

**CHFP025**

**COMPANIES FORM No. 155(6)a**

**Declaration in relation to  
assistance for the acquisition  
of shares**

# 155(6)a

Please do not  
write in this  
margin

Pursuant to section 155(6) of the Companies Act 1985

**Please complete  
legibly, preferably  
in black type, or  
bold block lettering**

To the Registrar of Companies  
(Address overleaf - Note 5)

For official use

Company number

**T T T**

00038397

**Note**  
Please read the notes  
on page 3 before  
completing this form.

Name of company

\* Yates's Wine Lodges Limited

\* insert full name  
of company

X/We 0 See Rider 1

- Ø insert name(s) and address(es) of all the directors

† delete as appropriate

~~The sole director~~ all the directors of the above company do solemnly and sincerely declare that:

The business of the company is:

§ delete whichever  
is inappropriate

~~any bank or person authorised under section 86A(1)(b) of the Companies Act 1985~~

(c) something other than the above§

The company is proposing to give financial assistance in connection with the acquisition of shares in the

[company] [company's holding company Yates Group Limited (Company number 478794)

(the "Target") limitedly

The assistance is for the purpose of ~~that acquisition~~ [reducing or discharging a liability incurred for the purpose of that acquisition].†

The number and class of the shares acquired or to be acquired is: See Rider 2

Presentor's name address and  
reference (if any) :

CMS Cameron McKenna  
Mitre House  
160 Aldersgate Street  
London, EC1A 4DD  
DX 135316 BARBICAN 2  
21034754  
107996.00009

For official Use  
General Section

Post room



**LD7**  
**COMPANIES HOUSE**

0432  
28/10/04

The assistance is to be given to: (note 2) Thorium plc (Company Number 05141092)  
(the "Acquirer") c/- Peter Yates House, Manchester Road, Bolton BL3 2PY

Please do not  
write in this  
margin

Please complete  
legibly, preferably  
in black type, or  
bold block  
lettering

The assistance will take the form of:

See Rider 3

The person who [has acquired] ~~will acquire~~† the shares is:

† delete as  
appropriate

Thorium plc (Company Number 05141092)

The principal terms on which the assistance will be given are:

See Rider 4

The amount of cash to be transferred to the person assisted is £ See Rider 5

The value of any asset to be transferred to the person assisted is £ Nil

The date on which the assistance is to be given is See Rider 6

\* delete either (a) or (b) as appropriate

**RIDER 1**

**Yates's Wine Lodges Limited**  
**(Company No. 00038397)**

**Form 155(6)(a)**

Stevan Lloyd Fowler  
The Tower House  
Kirkless Hall Clifton  
Brighouse  
Yorkshire HD6 4HD

Mark Vincent Jones  
The Hollies  
Hawley Lane  
Halebarns  
Altincham  
Cheshire WA15 0DR

**RIDER 2**

**Yates's Wine Lodges Limited**  
**(Company No. 00038397)**

**Form 155(6)(a)**

The number and class of the shares acquired is:

