMENTS

- Share Dealing
- Unit Funds/Trusts
- Lump Sum Investments
- Portfolio Management
- Nominee Service
- Valuations
- BES
- Property Investment

LIFE &
PENSIONS

- Corporate Pensions
- Personal Pensions
- Business Protection
- Life Assurance
- Mortgages & Loans
- Savings Plans
- Inheritance Tax Planning
- Disability Insurance

INSPECTOR
JOHN A. GLACKIN,
Appointed by Warrant of the Minister for Industry
DUBLIN 2.
and Commerce dated the 9th day of October 1991

FILE COPY

INSPECTOR'S OFFICE
4th Floor,
69/71 ST. STEPHEN'S GREEN

Tel: 78 06 99 Fax: 73 56 43

OUR REF: JAG/MD

YOUR REF:

DATE: 3 February 1992

Joseph Lewis, Esq.
Lewis House
P.O. Box N7776
Lyford
Cayman
New Providence
Bahamas

Re: Chestvale Properties Limited
Hoddle Investments Limited ("the Companies")

Dear Sir,

I refer to my letter to you of the 6th December last enclosing a list of interrogatories relating to your shareholding in United Property Holdings Limited.

NCB notified me on the 10th December that they had passed on to you the letter which I had written to you and sent to you care of their offices.

I have not as yet had any response and should be obliged if you should deal with the interrogatories as a matter of urgency at this stage.

I should also be obliged if you would arrange to attend before me for examination at the earliest possible date and should be obliged if you would contact me with a view to arranging a mutually convenient time.

Yours faithfully,



John A. Glackin

INSPECTOR

ALEXIOU, KNOWLES & CO.

ATTORNEYS-AT-LAW
P.O. BOX N-4805
NASSAU, BAHAMAS.

FAX: 809-328-8395
PHONE: 809-323-5600

TELEFAX

DATE: FEBRUARY 5, 1992

TO: INSPECTOR JOHN A. GLACKIN - INSPECTOR'S OFFICE -
DUBLIN, IRELAND - 78-56-43

FROM: EMANUEL M. ALEXIOU

RE: CHESTVALE PROPERTIES LIMITED
HODDLE INVESTMENTS LIMITED

PAGES SENT EXCLUDING THIS PAGE:

Dear Mr. Glackin,

Your letter of the 6th of December, 1991 together with its annexures have been forwarded to me by our client, Mr. Joe Lewis.

It is our view that Mr. Lewis is under no compulsion to answer any of the interrogatories that are being put to him. However, it is not his wish to be obstructive in any way with your investigation and in this regard has therefore instructed us to confirm to you the following:

1. That Aurum Nominees (333013) did acquire shares in United Property Holdings Limited for him.
2. Our client has never received a dividend from United Property Holdings Limited.
3. Our client has never been involved and has no knowledge of the operations of United Property Holdings Limited.

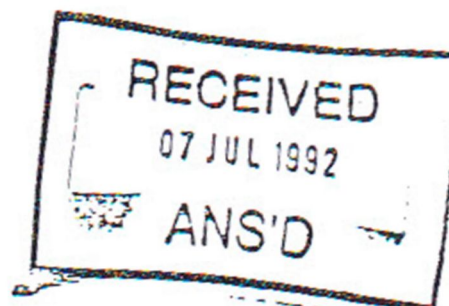
Yours faithfully,
ALEXIOU, KNOWLES & CO.


Emanuel M. Alexiou

EMA/cl

ALEXIOU, KNOWLES & CO.

COUNSEL & ATTORNEYS AT LAW
NOTARIES PUBLIC
FREDERICK STREET STOPS
P.O. BOX 48015
NASSAU, BAHAMAS
BOX 223 5000 223 25
FAX 800 328 8005



MANUEL M. ALEXIOU BA
HERCKA KNOWLES B COMM
FREDERICK STREET STOPS
P.O. BOX 48015
NASSAU, BAHAMAS

TELEPHONE 8001
328 6558 323 447
323 3 03 323 4038
323 4505 328 0568
TELEX 20 44 08 20 229
CABLE ALEX OR LEGES

AIR MAIL

OUR REF
YOUR REF

June 29, 1992

Inspector John R. Blackin
Inspector's Office
4th Floor
69/71 St. Stephen's Green
DUBLIN 2.

