

**PART ONE**  
**1984 to 1990**

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**1. THE ACQUISITION OF MGN**

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**The 1971 DTI Report**

- 1.1 On 13 July 1971, Mr Owen Stable QC and Sir Ronald Leach, Inspectors appointed by the Department of Trade and Industry (DTI), in presenting their Interim Report on the affairs of Pergamon Press Limited (PPL)<sup>a</sup> concluded<sup>b</sup>:

"We regret having to conclude that, notwithstanding Mr Maxwell's acknowledged abilities and energy, he is not in our opinion a person who can be relied on to exercise proper stewardship of a publicly quoted company."

The detailed findings of that Report, to which we will refer when considering the issues that arose on the flotation in 1991, are as significant to any understanding of RM's business methods as this well-known conclusion<sup>c</sup>.

- 1.2 It is not necessary to describe the events that led to that Report or the effect that had on RM's position. It is sufficient to say that in the period to 1980, his time was largely spent in rebuilding his private finances<sup>d</sup>, reacquiring in 1974 PPL (which he returned to private ownership) and rebuilding its core business of publishing scientific journals. PPL became of substantial importance in the development of RM's other companies as publishing scientific journals was a relatively straightforward business to run and produced a steady flow of cash and profits<sup>e</sup>; this came to be regarded by most of his associates and advisers as "the crown jewel" of his businesses.

**The Maxwell Foundation**

- 1.3 It is however necessary to go back to 1970 to explain the function of the Liechtenstein entities that played a role in the ownership of PPL and the subsequent development of RM's businesses. RM was always secretive about his businesses; he operated on a "need to know" basis that meant no one who worked within his businesses but himself was in a position to have a full picture of his

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<sup>a</sup> This company had been built up by RM primarily on the strength of the business of publishing scientific journals, had been floated on the stock market in 1964 and had been the subject of a take over by Leasco Inc which had led to the DTI enquiry.

<sup>b</sup> See paragraphs 340 to 343.

<sup>c</sup> We have summarised in Appendix 4 those findings of the 1971/73 Reports that are relevant to an understanding of his business methods.

<sup>d</sup> He did become involved in the workers' co-operative set up for the Scottish Daily News.

<sup>e</sup> Each year about £40m of cash was received between November and January when subscriptions were collected; expenditure was then spread over the year. RM was therefore able to use this cash flow to fund acquisitions and to take very substantial positions in gilts; he continued to do this throughout the 1980s. The business was also very profitable.

various interests. This characteristic was particularly applied to everything that concerned the role of the Maxwell Foundation, one of these Liechtenstein entities.

- 1.4 RM's connections with Liechtenstein went back a long time. After the Second World War, RM met Dr Ludwig Gutstein, a Swiss lawyer practising in Zurich and from either the late 1940s or early 1950s RM had used Liechtenstein entities in connection with his business<sup>a</sup>.
- 1.5 Liechtenstein had established in the 1920s certain distinctive types of entity; one of these was a Liechtenstein *Stiftung* or foundation. A Liechtenstein foundation was usually established on behalf of an individual, but had no owner, only beneficiaries. It could be used for family or charitable purposes or both; it could not itself engage in trade but could control trading companies. If a foundation was a "deposited" foundation, no information was publicly available about it. If it was registered, then very little information about it was publicly available; in particular its governing instruments (its statutes) were private documents.
- 1.6 In 1970 the Maxwell Foundation<sup>b</sup> was acquired or established on behalf of RM by Dr Gutstein as a deposited foundation through the General Trust Company of Liechtenstein<sup>c</sup>.
- 1.7 Although the Maxwell Foundation had no owner, supreme power over the Maxwell Foundation was vested by its statutes in the holder of the "founder's rights". The founder of the Maxwell Foundation was the General Trust Company acting for Dr Gutstein whom it regarded as its mandator. Accordingly the founder's rights were passed by means of a blank transfer to Dr Gutstein<sup>d</sup>. These gave him the power to appoint the Director, to give him instructions, to appoint the beneficiaries and to change the purpose of the Maxwell Foundation and any other provision of its statutes. In the summer of 1987 Dr Werner Rechsteiner, a lawyer in Zurich, took over part of Dr Gutstein's practice and the founder's rights of the Maxwell Foundation were passed to him<sup>e</sup>.
- 1.8 Dr Walter Keicher, a director of the General Trust Company was appointed by Dr Gutstein as the first Director of the Maxwell Foundation and the sole member of the board; he was, as far as the outside world was concerned, the person who controlled the Foundation. Dr Walter Keicher was succeeded by his son, Dr Werner Keicher in March 1986. In their capacity as directors, Drs

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<sup>a</sup> On 1 March 1954, Dr Gutstein had established International Trust Services for RM's sister, Brana.

