

# G

CHWP000

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## COMPANIES FORM No. 155(6)b

### Declaration by the directors of a holding company in relation to assistance for the acquisition of shares

# 155(6)b

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

|  |  |  |
|--|--|--|
|  |  |  |
|--|--|--|

1987333

Name of company

\* The Private Clinic Limited  
of 32 Queen Anne Street, London W1G 8HD

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

\* insert full name  
of company

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

I/We Ø

(a) Chnstine Mary Banstead of Calle De Feniz 27, Montgo 416, Javea, Spain

(b) Marco Anatriello of 69 Queens Court, Queensway, London W2 4QN

(c) Marco Capello of 7 Pelham Place, London SW7 2NQ

† delete as  
appropriate

~~(the sole director)~~ [all the directors]† of the above company (hereinafter called 'this company') do  
solemnly and sincerely declare that

§ delete whichever  
is inappropriate

The business of the company is

~~(a) that of a [recognised bank/licensed institution]† within the meaning of the Banking Act 1979§~~

~~(b) that of a person authorised under section 3 or 4 of the Insurance Companies Act 1982 to carry on  
insurance business in the United Kingdom§~~

(c) something other than the above§

The company is [the] [ ] holding company of\* 0700 Software Limited (the "Subsidiary")

\_\_\_\_\_ which is

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

in [this company][ ]

\_\_\_\_\_ [the holding company of the company.]†

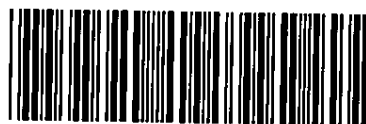
Presenter's name address and  
reference (if any)

Kerman & Co LLP  
200 Strand  
London WC2R 1DJ

For official Use (02/06)  
General Section

Post room

THURSDAY



A59

07/02/2008

143

COMPANIES HOUSE

The assistance is for the purpose of [that acquisition][reducing or discharging a liability incurred for the purpose of that acquisition] † (note 1)

Please do not write in this margin

The number and class of the shares acquired or to be acquired is 100 shares in the Company of £1 each

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

The assistance is to be given to (note 2) BG Healthcare Limited with its address and registered office at Stuart House, 55 Catherine Place, London SW1E 6DY

The assistance will take the form of

The entering of a Guarantee and Debenture by the Subsidiary, the Company and another in favour of Brendan Kearney and Amanda Kearney (the "Sellers") and compliance with all obligations thereunder. The obligations, undertakings and liabilities incurred by the Subsidiary in executing the Guarantee & Debenture are given to guarantee, secure or otherwise assist BG Healthcare Limited ("BG") in connection with the obligations, undertakings and liabilities which it will incur for the purpose of the acquisition of the share capital of The Private Clinic Limited ("PCL") and The Sleep Disorder Clinic Limited ("SDC") and in particular payment of the deferred consideration as referred to herein. Upon payment of £402,011 owing to the Company and PCL, by Mediform Limited, a loan of £65,656 by the Subsidiary to the Company, with in addition a loan of £402,011 by PCL to BG Healthcare Limited, so the proceeds of the loan to BG can be used by the latter in paying the additional purchase consideration owing to in respect of shares in PCL and SDC.

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

† delete as appropriate

BG Healthcare Limited a company limited by shares registered in England with number 06293464 whose registered office is at Stuart House, 55 Catherine Place, London SW1E 6DY

The principal terms on which the assistance will be given are

The Subsidiary will on a joint and several basis guarantee payment by BG of deferred consideration of £2,180,000, payable in relation to the acquisition of shares in the Company and SDC ("Deferred Consideration"), plus any interest, costs, charges and expenses incurred by the Sellers in relation to procuring payment thereof, and as continuing security therefor create fixed charges over its land (now owned or acquired in future), goodwill, uncalled capital, securities, insurances, intellectual property, rents, asset contracts and other claims and fixed and loose plant and machinery and create floating charges (to which paragraph 14 of Schedule 1B to the Insolvency Act 1986 will apply) over all its assets, including debts, to secure the Deferred Consideration, whereby the Subsidiary cannot without the prior written consent of the Sellers (a) create any Encumbrance, or allow any Encumbrance to arise or continue, on or over any of the assets of the Subsidiary, or (b) part with or dispose of all or any of the assets charged by way of fixed charge or mortgage, other than assets disposed of in the ordinary course of business, or (c) part with or dispose of all or any of the assets charged by way of floating charge, except in the ordinary course of carrying on its business as a going concern (see continuation page)

The amount (if any) by which the net assets of the company which is giving the assistance will be reduced by giving it is n/a

The amount of cash to be transferred to the person assisted is £ 1,602,011 (excluding the guarantee)

The value of any asset to be transferred to the person assisted is £ n/a

**Terms of assistance (continued from page 2 of Form 155(6) (a))**  
**Guarantee and Debenture:**

The principal debt guaranteed is made up of £1,060,000 to be payable one year from Completion and £1,120,000 to be payable two years from Completion of the sale of shares, for which the Company and SDC are also guarantors on the basis that the liability of each guarantor is joint and several

"Encumbrance" is defined in the Debenture and Guarantee as "a mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, standard security, assignation in security, bond and floating charge or other security interest of any kind, and any right of set-off, assignment, trust, flawed asset or other agreement or arrangement whatsoever for the purpose of providing security or having a similar effect to the provision of security"