Dear Sir:

Re: Chestvale Properties Limited
and Hoodle Investments Limited

As you know from previous communications, we act on behalf of Mr. J. Lewis of Lewis House, P.O. Box N-7776, Lyford Cay, Bahamas.

Our client, despite having no legal obligation to do so, has co-operated with your enquiry. Our client co-operated with the investigation on the clear understanding that all matters relating to him would remain confidential. We also expressly requested you to communicate with us regarding these matters. This regrettably has not been the case. It now appears that without any reference to our client you have induced NCB Brokers Limited to breach the duties of confidentiality owed by them to our client and requested them to obtain information in relation to the payment of Stg103,563 from Mr. Lewis' account at Union Bank of Switzerland in Geneva, on 15th June, 1989 to Ulster Bank.

NCB Brokers, in compliance with your request, wrote directly to the Union Bank in Switzerland, without any reference to our client, stating that the information requested was required by the Inspector appointed by the Minister for Industry and Commerce in the course of an investigation being carried out by him. This naturally has caused our client grave embarrassment

. . . 2/

ALEXIOU, KNOWLES & CO.

page 2

and damage. If you had the courtesy to make reference it is directly you could have been provided with the information requested without causing any such embarrassment or damage and our client would have confirmed that the monies were transferred on his instructions in order to pay for his shareholding in U.S.H.

Your appointment as an Inspector does not entitle you to infringe our client's legal rights or cause him any damage or embarrassment. We must ask for your assurance that there will be no repetition of these actions. If we do not obtain such assurance we must advise our client to take the appropriate legal action.

Yours faithfully,
ALEXIOU, KNOWLES & CO.


Emanuel M. Alexiou

INSPECTOR

JOHN A. GLACKIN,

Appointed by Warrant of the Minister for Industry
and Commerce dated the 9th day of October 1991

INSPECTOR'S OFFICE

4th Floor,

69/71 ST. STEPHEN'S GREEN, DUBLIN 2

Tel: 78 06 99 Fax: 78 56 43

OUR REF: JAG/MO

YOUR REF:

DATE: 3rd July 1992

Alexiou, Knowles & Co.
Frederick Street Steps
P.O. Box N4805
Nassau
Bahamas

By Fax: 00-1-809-32 88395

Re: Chestvale Properties Limited
Hoddle Investments Limited ("the Companies")
Your Client: J. Lewis

Dear Sir,

I refer to your letter of the 29th ult. received by fax on the 1st inst.

Unfortunately you suffer from a misconception in relation to your client's obligations. Your client does have a legal obligation to cooperate. The only issue is whether I am in a position to enforce that obligation.

I do not accept that your client has cooperated with the investigation nor do I accept that you or your client are entitled to impose any conditions as to confidentiality or otherwise as to how I conduct the investigation. I have to date, and will continue, to conduct the investigation fairly and in accordance with law.

If your client does wish to cooperate with the investigation, he should do so in the following manner:

1. Authorise the bank in Switzerland to furnish to me the following information in relation to the account:-
 - (i) The name of the bank and the address of the branch from which the transfer was made.
 - (ii) The name of the account holder.
 - (iii) A bank statement

- (iv) A statement as to whether the funds were transferred into the account within 90 days of 15th June 1989 from another account or accounts and if so, details of the relevant credits to the account and in particular the name of the bank and the account holder from which the credits emanated.
2. Mr. Lewis should then answer the detailed list of questions which I submitted to him with my letter of the 6th December 1991. In this regard, the selective information furnished by him in your letter of 5th February 1992 is unsatisfactory and may be commented on by me as such in any report I may make pursuant to Section 11, Companies Act, 1990.
3. Finally, your client should furnish a detailed statement of any and all involvements, actual or proposed which he had with the Johnston Mooney & O'Brien site at Ballsbridge, Dublin 4, whether directly, through Chestvale Properties Limited or through any other entity. This statement should also indicate the nature of any interest actual or proposed by Mr. Lewis in such site, company or entity and there should be exhibited with such statement, any memoranda, correspondence or other documents concerning this.

