

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

**155(6)b**

[illegible]

249  
15/08/2006

Please do not  
write in this  
margin

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

The assistance is to be given to: (note 2) \_\_\_\_\_

The assistance will take the form of:

† delete as appropriate

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

Please do not  
write in this  
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The date on which the assistance is to be given is SEE ANNEXURE 6

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)

(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)

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

(b) ~~It is intended to commence the winding up of this company within 12 months of the date, and the~~  
~~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

10 Snow Hill, London

Declarants to sign below

Day Month Year  
on 

0	2	0	8	2	0	0	6
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before me *J. R. Pops*

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

## 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  
Companies House  
37 Castle Terrace  
Edinburgh  
EH1 2EB

**PAN EUROPEAN RESTAURANTS LIMITED**

**(Registered number 4278268)**

**ANNEXURE 1 TO FORM 155(6)b**

ZEEV GODIK of 7 Lower Mall, Hammersmith, London W6 9DJ; and

CHARLES MCLEAN of 10 Ockley Road, Ewhurst, Cranleigh GU6 7QJ

**PAN EUROPEAN RESTAURANTS LIMITED**

**(Registered number 4278268)**

**ANNEXURE 2 TO FORM 155(6)b**

40,000 A ordinary shares;

470,000 B ordinary shares; and

490,000 C ordinary shares

of 0.10p each in the capital of Gaucho Grill Holdings Limited, a holding company of the Company.

**PAN EUROPEAN RESTAURANTS LIMITED**

**(Registered number 4278268)**

**ANNEXURE 3 TO FORM 155(6)b**

Terms defined in this statutory declaration (including the other Annexures hereto) have the same meanings in this Annexure 3 unless otherwise stated or the context otherwise requires.

References to any agreement are to an agreement as amended, varied, supplemented or novated from time to time.

The assistance will take the form of the execution, delivery and performance by the Charging Company of the following documents:

- A. the Facility Agreement Accession Letter;
- B. the Subordination Accession Deed;
- C. the Debenture Accession Deed; and
- D. the Intra-group Loan Agreement.

**PAN EUROPEAN RESTAURANTS LIMITED**

**(Registered number 4278268)**

**ANNEXURE 4 TO FORM 155(6)b**

**PART I**

Terms defined in this statutory declaration (including the other Annexures hereto) have the same meanings in this Annexure 4 unless otherwise stated or the context otherwise requires.

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

- A. Under the terms of the Facility Agreement, to which the Charging Company accedes by entering into the Facility Agreement Accession Letter, the Charging Company irrevocably and unconditionally:
- (a) guarantees to each Finance Party punctual performance by each Obligor of all that Obligor's payment obligations under the Finance Documents;
  - (b) undertakes with each Finance Party that whenever an Obligor does not pay any amount when due and payable under or in connection with any Finance Document, the Obligor shall immediately on demand pay that amount as if it were the principal obligor; and
  - (c) indemnifies each Finance Party immediately on demand against any cost, loss or liability suffered by that Finance Party if any obligation guaranteed or undertaken by it is or becomes unenforceable, invalid or illegal and 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.

The Charging Company also gives various other indemnities in favour of the Finance Parties.

- B. Under the terms of the Subordination Deed, to which the Charging Company accedes by entering into the Subordination Accession Deed, the Charging Company acknowledges and agrees to the priority arrangements in favour of, and the rights and obligations of, the Finance Parties as more particularly set out therein.
- C. Under the terms of the Debenture, to which the Charging Company accedes by entering into the Debenture Accession Deed, the Charging Company agrees and covenants as follows:

1. Covenant to pay

The Charging Company covenants in favour of the Trustee as trustee for the Finance Parties that it will pay and/or discharge on demand the Secured Obligations.

2. Charges

The Charging Company with full title guarantee charges to the Trustee as trustee for the Finance Parties by way of first fixed charge as a continuing security for the payment and discharge of the Secured Obligations the following assets, both present and future, from time to time owned by the Charging Company or in which the Charging Company may from time to time have an interest:

- 2.1.1 all freehold and leasehold property of the Charging Company and all liens, charges, options, agreements, rights and interests in or over land or the proceeds of sale of land and all buildings, fixtures and fittings (including trade fixtures and fittings) and fixed plant and machinery from time to time on such property or land together with all rights easements and privileges appurtenant to or benefiting the same (but excluding any such assets which are not owned by the Charging Company);
- 2.1.2 all plant, machinery (other than that charged by clause 3.1.1 of the Debenture) computers and office and other equipment and the benefit of all contracts and warranties relating to the same (but excluding any such assets which are not owned by the Charging Company);
- 2.1.3 all stocks, shares, bonds and securities of any kind whatsoever whether marketable or otherwise and all other interests (including but not limited to loan capital) in any person including all Related Securities Rights and all Related Property Rights in respect thereof;
- 2.1.4 all Shares;
- 2.1.5 (subject, in the case of any monies held in, or sums standing to the credit of, the Accounts, to clause 7 of the Debenture) the Receivables;
- 2.1.6 all its rights, title and interest in and to cash at bank and (if different) any amount from time to time standing to the credit of any bank or other account with any Finance Party or with any other bank, financial institution or person (including, without limitation but subject to clause 7 of the Debenture, the Accounts);
- 2.1.7 the Insurances and all proceeds of the Insurances;
- 2.1.8 all uncalled capital and the goodwill of the Charging Company now or at any time in the future in existence; and



2.1.9 all Intellectual Property.