<sup>b</sup> It was originally known as Swico Foundation, then changed its name to Pergamon Holdings Foundation in 1982, to Pergamon Foundation in November 1987 and to the Maxwell Foundation in February 1988.

<sup>c</sup> As explained at paragraph 3.24, Mr Haines was given information about the Maxwell Foundation in 1988 before finishing his biography of RM, "*Maxwell*". Mr Haines stated in this biography that the Maxwell Foundation was established because Dr Gutstein was concerned that RM and Mrs Maxwell were defendants in a large lawsuit brought by Leasco Inc.

<sup>d</sup> It is usual where a lawyer acts in this capacity that he does so for a client under a mandate that is either verbal or in writing. By using a Swiss lawyer, the client can claim that he does not hold the founder's rights and his identity is protected by Swiss secrecy laws.

<sup>e</sup> The transfer took place because Dr Gutstein was by then very old and it was anticipated that he might have to be cross examined in connection with litigation arising out of the Harcourt Brace Jovanovich Inc bid (see paragraph 3.20).

Keicher had a fiduciary role to carry out the wishes of the founder; thus although they had all the legal powers, they had to exercise them in accordance with the will of the founder. As their relationship was with Dr Gutstein and then Dr Rechsteiner they would act on instructions from them, but they appreciated that in turn Dr Gutstein's and Dr Rechsteiner's client was RM who provided their instructions.

- 1.9 The beneficiaries of the Maxwell Foundation were not at first specified in its statutes; we were told this is not unusual in a family foundation as the lawyer will be given instructions as to who the beneficiaries are. The beneficiaries were in fact RM's family resident outside the US and the UK and charitable purposes<sup>a</sup>. In 1988 the beneficiaries were changed solely to charitable purposes in the circumstances described at paragraph 3.24.
- 1.10 In addition to the Maxwell Foundation, Dr Gutstein acquired for RM twelve other Liechtenstein entities in December 1984 and formed those that were not already foundations into foundations. We were told they were acquired for a specific purpose, but were not used and remained dormant until about 1989. Those included Akim Foundation, Alandra Foundation, Baccano Foundation, Corry Foundation, Jungo Foundation, Kiara Foundation and Nessi Foundation, all of which are mentioned in the following chapters. We were told that in 1988, RM gave to Dr Rechsteiner a list of which of his children were to be the beneficiary of each of these Foundations and that RM confirmed this to him in the summer of 1991 in the circumstances described in paragraph 21.4. KM told us that this was not correct and RM had given Dr Rechsteiner no such list and no such confirmation. After RM's death Dr Rechsteiner wrote to various of RM's children informing them of their respective interests, but they stated they knew nothing and renounced their interests.
- 1.11 The ultimate ownership of PPL was transferred to the Maxwell Foundation<sup>b</sup> by 1982.
- 1.12 Technically therefore all businesses owned by PPL were ultimately owned by and for the benefit of the Maxwell Foundation; however the Maxwell Foundation left the management of the companies to RM and acted on his instructions.

### **The acquisition of BPC**

- 1.13 It was the acquisition by PPL in April 1981 of a controlling interest in British Printing Corporation (then known as BPC Ltd (BPC) and a publicly listed company) that was the most significant event in RM's re-establishment of his position after the earlier events relating to his ownership of PPL. A chronology of the main acquisitions made by RM in 1980 – 1989 is set out in Appendix 5.

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<sup>a</sup> This was also publicly asserted on 13 December 1984 during the course of a bid for John Waddington plc (see paragraph 3.12); the information was provided by Dr Keicher who obtained it from Dr Gutstein; RM gave similar information in the course of his bid for Extel Group plc in April 1987 (see paragraph 3.14).

<sup>b</sup> By 1982 the issued share capital of PPL was held through Pergamon Holdings Corporation (PHC) a US corporation owned by the Maxwell Foundation; a decision was made to transfer the ownership from the US for tax purposes, and those shares were passed by dividend to the direct ownership of the Maxwell Foundation by PHC pursuant to a resolution of its board dated 1 April 1983.