67,058,999 ordinary shares

## RIDER 3

**Yates's Wine Lodges Limited**  
**(Company No. 00038397)**

### Form 155(6)(a)

The background to the financial assistance is as follows

- 1.1 The Acquirer has acquired the entire issued share capital of the Acquirer (the "**Acquisition**").
- 1.2 The Acquirer has financed the purchase of the shares by means of funds provided under, inter alia:
  - 1.2.1 a senior credit agreement (the "**Senior Credit Agreement**") dated 9 June 2004 between, inter alia, (1) Lanthanum Limited (the "**Parent**") (2) the Acquirer (3) The Royal Bank of Scotland plc and Barclays Bank PLC as arrangers, (4) the persons listed in Schedule 1 thereto as original lenders, (5) The Royal Bank of Scotland plc and Barclays Bank PLC as ancillary lender, (6) Barclays Bank PLC as notes guarantor, and (7) Barclays Bank PLC as facility agent;
  - 1.2.2 a mezzanine credit agreement (the "**Mezzanine Credit Agreement**") dated 9 June 2004 between, inter alia, (1) the Parent (2) the Acquirer (3) The Royal Bank of Scotland plc and Barclays Bank PLC as arrangers, (4) the persons listed in Schedule 1 thereto as original lenders, and (5) The Royal Bank of Scotland plc as facility agent.
- 1.3 The following facility has been provided under the Senior Credit Agreement in part in order to assist the Acquisition:
  - 1.3.1 an A Term Loan Facility in the amount of £56,000,000 (to be provided by way of cash advances and a guarantee of loan notes).
- 1.4 The following facility has been provided under the Mezzanine Credit Agreement in order to assist the Acquisition:
  - 1.4.1 a term loan facility of £20,000,000.
- 1.5 The Company has acceded as a borrower and guarantor under the Senior Credit Agreement.
- 1.6 Under the terms of the Senior Credit Agreement the Company has agreed, amongst other things:
  - 1.6.1 (subject to paragraph 1.7 below), to guarantee to each Finance Party (as defined in the Senior Credit Agreement and hereinafter referred to as the "**Senior Finance Parties**" and each a "**Senior Finance Parties**") the due and punctual performance by each Obligor (as defined in the Senior Credit Agreement and including the Parent and the Acquirer and hereinafter referred to as the "**Senior Obligors**" and each a "**Senior Obligor**") of all of its obligations under the Finance Documents (as

defined in the Senior Credit Agreement and hereinafter referred to as the “**Senior Finance Documents**” and each a “**Senior Finance Document**”);

- 1.6.2 to indemnify each Senior Finance Party immediately on demand against any loss or liability suffered by that Senior Finance Party if any payment obligation expressed to be guaranteed by it is or becomes unenforceable, invalid or illegal; the amount of the loss or liability under this indemnity will be equal to the amount the Senior Finance Party would otherwise have been entitled to recover; and
  - 1.6.3 that its guarantee and indemnity obligations will not be affected by (among other things) any act, omission, matter or thing which would otherwise reduce, release or prejudice any of such obligations or prejudice or dismiss such obligations.
- 1.7 The guarantee given by the Company under the Senior Credit Agreement currently extends only to the obligations of:
- 1.7.1 the Acquirer as Borrower of the Refinancing Loans (as defined in the Senior Credit Agreement and meaning the financial indebtedness of the members of the Company and its subsidiaries outstanding under the £85,000,000 revolving credit facility dated 20 March, 2003 between, amongst others, The Royal Bank of Scotland plc and the Target and any break funding costs, redemption premia and other costs payable in connection with that refinancing (including any hedging termination costs);
  - 1.7.2 the Target as Borrower of the Revolving Loan Facility and the Ancillary Facility only (each term as defined in the Senior Credit Agreement); and
  - 1.7.3 the Target as counterparty under the Hedging Documents (as defined in the Senior Credit Agreement).
- 1.8 In addition the Company has entered into a debenture (the “**Debenture**”) dated 10 September 2004 between, inter alia, (1) the Company, the Target and certain other subsidiaries of the Target and (2) Barclays Bank PLC as security agent. Under the terms of the Debenture the Company, amongst other things:
- 1.8.1 charges all of its property, assets and undertaking by way of fixed and floating charge in favour of the Security Agent (as defined therein) as security for certain obligations under the Senior Finance Documents; and
  - 1.8.2 undertakes to, at its own expense, execute and do all such assurances, acts and things as the Security Agent may reasonably require for perfecting or protecting the security intended to be created by the Debenture over the assets thereby.
- 1.9 The Secured Liabilities (as defined in the Debenture) currently only extend to the obligations of:

- 1.9.1 the Acquirer as Borrower of the Refinancing Loans (as defined in the Senior Credit Agreement and meaning the financial indebtedness of the members of the Company and its subsidiaries outstanding under the £85,000,000 revolving credit facility dated 20 March, 2003 between, amongst others, The Royal Bank of Scotland plc and the Target and any break funding costs, redemption premia and other costs payable in connection with that refinancing (including any hedging termination costs);
  - 1.9.2 the Target as Borrower of the Revolving Loan Facility and the Ancillary Facility only (each term as defined in the Senior Credit Agreement); and
  - 1.9.3 the Target as counterparty under the Hedging Documents (as defined in the Senior Credit Agreement).
- 1.10 It is a condition of the Senior Credit Agreement that the Company enter into certain security and other documents.
- 1.11 The Company will enter into the following documents:
- 1.11.1 an accession agreement (the “**Mezzanine Accession Agreement**”) to the Mezzanine Credit Agreement between inter alia, (1) the Company (2) the Parent and (3) The Royal Bank of Scotland plc;
  - 1.11.2 an amendment agreement (the “**Amendment Agreement**”) to the Senior Credit Agreement between, inter alia, (1) the Company (2) the Parent, and (3) Barclays Bank PLC as senior agent;
  - 1.11.3 a supplemental debenture (the “**Supplemental Debenture**”) to the Debenture between (1) the Target, (2) the Company and each of the other parties to the Debenture and (3) Barclays Bank PLC as security agent;
  - 1.11.4 a deed of accession between the Company and Barclays Bank PLC as security agent (the “**Priority Deed of Accession**”) under which the Company accedes to a priority agreement dated 9 June 2004 (the “**Priority Agreement**”) between (1) Holmium Limited (2) the Parent (3) the Company (4) the persons listed in Schedule 1 thereto as obligors (5) the persons listed in Schedule 2 thereto as senior creditors (6) the persons listed in Schedule 3 thereto as mezzanine creditors and (7) The Royal Bank of Scotland plc as hedging bank (8) The Royal Bank of Scotland plc as mezzanine agent and (9) Barclays Bank PLC as senior agent and security agent; and
  - 1.11.5 an intra group funding agreement (the “**Intra Group Funding Agreement**”) between inter alia (1) the Target and certain of its subsidiaries as lenders (including the Company) and (2) the Parent and the Acquirer as borrowers.
- 1.12 It is also proposed that the Company pay interim dividends to the Target and that the Target pay interim dividends to the Acquirer. It is intended that in order to assist the Company and the Target to pay dividends, the Company, the Target and certain other subsidiaries of the Target (the “**Subsidiaries**”) will enter into a loan



agreement (the “**Dividend Loan Agreement**”) under which, inter alia, the Acquirer will provide an uncommitted £130,000,000 facility to the Company, the Target and the Subsidiaries in order to assist (i) the Target to pay dividends to the Acquirer (ii) the Target to refinance part of the Target’s existing indebtedness with the Acquirer and (iii) the Company and the Subsidiaries to pay dividends to the Target.

- 1.13 The financial assistance will take the form of the Company entering into:
  - 1.13.1 the Mezzanine Accession Agreement;
  - 1.13.2 the Amendment Agreement;
  - 1.13.3 the Supplemental Debenture;
  - 1.13.4 the Priority Deed of Accession; and
  - 1.13.5 the Intra Group Funding Agreement.
- 1.14 If the Company enters into the Dividend Loan Agreement, the financial assistance will also take the form of the Company entering into the Dividend Loan Agreement.

#### RIDER 4

Yates's Wine Lodges Limited  
(Company No. 00038397)

#### Form 155(6)(a)

The principal terms on which the financial assistance will be given are contained in:

