



CW Consulting Limited

THE ECO RESOURCES FUND PCC PLC (IN LIQUIDATION)

INTERIM REPORT OF PROVISIONAL LIQUIDATOR AND DEEMED OFFICIAL
RECEIVER

4 APRIL 2017

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1 Introduction

We make this interim report following from the order on 16 March 2017 by the High Court of Justice in the Isle of Man (“Court”) that the Eco Resources Fund PCC PLC (in liquidation) (herein “Eco” and/or the “Fund”) be wound up.

This report is issued in advance of the scheduled meetings of creditors and contributories on 13 April 2017 in order that those concerned might have a better appreciation of the current situation.

This report sets out our current considered position, the apparent reasons for Eco’s failure and its current financial situation, including information about assets and known creditors.

The Court’s judgement and order pertaining to our appointment can be found using this link - <https://www.judgments.im/content/J1862.htm>.

2 Previous Reports

Our reports as adviser and controller are confidential to the Isle of Man Financial Services Authority (“IOMFSA” and / or “Authority”). However, to assist you and to save costs, we set out below extracts from certain of our reports which the IOMFSA has allowed us to disclose.

3 Background

We reported to IOMFSA in January 2017 on the background to our involvement in the Fund’s affairs as follows:

“We first became involved in the affairs of the Fund as adviser to the Fund appointed by the Authority on 30 June 2016.

We submitted a preliminary report as adviser on 7 July 2016.

In short, we reported that the Fund was at the top of a complex structure, arguably an overly complex structure, the entirety of which had been in financial difficulties for some time.

We concluded that it was desirable, and seemingly in the interests of all concerned, to undertake a restructure, the objectives of which were:

- *to simplify the structure;*
- *to better align the interests of the various parties with apparent financial interests in the underlying assets;*
- *to put in place a structure more suited to holding a longer-term asset; and*
- *to reduce costs and structure risk going forward.*

We discussed this with the Fund’s board and they broadly agreed with our assessment.

Our appointment was upgraded to controller of the Fund and the aim was to try to put in place a new structure, along the lines of our suggestion, by negotiating with all of those who had an apparent financial interest in the underlying assets to see if there was a better way forward.

However, that was not possible for a variety of reasons and having concluded that we could not, as controller, materially improve the situation for the Fund's investors, we reported our findings to the Authority on 4 August 2016, our controller position was then terminated and we were re-appointed as adviser. Control of the Fund passed back to the board on 5 August 2016.

We remained in that adviser position through to 21 December 2016 and we submitted a comprehensive report as adviser dated 22 November 2016.

In that report we explained that the directors had concluded on 3 November 2016 that the Fund could no longer continue by reason of an excess of liabilities over assets."

4 Meeting of Eco Investors – 20 December 2016

Investors will recall that there was a general meeting of Eco investors on 20 December 2016 at which a resolution for Eco's liquidation was put to the vote. The resolution failed because a majority of investors who voted were against liquidation. The failure of the resolution led to the resignation of the then board.

We commented on this meeting in our 17 January 2017 controller report to IOMFSA as follows:

"An extra-ordinary general meeting was called by the Fund's board for 20 December 2016 at which investors were asked to vote on a resolution to wind up the Fund.

There are around 33.7m Eco shares in issue and votes were received from holders of 16.8m of them for the 20 December 2016 meeting, i.e. around 50% of investors voted.

That was enough to make the meeting quorate and there is no suggestion that notice was anything other than properly served. However, we feel that it is nonetheless significant that half of the investors in the Fund did not vote. One of those non-voting investors was Mr. Richardson who informed us that he was "too conflicted to vote".

Out of the 16.8m votes cast, 2.675m were for liquidation (16%) and 14.16m were against liquidation (84%).

Of the 14.16m votes against liquidation, 9.577m were associated with Troy Wiseman's Eco Bamboo Group and 1.41m were associated with Paul Feldman. Those two individuals are associated with SAL, both as controllers and investors. Mr. Richardson is also a SAL investor.

[redacted]

Of the 3.16m ex Wiseman/Feldman votes against, some 2.736m were from one shareholder, a Mauritian based insurance company. We have recently spoken to that investor who explained to us that they had not apparently seen the investor communications nor had they any appreciation of the Fund's financial difficulties. Rather they had approached Mr. Wiseman who had shared a "favourable financial projection" with them. On that basis, they voted against liquidation thinking that a better outcome would be achieved.

It is therefore apparent that the votes cast by and the related actions of Messrs Feldman and Wiseman, two individuals with a vested interest SAL (therefore an arguable vested interest in the Fund not succeeding in any action against SAL) have significantly swayed the liquidation vote.

We believe that this calls into question the legitimacy of the vote outcome as a proxy for the views of the wider investor group.”

5 Attempt to Reconstitute the Fund’s Board

As their last act, the outgoing Fund board called a meeting of the voting shareholder for mid-January 2017 to consider and if thought fit pass resolutions to appoint new directors.

Mr. Wiseman, Mr. Bourbon and Mr. Robinson all indicated that they were willing to stand, however over the weekend before the meeting they all withdrew their willingness to act.