1.14 PPL commenced buying shares in BPC during 1980 and by 18 July 1980, after a dawn raid carried out through Grieson, Grant & Co, PPL had acquired 29.4 per cent. of the company. Later in the year it was announced that PPL would be prepared to inject new capital into BPC and discussions were then held between National Westminster Bank plc (National Westminster) (who were BPC's Bankers), BPC and RM. On 16 February 1981 it was announced that RM would become Chief Executive and Deputy Chairman of the company and PPL would inject new capital conditional upon the trade unions agreeing to RM's "survival plan". On the acceptance by the unions of RM's survival plan, PPL injected £10m and took control of the company with a shareholding of 76.9 per cent.<sup>a</sup>.

1.15 RM's appointment as Chief Executive of BPC and PPL's acquisition of control of BPC were particularly significant in the following respects:

- RM became a director of a publicly listed company despite the findings of the DTI Inspectors in 1971/73. In July 1977, some two months after the Solicitor General had announced that no prosecutions would be made as a result of the DTI Inquiry into PPL, RM approached the Stock Exchange to enquire what their attitude would be if he made a cash bid for a listed company; he told them that if they treated him unfairly, he would take them to court. The Stock Exchange concluded that it would not be right to place a bar on his appointment to the board of a listed company<sup>b</sup> although they would suggest to the sponsor of the company that some other person ought to act as independent Chairman as it was likely that RM would want to be the Managing Director of any company on whose board he sat. RM did not bid for a listed company in 1977, but when he did acquire a stake in BPC in July 1980, the Stock Exchange followed the view that it had formed in 1977. When RM became Chairman of BPC on 1 September 1981, the Stock Exchange took no action; the Stock Exchange told us it had no power to do so.
- The Bank of England was consulted in its traditional role as a "catalyst" between interested parties that were in financial difficulties. The Bank of England was unsure about the financial position of BPC and the quality of its management and Sir Henry Benson<sup>c</sup> considered that it would be better to have RM on the board where he would have to behave as a responsible director, though it was common ground he was unsuitable as a director. Sir Henry Benson maintained his views even though Hambros Bank Limited and Cazenove & Co also said they would resign as merchant bankers and brokers to BPC if

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<sup>a</sup> The Stock Exchange was informed of this holding and took no objection in the light of the financial position of BPC, a dispensation granted by the Takeover Panel from the obligation to bid for the minority and the uncertainty at that time as to whether the condition applicable to listing (that 25 per cent. of a company had to remain in the hands of the public) was an enforceable continuing obligation.

<sup>b</sup> The reasons why the Stock Exchange reached this decision were: public criticism of the DTI Inspectors' conduct of their investigation, RM's re-establishment of his own business career, the Rehabilitation of Offenders Act 1974 (as an example in the relaxation of attitudes to hounding persons who had been convicted or criticised in public) and the fact that RM had not been prosecuted or convicted.

<sup>c</sup> Later Lord Benson. He was adviser to the Governor of the Bank of England on industrial matters from 1975 to 1983; he had been a partner of Coopers & Lybrand 1934-1975, but had severed all his links on appointment to the Bank of England.

RM joined the board<sup>a</sup>. He made clear to Lord Kearton on his appointment as Chairman of BPC that he would have the task of keeping RM under control<sup>b</sup>.

- RM had the opportunity of turning around a business about which the circular to shareholders had stated that the only alternative to RM's plan was the appointment of a receiver. He took full advantage of this opportunity and within a year BPC was reporting profits.
- It strengthened RM's relationship with his bankers, particularly National Westminster<sup>c</sup>. His success re-established him in the eyes of bankers and ensured their support for his future expansion.

1.16 During 1982 and 1983 RM largely concerned himself with cost cutting and the development of the business at BPC. BPC subsequently changed its name and ultimately was known as Maxwell Communication Corporation plc (MCC)<sup>d</sup>. It is more convenient to call it "MCC" throughout the Report. Acquisitions were made of printing businesses. The acquisition of Odhams Printers Ltd, when merged with Sun Printers Ltd, permitted rationalisation and productivity gains such that, for the first time in many years, MCC's gravure business became profitable. MCC also in June 1983 made an unsuccessful bid for John Waddington plc, another company with a substantial printing and packaging business.