- 2.1 the Mezzanine Accession Agreement. The principal terms of the Mezzanine Accession Agreement are that the Company will accede to the Mezzanine Credit Agreement and thereby, amongst other things:
  - 2.1.1 guarantee to each Finance Party (as defined in the Mezzanine Credit Agreement and hereinafter referred to as the "**Mezzanine Finance Parties**") and each a "**Mezzanine Finance Parties**") the due and punctual performance by each Obligor (as defined in the Mezzanine Credit Agreement and including the Parent and the Acquirer and hereinafter referred to as the "**Mezzanine Obligors**") and each a "**Mezzanine Obligor**") of all of its obligations under the Finance Documents (as defined in the Mezzanine Credit Agreement and hereinafter referred to as the "**Mezzanine Finance Documents**" and each a "**Mezzanine Finance Document**");
  - 2.1.2 indemnifies each Mezzanine Finance Party immediately on demand against any loss or liability suffered by that Mezzanine Finance Party if any payment obligation expressed to be guaranteed by it is or becomes unenforceable, invalid or illegal; the amount of the loss or liability under this indemnity will be equal to the amount the Mezzanine Finance Party would otherwise have been entitled to recover; and
  - 2.1.3 agrees that its guarantee and indemnity obligations will not be affected by (among other things) any act, omission, matter or thing which would otherwise reduce, release or prejudice any of such obligations or prejudice or dismiss such obligations.
- 2.2 the Amendment Agreement. The principal terms of the Amendment Agreement are that the Senior Credit Agreement will be amended such that the limitations on the Company's guarantee and indemnity obligations referred to in paragraph 1.7 are removed such that the Company's obligations under the Senior Credit Agreement will extend to all obligations of the Senior Obligors under the Senior Finance Documents including any monies used to acquire shares in the Target. The principal terms of the Senior Credit Agreement have been outlined at paragraph 1.6 above;
- 2.3 the Supplemental Debenture. The principal terms of the Supplemental Debenture are that the obligations of the Company currently secured under the Debenture are amended such they are extended to include all obligations of the Senior Obligors under the Senior Finance Documents including any monies used to acquire shares in the Target. The accession of the Company to the Mezzanine Credit Agreement pursuant to the Mezzanine Accession Agreement also means the obligations of the Company secured under the Debenture extend to all the

obligations of the Mezzanine Obligor under the Mezzanine Finance Documents. The principal terms of the Debenture have been outlined at paragraph 1.8 above.

- 2.4 the Priority Deed of Accession. The principal terms of the Priority Deed of Accession are that the Company will accede to the Priority Agreement. The Priority Agreement sets out the priority of security between the parties thereto and the Subsidiary acknowledges the priority of security between the parties and the subordination of their respective rights as creditors. The Company, as an obligor, covenants, inter alia, that it:
- 2.4.1 will not make any payment or receive or retain payment of or in respect of, or purchase, redeem or acquire, any of the Junior Debt (as defined therein) in cash or in kind except in accordance with the terms of the Priority Agreement;
  - 2.4.2 will not discharge any Junior Debt by set-off, any right of combination of accounts or otherwise;
  - 2.4.3 will not create or permit to subsist any security interest over any of its assets for any of the Junior Debt except in accordance with the terms of the Priority Agreement;
  - 2.4.4 will not give any financial support to any person for or in connection with the Junior Debt except in accordance with the terms of the Priority Agreement;
  - 2.4.5 will not allow any Junior Debt to be evidenced by a negotiable instrument;
  - 2.4.6 will not take or omit to take any action whereby the ranking and/or subordination of the Junior Debt provided for in this Agreement may be impaired;
  - 2.4.7 shall indemnify each Hedging Bank and Junior Creditor (as defined therein) for the amount of any Turnover Receipt (as defined therein) paid by that Hedging Bank or Junior Creditor to the Security Agent and such third party costs and expenses incurred by it, and agrees that the Hedging Debt or the Junior Debt (as defined therein and as appropriate) will not be deemed to have been reduced or discharged in any way or to any extent by the receipt or recovery of the relevant Turnover Receipt; and
  - 2.4.8 will give a guarantee to each Hedging Bank on the same terms as contained in the Senior Credit Agreement.
- 2.5 the Intra Group Funding Agreement. The principal terms of the Intra Group Funding Agreement are that the Company agrees to lend moneys (the "IGFA Facilities") to the Parent and the Acquirer (the "IGFA Borrowers") on the terms and conditions thereof, to enable the IGFA Borrowers to meet their debt service requirements under the Senior Credit Agreement and the Mezzanine Credit Agreement as they fall due. The principal terms under which such IGFA Facilities are made available are as follows:

