

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

Company number

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
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192753

* Ewen & Company Limited

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

LD4 COMPANIES HOUSE

The assistance is to be given to: (note 2) Whyte and Mackay Group Limited (Company Number SC221954) the registered office of which is at Dalmore House, 310 St Vincent Street Glasgow, G2 5RG and The Governor and Company of the Bank of Scotland of The Mound, Edinburgh EH2 2EL.

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:

Please see Annexure A attached hereto.

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

† delete as
appropriate

Whyte and Mackay Group Limited (Company Number SC 221954)

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

Please see annexure B attached hereto.

The amount of cash to be transferred to the person assisted is £ Up to £200,000,000

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 Within 8 weeks of the date hereof

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

~~X~~We have formed the opinion, as regards the company's initial situation immediately following the date on which the assistance is proposed to be given, that there will be no ground on which it could then be found to be unable to pay its debts. (note 3)

(a) ~~¶~~We have formed the opinion that the company will be able to pay its debts as they fall due during the year immediately following that date]* (note 3)

(b) XX
XX
XX (note 3)

And ~~X~~we make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

Declared at

GLASGOW

Declarants to sign below

J. H. Hanlon

ON BEHALF OF HAY & MARLEED LTD

Day Month Year
on 31/01/2000

before me

A Commissioner for Oaths or Notary Public or Justice of the Peace or a Solicitor having the powers conferred on a Commissioner for Oaths.

J. A. A. A.

ON BEHALF OF DALMORE WHITE
2 MACKAY LTD

NOTES

- 1 For the meaning of "a person incurring a liability" and "reducing or discharging a liability" see section 152(3) of the Companies Act 1985.
- 2 Insert full name(s) and address(es) of the person(s) to whom assistance is to be given; if a recipient is a company the registered office address should be shown.
- 3 Contingent and prospective liabilities of the company are to be taken into account - see section 156(3) of the Companies Act 1985.
- 4 The auditors report required by section 156(4) of the Companies Act 1985 must be annexed to this form.
- 5 The address for companies registered in England and Wales or Wales is:-

The Registrar of Companies
Companies House
Crown Way
Cardiff
CF14 3UZ

or, for companies registered in Scotland:-

The Registrar of Companies
37 Castle Terrace
Edinburgh
EH1 2EB

STRICTLY PRIVATE AND CONFIDENTIAL

The Directors
Ewen & Company Limited
6 Laurence Pountney Hill
LONDON
EC4R 0BL

31 January 2005

Dear Sirs

Auditors' report to the directors of Ewen & Company Limited pursuant to Section 156(4) of the Companies Act 1985

We have examined the attached statutory declaration of the directors of Ewen & Company Limited (the "Company") dated 31 January 2005 that the Company is proposing to give financial assistance in connection with the refinancing of debt incurred for the purpose of the acquisition of shares in its intermediate parent, Whyte and Mackay Limited, and for reducing or discharging liabilities incurred for the purposes of that acquisition. This report including the opinion, has been prepared for and only for the Company and the Company's directors in accordance with Section 156 of the Companies Act 1985 and for no other purpose. We do not, in giving the opinion set out below, accept or assume responsibility for any other purpose or to any other person to whom this report is shown or into whose hands it may come save where expressly agreed by our prior consent in writing.

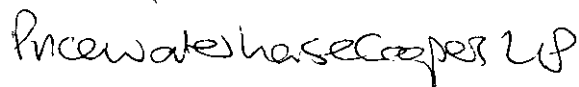
Basis of opinion

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

Opinion

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



PricewaterhouseCoopers LLP
Chartered Accountants and Registered Auditors

Ewen & Company Limited
Company number: 192753
(the "Company")
Annexure A to Form 155(6)a

Definitions

In this statutory declaration (including each Annexure) the following expressions shall have the following meanings:

"Ancillary Rights" means the benefit of all covenants, leases, tenancies, agreements, licences, rights, conditions or encumbrances relating to the Mortgaged Properties and all monies paid or payable thereunder;

"Bank" means The Governor and Company of the Bank of Scotland as agent, arranger and security trustee for the Finance Parties;

"Borrowers" means Whyte and Mackay Group Limited and Whyte and Mackay Limited and **"Borrower"** means any one of them;