As there were no willing directors, there was no vote on a new board.

6 Functionaries

All of the functionaries of the Fund have resigned.

The directors resigned in December 2016. The custodian resigned in January 2017. The manager and administrator both resigned in February 2017. The Fund’s company secretary resigned in March 2017.

As controller, Mr. Wilson remains in place until his appointment as liquidator is confirmed at the meeting on 13 April 2017.

7 Apparent Reasons for the Fund’s Failure

Whilst we have not as yet made a final determination on the reasons for the Fund’s failure, mainly because there are still some fundamental uncertainties about what exactly has occurred, we have reached some preliminary findings and conclusions.

In our first report as controller in August 2016 we said:

“It is apparent to us that the three principal companies involved, the Fund, ERF and EBIOM have been in financial difficulties for well over a year. They are all, in our considered view, insolvent and most likely have been insolvent for some time. [redacted]

EBIOM’s inability to meet the plantation expenses led to the introduction of the money from SAL from July 2015. That effectively kept things going whilst longer term options were sought. [redacted]

The financial difficulties can, in our view, be directly attributed to the decisions taken early in the life of this structure, in particular to give special redemption terms to the shareholder vehicles linked to Mr. Wiseman which saw them redeem over half their shares in cash. [redacted]

In addition, the financial difficulties were compounded by an apparent under-regard for the longer term financial consequences on the investment strategy of paying that redemption cash out of the structure.

Finally, there is evidence that the later acquisitions of plantations in late 2013 were intended to bulk up the asset value of the Fund such that it would be of a size which would attract more new investors with apparent under-regard for the related risks and cashflow needs of the additional assets.

The result for the majority of those 180 or so people who subscribed cash is that they now have an investment which, if it ever pays them any cash back, will be unlikely to do so until the mid-2020s.

Overall we feel that the investors have been significantly let down [redacted].”

In our November 2017 adviser report, in assessing the reasons for the Fund’s failure, we concluded that:

“the Fund’s financial failure was principally due to:

- a collective failure to objectively manage the plantation assets due to a combination of over reliance on Eco Bamboo Group and Mr Wiseman, to Mr Wiseman’s degree of control over EBIOM and failures to avoid conflicts of interest,*
- an overly complex structure with a catastrophic mismatch between liquidity terms offered to investors versus the liquidity associated with the underlying asset class,*
- restrictions on information flows and their subsequent impact on objective decision making,*
- financial mismanagement, in particular the consequences of the redemptions paid to Eco Bamboo Group.*

These failures were then compounded by Mr Richardson and Mr Wiseman becoming personally invested in SAL and the resultant conflict of interest which that caused them both.”

8 Appointment of Inspector

In December 2016, the Court appointed Mr. Paul Shimmin as inspector to inspect and report on a number of aspects concerning the affairs of the Fund. This appointment followed from an application by the IOMFSA.

Mr. Shimmin has a wide-ranging remit to investigate and report on various areas of concern including those which we have identified.

We understand that Mr. Shimmin’s work is ongoing and we look forward to reading his conclusions in due course.

There may well be an overlap between some of the work that Mr. Shimmin is engaged in and some of the work that we will have to undertake as liquidator. In that regard we will cooperate fully with each other to avoid duplication where possible.

9 SAL Foreclosure

In our January 2017 Controller report we explained that:

“We attended a meeting in London on 18 January 2017 at which Mr. Bourbon, Mr. Wiseman and Mr. Sutton were present. The purpose of the meeting was to try to agree on a way forward for the Fund using our 12 January 2017 email as a starting point.

Mr. Wiseman opened the meeting by saying that he was attending as an investor in the Fund and that he had no remaining executive role in or control over SAL. This was disappointing as we had believed that Mr. Wiseman had control over SAL and it was on that understanding that we agreed to meet. For the avoidance of doubt, we still believe (based on our assessment of his conduct) that Mr. Wiseman is involved with SAL as an investor and as either a controller or manager or influencer.

Mr. Wiseman then informed us that SAL had foreclosed on the plantation companies' (CA IV and SA II) loans and that he had seen stock certificates in the plantation companies in SAL's name.

This was the first that we heard that the plantation companies had been foreclosed on. Mr. Bourbon, Mr. Sutton and Mr. Richardson confirmed that it was news to them as well.

Mr. Wiseman referred to the letters sent by Mr. John C. Lessel of Little Rock Arkansas, acting as lawyer for SAL, who wrote to EBIOM on 19 October 2016. [redacted]

Everyone concerned acknowledged having seen those letters but they were considered a threat not a confirmation that SAL had foreclosed.

We asked Mr. Wiseman to provide evidence that the foreclosure had occurred, details as to who had done what, who knew what and when this had all happened. He agreed to provide these details and Mr. Sutton has been following that up under our supervision.

Having established that the Fund may well have no remaining interest in the plantation companies, [redacted] we also drew the situation to the attention of the [IOMFSA].”