I await an immediate response, failing which I will assume that the cooperation professed is not forthcoming and I will be obliged to proceed in due course.

Yours faithfully,

John A. Glackin

INSPECTOR

INSPECTOR

JOHN A. GLACKIN,

Appointed by Warrant of the Minister for Industry
and Commerce dated the 9th day of October 1991

INSPECTOR'S OFFICE

4th Floor,

69/71 ST. STEPHEN'S GREEN, DUBLIN

Tel: 78 08 99 Fax: 78 56 43

OUR REF: JAG/MF

YOUR REF:

DATE 25th March 1993

Alexiou Knowles & Company
Frederick Street Steps
P.O. Box N4805
Nassau
Bahamas

Re: Chestvale Properties Limited
Hoddle Investments Limited ("the Companies")
Your Client: J. Lewis

Dear Sir,

I refer to previous correspondence in this matter and in particular my letter of the 3rd of July last in response to yours of the 29th of June.

I note that I have not had any response to my letter of the 3rd of July.

If the account referred to by you in your letter of the 29th June was an account of which your client was the beneficial owner, I would have expected him to produce the requested authority and information to me.

I invite him again to do so. If he persists in failing to do so, I consider myself at liberty to infer from that that he is not the true beneficial owner of the account and hence of the shares in United Property Holdings Limited registered in Aurum Nominees and that he is merely acting as an agent or nominee for some third party.

I would hope to hear from you in this regard in the next fourteen days.

Yours faithfully,



APR 2 1993 FRI 15:22 ALEXIOU

ALEXIOU, KNOWLES & CO.
ATTORNEYS-AT-LAW
P.O. BOX N-4805
NASSAU, BAHAMAS.

FAX: 809-328-8395
PHONE: 809-323-5600.

TELEFAX


DATE: APRIL 2, 1993
TO: INSPECTOR JOHN A. GLACKIN - DUBLIN - 78-56-43
FROM: EMANUEL M. ALEXIOU
RE: CHESTIVALE PROPERTIES LIMITED
PAGES SENT EXCLUDING THIS PAGE:

Dear Inspector Glackin,

We acknowledge receipt of your telefax of the 25th of March, 1993.

We would like to refer you to our letter to you of the 5th of February, 1992 wherein you were advised as to who owned the shares.

Yours very truly,
ALEXIOU, KNOWLES & CO.


Emanuel M. Alexiou

EMA/cl

INSPECTOR
JOHN A. GLACKIN,
Appointed by Warrant of the Minister for Industry
and Commerce dated the 9th day of October 1991

INSPECTOR'S OFFICE
4th Floor,
69/71 ST. STEPHEN'S GREEN, DUBLIN

Tel: 78 06 99 Fax: 78 58 43

OUR REF: JAG/MQ

YOUR REF:

DATE 6 April 1993

Alexiou Knowles & Co.
Attorneys at Law
P.O. Box N4805
Nassau
Bahamas

Re: Chestvale Properties Limited
Hoddle Investments Limited ("the Companies")

Dear Mr. Alexiou,

I acknowledge receipt of your fax of the 2nd inst.

As I have made clear in earlier correspondence, I am not satisfied with the response in the letter of 5th February 1992 and hence our subsequent correspondence.

I repeat again the fourth paragraph of my letter to you of the 25th ult.

Yours faithfully,

John A. Glackin

INSPECTOR