"Debenture" means the debenture in the agreed form given by the Company in favour of the Bank;

"Finance Documents" means the Senior Facilities Agreement, the Intercreditor and Security Trust Deed, the Debentures, the Floating Charges, the Fixed Charges and Assignments, the Standard Securities, the Stock Pledge, the Invoice Discounting Documents, the Asset Finance Documents, the Hedging Agreement, the Working Capital Agreement and any other document designated as a "Finance Document" by the Bank acting as agent for the Finance Parties and the Company;

"Finance Party" means the Agent, the Arranger, the Security Trustee, a Lender, the Hedge Counterparty, the Working Capital Bank, the Invoice Discounting Facility Provider or the Asset Finance Facility Provider (each such term as defined in the Senior Facilities Agreement) (together the **"Finance Parties"**);

"Fixed Charge Assets" means any Security Asset which for the time being is the subject of a mortgage, fixed charge or assignment created under or pursuant to the Debenture;

"Floating Charge Asset" means any Security Asset which for the time being is the subject of the floating charge created under the Debenture but if it is also a Fixed Charge Asset, only as regards such floating charge;

"Hedging Agreement" means any master agreement, confirmation, schedule or other agreement entered into or to be entered into by a Borrower and the Hedge Counterparty for the purpose of hedging interest rate liabilities in relation to the Senior Facilities Agreement;

"Hedge Counterparty" means HBOS Treasury Services plc (company number 02692890);

"Indemnified Events" means all actions, suits, proceedings, claims, demands, liabilities, costs, expenses, losses, damages and charges whatsoever incurred or

suffered by the Bank (as Working Capital Bank) (except those arising as a result of the gross negligence or wilful misconduct of the Bank (as Working Capital Bank) which may occur in relation to or arising out of any utilisations of the Working Capital Facility or other sums made available under the Working Capital Agreement.

"Insurances" means all policies or contracts of insurance or assurance now or hereafter effected by the Company or on its behalf or in which it may have an interest;

"Intercreditor and Security Trust Deed" means the intercreditor and security trust deed in the agreed form made between (among others) the Borrower, the Company and the Bank;

"Intellectual Property Rights" means all know-how, patents (including supplementary protection certificates), patent applications, trade marks, immunity trade marks, service marks, trade names, brand names, business names, registered and unregistered designs, database rights, copyright, trade secrets, confidential information and knowhow and all other industrial and intellectual property rights and any interests (including by way of licence) in any of the foregoing (in each case wheresoever situated and whether registered or not) and including all applications for the same and all rights and causes of action in respect of infringement, past, present and future, of any of the foregoing;

"Intra-Group Loan Agreement" means an intercompany loan agreement to be made between, amongst others, the Company and the Borrowers;

"Mortgaged Properties" means all freehold or leasehold properties from time to time forming part of the Security Assets and includes the Specified Properties;

"Secured Obligations" means all or any monies, liabilities and obligations, whether actual or contingent and whether owed jointly or severally or as principal debtor, guarantor, surety or otherwise, which are now or may at any time hereafter (whether before or at any time after demand) be or become due in any manner by the Company to the Finance Parties under the Senior Facilities Agreement and the other Finance Documents, and all or any monies, liabilities and obligations due by the Company under the Debenture;

"Security Assets" means all or any part of or interest in the undertaking, property, rights and assets of the Company which now or at any time after the date of the Debenture are or are expressed to be the subject of any Security Interest created or purported to be created by or pursuant to the Debenture;

"Security Interest" means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect;

"Security Trustee" means the Bank acting in its capacity as security trustee to the Finance Parties;

"Senior Facilities Agreement" means a senior facilities agreement to be made between (amongst others) the Borrowers, certain of the subsidiaries of Whyte and Mackay Group Limited (including the Company) listed therein as obligors, the Bank as Lender, Arranger, Agent, Working Capital Bank, Security Trustee and Account Bank (all as defined therein), the financial institutions listed therein, the Bank using the trading name Bank of Scotland Cashflow Finance, the Bank using the trading name Bank of Scotland Asset Finance and the Hedge Counterparty;

"Specified Insurances" means the Insurances specified in Part 1 of Schedule 2 of the Debenture;

"Specified Intellectual Property Rights" means the Intellectual Property Rights specified in Schedule 3 of the Debenture;

"Specified Properties" means the freehold or leasehold properties specified in Part 1 of Schedule 1 of the Debenture.

