
19. THOSE WHO BENEFITED FROM THE PROCEEDS OF THE FLOTATION

The destination of the proceeds of the flotation

19.1 The total amount raised from the flotation after the payment of expenses and commissions on the overseas offering was £238.4m. This sum was applied as follows:

- £210m Replacement of £360m facility by £150m facility
- £18m Payment to RMH^a
- £2.9m UK offer commissions
- £7.5m Balance left for MGN

19.2 It had been anticipated at an earlier stage that very much more than £18m would be raised for the private side; it was only of this small order because the shares had been floated at a much lower price than RM had anticipated. However Smith New Court told us that the reaction of the market (as described in the preceding chapter) indicated that the price obtained was at the higher end of what could have been obtained.

19.3 The fees paid to the advisers^b amounted to £8.95m:

Samuel Montagu	£ 3.5m
Smith New Court	£ 0.75m
SBIL	£ 1m
CLD	£ 1.48m
Clifford Chance	£ 1.2m
Linklaters & Paines	£ 0.48m
Dewe Rogerson	£ 0.54m

Table 7 – Fees paid to advisers on the flotation

The benefits of the flotation to RM's interests

19.4 The principal benefits obtained by the flotation for RM's interests were the reduction of the overall debt owed to the banks and the ability to use MGN shares as collateral for the private side's borrowing requirements.

19.5 There was one potentially very substantial disadvantage. MGN had been a substantial provider of cash to the private companies and the effect of the flotation should have been to cut off this source of cash, except in the form of dividends. However, for the reasons given, RM's use of the cash flow was in fact going to continue as before.

^a A scheme was arranged involving a dividend payment and a loan to make this payment "more tax efficient".

^b Excluding underwriting commission.

19.6 When referring to the benefits of the flotation, we have referred to that benefit as accruing to RM's interests. By the time of the flotation, control of all the UK companies had passed to RM's family company, HI, and the Maxwell Foundation had merely an economic interest in those companies. However, in earlier years the Maxwell Foundation had enjoyed the complete economic interest in and control of MGN and the other companies the Maxwell Foundation owned and controlled had benefited from the use of MGN's assets and cash flow; as set out in Chapters 1 and 3, the Maxwell Foundation followed RM's instructions and had been used very largely for RM's own advantages^a.

19.7 As described in the previous chapters of this Report, whenever adverse publicity or an impediment to expansion arose from the fact of Liechtenstein control and when there ceased to be any fiscal advantages in Liechtenstein ownership or control, control or ownership from Liechtenstein was removed, albeit that this was done carefully so as to avoid exposing the reality of the previous position.

The reasons for the flotation

19.8 The prospectus set out what was aptly described to us by a member of the Stock Exchange's staff as the conventional reasons for a flotation - the reduction of MGN's debt, the advantage from listing of access to capital markets and the ability to give further incentive to staff by offering share options and employee share schemes.

19.9 At an early stage in the drafting of the section of the prospectus that set out the reasons for the flotation, consideration was given to including a passage on the need to reduce the indebtedness of RM's companies. Such a passage was drafted by Mr Willett who considered that the reason why the company was being floated at that time was that RM wanted to reduce the indebtedness of the private side companies and a flotation was part of the overall programme to reduce the indebtedness of the private side companies^b.

19.10 Mr Willett's perception was largely correct; there were two reasons why the flotation took place when it did and both related to the private side:

- the need to reduce the overall indebtedness of RM's companies;
- the need to have additional collateral available in the form of marketable shares to collateralise the debt incurred or to be incurred by the private side^c.

^a An example of another advantage was that he could claim that where control of a company lay with the Maxwell Foundation he did not control that company; this was used as the reason by Mr Cook for not relaying to Bacon & Woodrow the increase in self-investment in October 1990 (see paragraph 6.23).

^b RM required Mr Willett to take him through parts of the prospectus line by line, particularly those sections where RM had a special interest, including the historical perspective and reasons for transactions. Mr Willett told us RM's attitude to the topics upon which he focused was co-operative and painstaking.

^c As set out in a footnote to paragraph 6.74, KM told us this reason only became apparent in the Spring of 1991.

No mention was made in the prospectus of either of these reasons^a. Technically, the issue was an offer for the sale of new shares and it might be said that it was not a primary function to reduce the debts of the private side. However, that was not the reality. There was given in the prospectus as one of the reasons the reduction in the bank debt of MGN. KM told us that the need of the private side to reduce debt was well known in the market at the time but that the prospectus had been drafted by the professionals involved.

- 19.11 Nothing was said in the prospectus about the financial state of the private side as the majority shareholder in MGN. Samuel Montagu and SBIL did consider the financial position of the private side as material in so far as it related to the issues identified at paragraph 16.23; Samuel Montagu had asked CLD to carry out a review of the private side finances (which we have described) as part of their due diligence procedures and had kept SBIL informed of the results. However, Samuel Montagu did not give consideration as to whether anything should be said in the prospectus about the state of the private side finances. We were told by Samuel Montagu that prior to the flotation of The Telegraph plc in 1992 (which took place with the benefit of the knowledge of what had happened to MGN) disclosure had not been made about the finances of any majority shareholder and the Stock Exchange had not required it. SBIL told us that they did consider whether something should be said, but decided, in the light of the letter from CLD and the fact that the intercompany debt had been eliminated, that nothing need be said.

^a Mr Galloway could not recall why the paragraph drafted by Mr Willett was deleted but thought that it might have been included in an early draft of the prospectus and have reflected a proposal that RMH would sell some of its MGN shares and apply the proceeds in repaying the balance of the private side's debt to MGN. Samuel Montagu told us that a reader of the prospectus taking account of various paragraphs in the accountants' report would have been aware that one of the reasons for the flotation was to reduce private side debts; they accepted it was not spelt out as a reason.