Under the Debenture and Guarantee the Subsidiary shall pay into such account of Brendan Kearney and Amanda Kearney (the "Sellers") as they may direct all moneys which it receives in respect of any securities, insurances, intellectual property, rents and any other of the rights and claims charged to the Sellers, and not withdraw any moneys from that account unless the Sellers permit it to do so, and until such payment hold all moneys so received upon trust for the Sellers and shall not without the prior written consent of the Sellers charge, factor, discount or assign any of them in favour of any other person, or otherwise deal with them except for the purpose of collecting them in and paying them as required under the Guarantee and Debenture

**Loan:**

**(a) The Loan provided by the Subsidiary**

- (i) may only be drawn by the Company once Completion has occurred under the Share Purchase Agreement, and all necessary "whitewash" proceedings required under sections 155 to 158 of the Companies Act have been duly carried out, and
- (ii) shall be drawn by the Company not later than 8 weeks of the date of this declaration, failing which the offer of the Loan to the Company shall be deemed to have been withdrawn

**(b) Any amounts owing by the Company to the Subsidiary under the Loan or that may in future be claimed by the Sellers from the Company in respect of the Guarantee shall be repayable immediately (by the Company in the first case and by BG in the second case) upon delivery of a written demand therefor by the Company, addressed to The Private Clinic Limited and B G Healthcare Limited as the case may be ("Demand")**

**(c) In the event of Demand under (b) or (g) the undertaking by BlueGem Capital Partners LLP (the manager of BlueGem L P , a fund which indirectly controls the majority of shares of BG) in a Deed of Undertaking by them shall be performed immediately for the full amount in the Demand and, when BG receives funds**

thereunder, it will promptly remit those funds to the Company

- (d) If a Demand claims interest on the amounts advanced, interest shall accrue from the date of demand to the date of repayment at the rate which reflects a margin of 4 per centum per annum over the base rate of HSBC Bank from time to time
- (e) No claim may be made by BG, BlueGem L P or any member thereof or BlueGem Capital Partners LLP against the Company in respect of any matter or representation (including any that involves negligence or gross negligence for which the Company would otherwise be responsible) on which they have relied in purchasing the shares in the Company and SDC entering into the transactions mentioned herein or undertaking any other matter pursuant their direct or indirect investment in the Company, the Subsidiary or SDC
- (f) If any claim shall arise for any reason by BG, BlueGem L P or any member thereof or BlueGem Capital Partners LLP against the Company or the Subsidiary, such shall not be capable of be set off against the claim made against BG under the Demand
- (g) In the event that any claim for payment is made by the Sellers against the Subsidiary under the Guarantee and Debenture or any circumstance arises (including without limitation anything prejudicing the ability of the Subsidiary to pay its debts as they fall due) where it is prudent for the Director of the Subsidiary (in their sole and unfettered discretion) to take such a step
  - (i) such Directors may make a assessment of the amount of any cash security the Subsidiary needs to have provided by BG to ensure the Guarantor is able to pay its debts as they fall due, and
  - (ii) deliver a demand to BG Healthcare Limited for immediate payment of the amount so assessed by Directors (a "Demand") not exceeding the sum of the present or future liability of the Subsidiary to the Sellers under the Guarantee and Debenture

The assistance is for the purpose of [that acquisition]~~[reducing or discharging a liability incurred for the purpose of that acquisition]~~† (note 1)

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1 February 2008

The date on which the assistance is to be given is \_\_\_\_\_

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

☒ We have formed the opinion, as regards this 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)

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

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

(b) ~~It is intended to commence the winding up of this company within 12 months of that date, and I/we have formed the opinion that this company will be able to pay its debts in full within 12 months of the commencement of the winding up.]~~\* (note 3)

And ☒ 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 KERMAN & CO  
200 THE STRAND WC2R 3DJ

Declarants to sign below

Day Month Year  
on 

|   |   |   |   |   |   |   |   |
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before me you cerdoni

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

*[Handwritten signature]*  
*[Handwritten signature]*  
*[Handwritten signature]*

 **Giambrone & Law**  
International Law Practice

## NOTES

50 Essex Street  
The Strand  
London - WC2R 3JF

- 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

DX 33050 Cardiff

or, for companies registered in Scotland -

The Registrar of Companies  
37 Castle Terrace  
Edinburgh  
EH1 2EB

DX 235 Edinburgh

or LP-4 Edinburgh 2

The Directors  
The Private Clinic Limited  
98 Harley Street  
London  
W1G 7HZ

Stuart House  
55 Catherine Place  
London SW1E 6DY

☎ +44(0)207 630 6665  
☎ +44(0)207 630 1977  
[www.wellersaccountants.co.uk](http://www.wellersaccountants.co.uk)

Dear Sirs

**REPORT OF THE INDEPENDENT AUDITOR TO THE DIRECTORS  
OF THE PRIVATE CLINIC LIMITED PURSUANT TO SECTION  
156(4) OF COMPANIES ACT 1985**

We report on the attached statutory declaration of the directors dated 1 February 2008, prepared pursuant to the Companies Act 1985, in connection with the proposal that the Company should give financial assistance for the purchase of the company's 100 ordinary shares.

**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 statutory declaration as to any of the matters mentioned in section 156(2) of the Companies Act 1985 is unreasonable in all the circumstances.



Wellers Accountants  
Registered Auditor  
Stuart House  
55 Catherine Place  
London  
SW1E 6DY

Date. 14 February 2008