- 2.5.1 the IGFA Facilities shall be applied by the IGFA Borrowers in or towards the discharge or satisfaction of interest, principal, costs, fees, expenses, charges and other sums falling due under the Senior Credit Agreement and Mezzanine Credit Agreement (together referred to as the "Documents");
  - 2.5.2 the IGFA Facilities will be available to the IGFA Borrowers so long as they have any outstanding obligations in respect of the facilities granted pursuant to the Documents or any refinancings thereof;
  - 2.5.3 the IGFA Facilities may be redrawn once repaid or otherwise discharged;
  - 2.5.4 the IGFA Facilities shall bear interest at a rate to be agreed between the relevant IGFA Borrower and the relevant lender from time to time;
  - 2.5.5 the IGFA Facilities shall remain outstanding on inter-company loan account until repaid;
  - 2.5.6 no lender shall be obliged to make any amount available if an Insolvency Event (as defined in the Intra Group Funding Agreement) has occurred;
  - 2.5.7 any IGFA Facilities advanced, together with any interest thereon shall be repayable on demand but such demand shall not be made unless demand has been made by the Senior Finance Parties or the Mezzanine Finance Parties under the Documents; and
  - 2.5.8 there is a right of set-off between the lenders and the Borrowers in respect of inter-company indebtedness.
- 2.6 The principal terms of the Dividend Loan Agreement (if entered into) will be that:
- 2.6.1 the Acquirer will make an uncommitted, on demand facility of an amount up to £130,000,000 available to the Company, the Target and the Subsidiaries in order to assist (i) the Target to pay dividends to the Acquirer (ii) the Target to refinance part of the Target's existing indebtedness with the Acquirer and (iii) the Company and the Subsidiaries to pay dividends to the Target;
  - 2.6.2 interest will be payable at a rate to be agreed between the parties but at a rate approximately equivalent to the blended interest rate payable by the Acquirer under the Senior Credit Agreement and the Mezzanine Credit Agreement;
  - 2.6.3 in the absence of a demand from the Acquirer, the Company, the Target and the Subsidiaries will be required to make interest and principal repayments to the Acquirer at the same times and on the same terms as the Acquirer is required to make interest and principal repayments under the Senior Credit Agreement and the Mezzanine Credit Agreement; and

- 2.6.4 each of the Company's rights and obligations under the Dividend Loan Agreement are, at all times, subject to the terms of the Priority Agreement and the terms of the Priority Agreement will prevail over the terms of the Dividend Loan Agreement in the case of any inconsistency.

**RIDER 5**

**Yates's Wine Lodges Limited**  
**(Company No. 00038397)**

**Form 155(6)(a)**

The amount of cash to be transferred to the person assisted is:

Any amounts lent under the Intra Group Funding Agreement.

Any amounts paid by the Company to the Acquirer under the Dividend Loan Agreement.

**RIDER 6**

**Yates's Wine Lodges Limited**  
**(Company No. 00038397)**

**Form 155(6)(a)**

The date on which the financial assistance is to be given is:

within 8 weeks from the date hereof.



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United Kingdom

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**Private & confidential**

Yate's Wine Lodges Limited  
Peter Yates House  
Manchester Road  
BOLTON  
BL3 2PY

Our ref dai/5

Contact Dave Irvine  
0161 2464166

18 October 2004

Dear Sirs

**Auditors' report to the directors of Yate's Wine Lodges Limited pursuant to Section 156(4) of the Companies Act 1985**

We have examined the attached statutory declaration of the directors dated 15 October 2004 in connection with the proposal that the company should give financial assistance for the purchase of the entire issued ordinary share capital of Yates Group Limited.

This report is made solely to the company's directors as a body in accordance with section 156(4) of the Companies Act 1985. Our work has been undertaken so that we as the company's auditors might state to the company's directors those matters we are required to state to them in a report under section 156(4) of that Act and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the company and the company's directors as a body for our work under section 156(4) of that Act or for this report.

We have enquired into the state of the company's affairs in order to review the bases for the statutory declaration.

We are not aware of anything to indicate that the opinion expressed by the directors in their declaration as to any of the matters mentioned in Section 156(2) of the Companies Act 1985 is unreasonable in all the circumstances.

Yours faithfully

*KPMG LLP*

KPMG LLP



KPMG LLP,  
KPMG LLP, a UK limited liability partnership,  
is a member of KPMG International, a Swiss  
cooperative

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