10 Uncertainty as to SAL Foreclosure – What (if anything) have they foreclosed on?

In our January 2017 Controller report we explained that:

“During our meeting with Mr. Wiseman, we questioned how SAL could now own SA II and CA IV as we had understood that the plantation companies had charged their assets but **not the shares in them** which were owned by EBIOM. (our emphasis)

Mr. Wiseman immediately drew our attention to clause 9 (j) of the loan document between SAL and the plantation companies as justification for what had occurred.

Upon return we reviewed the loan agreements signed between SAL and SA II/CA IV.

We are not US lawyers and the following view on these documents is not given with the benefit of legal advice. However, we have noted an apparent discrepancy that may be relevant as follows:

Section 9 (j) pertaining to defaults states that:

“Any certificate representing ownership interests **in** [CA IV & SA II] which are acknowledged as collateral for this Security Agreement may be cancelled without being surrendered and reissued in the name of [SAL] without further authorization or action by [CA IV & SA II]”

(our emphasis)

We reviewed the Security Agreement collateral schedule and found that included in the list of property securing the debts was:

“The ownership interests of [CA IV & SA II] whether represented by certificate or not”

(our emphasis)

Legal advice on this is required however our preliminary conclusion is that there is a subtle yet fundamental difference to the wording between the loan document and the collateral schedule of the security document on this point which may well be crucial.

The collateral schedule of security document lists the assets of SA II and CA IV that are to be subject of the security (as would be expected in a security document) and we believe that the reference to “ownership interests of” the borrowers is arguably consistent with what might reasonably be contained in a collateral schedule for a loan. i.e. the assets listed are those owned by the intended borrower.

However, the term in the loan document which references “ownership interests in” the borrower is not what would reasonably be expected, certainly without the consent of the owners themselves who hold those interests. We don’t believe that EBIOM or ERF ever gave permission to the plantation companies to include their shares as security for the SAL debts.

This could prove to be a pivotal point if the Fund is to retain or regain any interest in these plantations going forward.”

In the period since the meeting with Mr. Wiseman in January, no information has been forthcoming from him or SAL to demonstrate or explain what has happened to the plantations or EBIOM’s shares in the plantation companies.

It is not therefore possible to say at this time whether or not the Fund has any remaining interest in them.


However, on a number of occasions since then, Mr. Wiseman has indicated that SAL may be willing to sell the Fund its plantations back for \$10m. Mr. Wiseman knows all too well that the Fund does not have \$10m, nor will anyone be likely to invest or lend \$10m to the Fund in current circumstances.

As a result, and at a very early stage in the Fund’s liquidation, it is likely that as liquidator we will formally ask Mr. Wiseman to provide evidence in order that we might better explain to you all what has happened.

11 Financial Situation

Currently the Fund has the equivalent of £12,555.32 in cash held in various currencies (using exchange rates at 23 February 2017) based on the most recent information that we have from the administrator.

The Fund’s other asset comprises 100% of the issued participating shares in ERF Limited. In turn ERF Limited holds 100% of the issued shares in EBIOM and is owed c\$51m by that company by way of a secured loan and accrued interest.



ERF's security for its loan is over shares that EBIOM holds/held in the two Delaware registered bamboo plantation owning companies. These companies may or may not now be owned by EBIOM.

As explained earlier, according to Mr. Wiseman, the plantation companies are now owned by SAL but we have seen no proof of that. Alternatively, the plantation companies may now no longer own the plantations if they have been repossessed by SAL. However, we have seen no proof of that either.

Clearly the exact situation will have to be determined in the course of the liquidation.

In terms of liquid assets, EBIOM has, we believe, around US\$1k in the bank and ERF has, we believe, around £7k in the bank.

There are at least 10 different Fund creditors including the administrator, the manager, the auditor, the custodian, the Fund's lawyers, the IOMFSA and the promoter.

In summary, the Fund's recorded aggregate liabilities are:

£1,565,657.14

€137,484.50

\$1,386,928.65

i.e. around £2.8m in total at current exchange rates.

A full list of creditors will be made available at the creditors meeting on 13 April 2017.

The majority of these debts appear to relate to 2016, however there are debts dating back to April 2014.


12 Conclusion

There are insufficient remaining liquid funds in the structure to pay for the costs of a liquidation and there are more than ample grounds to doubt that there will ever be any recovery from the bamboo plantations.

As a result, there will almost inevitably be a cost to the public purse of the Isle of Man in order to bring the affairs of the Fund and its underlying companies to an orderly conclusion.

Investors should appreciate that whilst the Isle of Man public purse can and does cover reasonable liquidation costs including costs to investigate and if necessary take action against those who may be accountable for the failure of the Fund, it cannot be expected to finance the costs of asset recovery, particularly legal fees.

If investors would like asset recovery efforts to be pursued, notably possible legal action in Nicaragua, South Africa or the USA in the interests of securing a return, then they should contact the liquidator to discuss any interest that they may have in providing non-recourse liquidation finance to support the costs of such efforts.



Whilst we remain open to the possibility that a credible last-ditch option might be presented to the Fund, in current circumstances, we think that it is unlikely that there will be any return on investment for investors or any dividend for creditors.