"Working Capital Limit" means £25,000,000.

"Working Capital Sub-Limit" means £10,000,000.

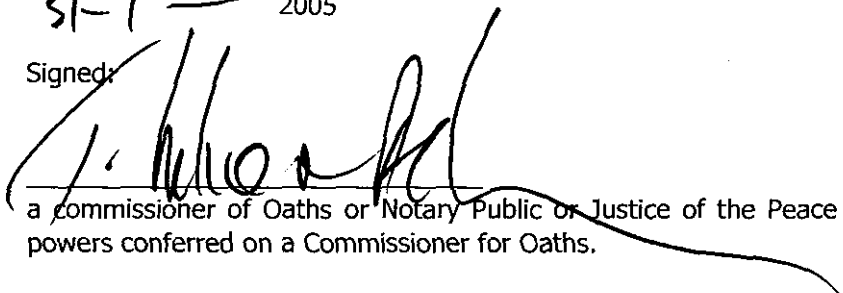
The assistance will take the form of the Company entering into the following documents:

- 1 the Debenture;
- 2 the Intercreditor and Security Trust Deed;
- 3 the Intra-Group Loan Agreement; and
- 4 the Senior Facilities Agreement.

This is Annexure A referred to in Form 155(6)a declared by the directors of the Company on

31-1-2005

Signed:


a commissioner of Oaths or Notary Public or Justice of the Peace or a Solicitor having the powers conferred on a Commissioner for Oaths.

Ewen & Company Limited
Company number: 192753
(the "Company")
Annexure B to Form 155(6)a

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

- 1 The Debenture under which as security for the payment and discharge of the Secured Obligations, the Company, with full title guarantee, and in favour of the Security Trustee:
 - 1.1 (a) charges by way of first legal mortgage, all estates and interests in the Specified Properties and all other freehold or leasehold properties now or hereafter belonging to it together with the premises and the fixtures on and in them, and the Ancillary Rights pertaining to them;
(b) charges by way of first legal charge (to the extent not effectively mortgaged under 1.1(a) above, or any other present or future mortgage in favour of the Security Trustee), all estates and interests in all freehold or leasehold properties now or hereafter belonging to it together with the premises and the fixtures and fittings on and in them and the Ancillary Rights pertaining to them;
 - 1.2 charges by way of first fixed charge, all plant, machinery and other chattels now or hereafter owned by it, and its interest in all plant, machinery and other chattels held by it under any lease, licence, hire or rental contract or other arrangement (excluding any forming part of its stock in trade or work in progress) together with the benefit of all hiring, leasing or rental contracts in respect of any such plant, machinery or chattels hired, leased or rented by it to any other person, and any guarantees, indemnities and Security Interests for the performance of such person's obligations now or hereafter held or enjoyed by it in relation thereto;
 - 1.3 charges by way of first fixed charge all rental income together with the benefit of all guarantees, indemnities, Security Interests and other rights of any nature now or at any future date held or enjoyed by it in relation thereto;
 - 1.4 charges by way of first fixed charge, the Specified Intellectual Property Rights, and all other Intellectual Property Rights now or at any future date owned by it (solely or with others), and its interest in all Intellectual Property Rights now or hereafter held or used by it (solely or with others) under licence, sub licence, franchise or otherwise in any way together with the benefit of all licences, sub licences, franchises and other agreements or arrangements of any nature entered into by it in relation to the use by it or third parties of such Intellectual Property Rights;
 - 1.5 charges by way of first fixed charge:
 - (a) the benefit of all statutory or regulatory licences, permissions, consents or authorisations held by it in connection with its business or the use of any Security Asset and any right to payment of compensation thereunder;
 - (b) all sums, realised or recovered by any liquidator or administrator of the Company pursuant to Part VI of the Insolvency Act 1986;
 - (c) its goodwill; and
 - (d) its uncalled capital;