#### **The acquisition of MGN**

1.17 By the early 1980s MGN, as a subsidiary of Reed International plc (Reed), had acquired a number of newspapers. In England and Wales its principal newspapers were the *Daily Mirror* (which had been launched by Mr Alfred Harmsworth, later Lord Northcliffe, in 1903) and the *Sunday Mirror*. In Scotland its principal newspaper was the *Daily Record* which had been founded by Alfred Harmsworth's brother, Harold Harmsworth (later Lord Rothermere), in 1895. The *Daily Record* had a Sunday sister paper, the *Sunday Mail* and these were published through a separate subsidiary, Scottish Daily Record and Sunday Mail Limited (SDR). MGN had also acquired *The People* and *The Sporting Life*.

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<sup>a</sup> Cazenove & Co resigned on RM's appointment to the board.

<sup>b</sup> Lord Kearton became Chairman on 18 February 1981; on 20 August 1981 he wrote to Sir Henry to tell him he felt his work was at an end and he was resigning as Chairman. His letter summarised what had been done at BPC, expressed the view that BPC would be profitable, and included the following passage:

"It will be a most remarkable turnaround. If BPC had gone into receivership earlier this year, the equity shareholders would have got nothing, and nearly all the 10,500 jobs would have gone. Nat Wests' own losses would have been not far short of £20m.

The credit for what has been achieved belongs to Robert Maxwell, who is a man of enterprise, resource, and vision. He is an outstanding negotiator, whether with the unions, the customers, the suppliers, or Nat West. He works long hours, extremely hard, and has great physical and mental robustness."

<sup>c</sup> RM had banked with National Westminster from at least the 1950s; they had considered whether they should continue to be his bank after the DTI Inquiry into PPL but as he had always honoured his commitments to the bank and had always behaved properly to them they allowed the relationship to continue with his then private companies.

<sup>d</sup> Its name was changed to The British Printing & Communication Corporation plc (BPCC) in March 1982 and was further changed to Maxwell Communication Corporation plc on 22 October 1987.

- 1.18 In October 1983, Reed announced plans for a flotation of MGN as an independent company. Under the period of Reed's ownership the company had been run as a subsidiary with its own independent board, but with its banking and treasury operations controlled by the Reed central treasury. The plans for the flotation did not proceed smoothly partly because of the lack of investment available to renew MGN's plant, partly because of the lack of profitability of MGN, and partly because of stock market conditions.
- 1.19 RM announced in the course of the preparation for flotation that PPL was interested in bidding for MGN and, although Reed initially stated that they would not sell to him, on 12 July 1984 PPL's bid for the company at a price of £113.4m was accepted. RM gave various undertakings including one to make a partial flotation of MGN. Hill Samuel & Co Ltd<sup>a</sup> (Hill Samuel) acted for RM and PPL.
- 1.20 The bid was financed by two loans from National Westminster.
- A loan of £64m was provided on the basis it was to be repaid from the proceeds of the intended flotation<sup>b</sup>.
  - A loan of £23m was provided on the basis that it would be repaid from an intercompany debt of £23.3m that Reed owed to MGN and had agreed to repay to MGN as a term of the purchase agreement. To ensure that there was no infringement of legislation which prevented the assets of the company being used in the purchase of its own shares, it was agreed that the £23m that PPL needed to repay this bank loan would be paid by MGN to PPL in return for shares that PPL held in MCC; this was subsequently done in September 1984, as set out at paragraph 2.17.

We were told that the rest of the funds necessary for the purchase were provided from PPL's own resources.

- 1.21 On the evening that RM acquired MGN, he went straight to MGN's offices at the Mirror Building in Holborn, London and, although he arrived at about midnight, he immediately ordered that a board meeting be summoned. The board met at 2.45 am (when 9 directors including RM were present) and again later that same day at 2.45 pm (when 11 directors including RM were present). These board meetings are significant in that:
- They were the last formal board meetings held until 1991 at which matters of policy were raised. At the second meeting that day there was not an open discussion; for example, when the way in which a threatened stoppage at SDR should be dealt with was raised, RM instructed how it was to be resolved.

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<sup>a</sup> RM first consulted them on 2 July 1984 at a meeting attended by Sir Robert Clark (who became a non-executive director of MGN on its flotation in 1991) and Mr Leslie Goodman. Hill Samuel had first acted for RM in 1968 in connection with his attempt to acquire *The News of the World*.

<sup>b</sup> In fact this was subsequently extended and then refinanced through another facility.

- RM obtained from the board an amendment to the mandates relating to the bank accounts of MGN so that he had authority to sign cheques and make transfers from the accounts on his sole signature for any amount.

RM's full control over the management and finances of MGN obtained in this way was to remain an essential characteristic of his ownership of MGN thereafter.