- 1.6 assigns absolutely by way of security, the benefit of and its whole present and future rights and claims under or in respect of, the Specified Insurances and all other Insurances including without limitation, all rights to submit, negotiate and settle claims, and all monies now or hereafter payable thereunder, including return of premiums;
- 1.7 assigns absolutely by way of security, the benefit of and its whole present and future rights under the Hedging Agreement(s);
- 1.8 charges by way of first floating charge, its whole undertaking, property, rights and assets, present and future, (including, without limitation, any immoveable property of the Company in Scotland and any assets in Scotland falling within any of the types mentioned in 1.2 to 1.5 above except to the extent they are effectively mortgaged, charged or assigned by way of fixed mortgage, charge or assignment under or pursuant to the Debenture or any other mortgage, charge or assignment in favour of the Security Trustee; and

the Company shall, promptly after being requested to do so by the Security Trustee, do all such acts and things, give such instructions (in material or dematerialised form) and sign, seal, execute and deliver all such deeds and other documents as the Security Trustee may require (and in such form as the Security Trustee may require) for perfecting or protecting the Security in respect of the Security Assets or its priority, vesting title to any Security Asset in the Security Trustee or its nominee or any purchaser, or for facilitating the realisation or application of the Security Assets and the exercise of the rights, powers and discretions conferred on the Security Trustee or any receiver under the Debenture and in particular, without limiting the foregoing generality:

- (a) a mortgage of any freehold or leasehold property now or hereafter owned by it;
- (b) a fixed charge over any interest, not capable of being charged by way of legal mortgage, in any freehold or leasehold property now or hereafter owned by it;
- (c) a chattel mortgage over all or any of its plant, machinery and other chattels;
- (d) a fixed charge or other fixed Security Interest over any Floating Charge Asset; and
- (e) in respect of any of its assets situated outside England and Wales, or governed by any foreign law, such fixed Security Interest under the law of the place where any such asset is situated or such governing foreign law as the Security Trustee may require, in such form as the Security Trustee may require;


2 The Intercreditor and Security Trust Deed pursuant to which the Company will:

- (a) acknowledge the arrangements made between the Borrowers (1), certain of the subsidiaries of Whyte and Mackay Group Limited (including the Company) listed therein as Obligors (2), the Bank as Agent, Senior Lender, Account Bank, Arranger and Working Capital Bank and Security Trustee (all as defined therein) (3), the Hedge Counterparty (4), the Bank through the trading name Bank of Scotland Cashflow Finance as Invoice Discounting Facility Provider (as defined therein) (5), the Bank through the trading name Bank of Scotland Asset Finance as Asset Finance Facility Provider (6) and Investec Bank (Channel Islands) Limited as Mezzanine Lender (as defined therein) (7) which regulate (inter alia) the ability of the Company to make payments to certain secured and unsecured lenders;

- (b) give certain undertakings in relation to the debt owed to it by other Obligors (as defined therein) and in relation to the debt owed by it to the Mezzanine Lender (as defined therein) in order to subordinate the rights relating to such debt to the rights of the Senior Lenders and Working Capital Bank (both as defined therein);
- (c) waive all and any rights it has to require the Security Interests or any part thereof to be enforced in a particular order or manner or to require the proceeds from enforcement thereof to be applied in a particular order or manner.
- 3 The Intra-Group Loan Agreement, whereby the Company, as a lender, may make loans available to the Borrowers. The proceeds of any advance made pursuant to the Intra-Group Loan Agreement are for use by the Borrowers, amongst other things, to meet their payment obligations under the Finance Documents;
- 4 The Senior Facilities Agreement under which the Company as a guarantor will irrevocably and unconditionally jointly and severally:-
- 4.1 guarantees to each Finance Party punctual performance by each Borrower of all that Borrower's obligations under the Finance Documents;
- 4.2 undertakes with each Finance Party that whenever a Borrower does not pay any amount when due under or in connection with any Finance Document, to immediately on demand pay that amount as if it was the principal obligor; and
- 4.3 indemnifies each Finance Party immediately on demand against any cost, loss or liability suffered by that Finance Party if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal. The amount of the cost, loss or liability shall be equal to the amount which that Finance Party would otherwise have been entitled to recover.

This is Annexure B referred to in Form 155(6)a declared by the directors of the Company on

31/1/2005
Signed:


a commissioner of Oaths or Notary Public or Justice of the Peace or a Solicitor having the powers conferred on a Commissioner for Oaths.