3. The Charging Company charges to the Trustee as trustee for the Finance Parties by way of first fixed charge with full title guarantee as a continuing security for the payment and discharge of the Secured Obligations all of its rights, title, benefits and interests whatsoever (whether present or future, proprietary, contractual or otherwise) under or arising out of the Transaction Documents (other than the Finance Documents), the Hedging Arrangements, the Operating Documents (in each case as from time to time extended, varied or replaced), including without limitation (i) any indebtedness arising from or in any way connected with the Acquisition or the financing of the Acquisition, (ii) all claims for damages or other remedies in respect of any breach of, or inaccuracy in, any Transaction Document (other than the Finance Documents), any Hedging Arrangements, any Operating Document and (iii) the benefit of (and the right to make any claims under or in respect of) all warranties, indemnities and representations given to it in or pursuant to any Transaction Document (other than the Finance Documents), any Hedging Arrangements, any Operating Document.
4. The Charging Company with full title guarantee charges to the Trustee as trustee for the Finance Parties by way of first floating charge as a continuing security for the payment and discharge of the Secured Obligations its undertaking and all its property, assets and rights whatsoever and wheresoever, both present and future, but excluding any property or assets from time to time or for the time being effectively charged to the Trustee by way of fixed charge pursuant to clauses 3.1 and 3.2 of the Debenture.
5. The charges created by clauses 3.1 and 3.2 of the Debenture shall be first charges.
6. As further security for the payment of the Secured Obligations, the Charging Company assigns absolutely to the Trustee as trustee for the Finance Parties all its right, title and interest in the Assigned Agreements and Insurances, (save that the exercise of all rights and remedies in connection with such contracts, the exercise of any discretions or judgments, the giving or any waivers or consents and any entitlement to all proceeds and claims arising therefrom shall, in the absence of an Event of Default which is outstanding, be exercised at the sole discretion of the Charging Company, subject always to the terms of the Facility Agreement), provided that on payment or discharge in full of the Secured Obligations the Trustee will at the request and cost of the Charging Company reassign the Assigned Agreements and Insurances.
7. Further Assurance
  - 7.1 The Charging Company consents to the application to the Land Registry for the entry of any notice or restriction (insofar as the entry relates to the security created by the Debenture) against any property charged pursuant to Clause 3.1.1 of the Debenture.
  - 7.2 The Charging Company shall at any time if and when required by the Trustee and at the cost and expense of the Charging Company execute such deeds and documents and take any

action required by the Trustee to perfect and protect the security created (or intended to be created) by the Debenture or to facilitate the realisation of it or otherwise to enforce the same or exercise any rights of the Trustee under the Debenture. In addition the Charging Company shall execute such further charges and mortgages in favour of the Trustee as the Trustee shall from time to time require (acting reasonably) over all or any of the Charged Assets to secure the Secured Obligations. Such further charges and mortgages shall be prepared by or on behalf of the Trustee at the cost of the Charging Company and shall be in a form required by the Trustee (but containing terms and conditions, where directly comparable, no more onerous than those in the Debenture).

- 7.3 Without prejudice to the generality of the provisions of clause 6.2 of the Debenture, the Charging Company shall execute as and when so required by the Trustee (acting reasonably) a legal mortgage, legal charge, standard security or other hypothecation (as appropriate) over any freehold, leasehold and heritable properties acquired by it after the date of the Debenture (including all or any property as and when the same are conveyed, transferred or let to it) and over any and all fixtures, trade fixtures and fixed plant and machinery at any time and from time to time situate on any such property.

## 8. Indemnities

- 8.1 The Charging Company covenants with the Trustee to pay on demand all costs, charges and expenses incurred by the Trustee or by any Receiver in or about the enforcement, protection, preservation or attempted preservation of any of the security created by or pursuant to the Debenture or any of the Charged Assets on a full indemnity basis, together with interest accruing daily at the Default Rate from the date on which such costs charges or expenses are so incurred until the date of payment (both before and after judgment) such interest to be compounded monthly in accordance with the normal practice of the Trustee.

- 8.2 The Charging Company agrees to indemnify the Trustee and any Receiver on demand against all losses, actions, claims, expenses, demands or liabilities whether in contract, tort, delict or otherwise and whether arising at common law in equity or by statute which may be incurred by or made against any of them (or by or against any manager agent officer or employee for whose liability, act or omission any of them may be answerable) as a consequence of:

8.2.1 anything done or omitted in the proper exercise or purported exercise of the powers conferred on the Trustee in the Debenture; or

8.2.2 any breach by the Charging Company of any of its obligations under the Debenture.

- D. Under the terms of the Intra-group Loan Agreement, the Charging Company (among others) grants to the Purchaser and Gaucho Group Limited, upon the terms and conditions of the Intra-group Loan Agreement, loan facilities of up to £75,000,000 or such other amount as may be agreed from time to time.

**PAN EUROPEAN RESTAURANTS LIMITED**

**(Registered number 4278268)**

**ANNEXURE 4 TO FORM 155(6)b**

**PART II**

Terms defined in this Annexure 4 shall apply throughout this Form 155(6)b and its annexures.

**"Accession Letter"** means Accession Letter as defined in the Facility Agreement.

**"Accounts"** means a General Account or the Surplus Deposit Account.

**"Acquisition"** means the acquisition by the Purchaser of the entire issued share capital of Gaucho Grill Holdings Limited.

**"Acquisition Agreement"** means the share purchase and sale agreement dated on or about the date of this statutory declaration made between, among others, the Purchaser and Swingline Holdings Limited.

**"Acquisition Disclosure Letter"** means the disclosure letter dated on or about the date of this statutory declaration made between, among others, the Purchaser and the Management Sellers (as defined in the Acquisition Agreement).

**"Acquisition Documents"** means the Acquisition Agreement, the Acquisition Disclosure Letter, the Tax Deed and/or the Exchange Agreement.

**"Additional Guarantor"** means a company which becomes a Guarantor in accordance with clause 26 (Changes to the Obligors) of the Facility Agreement.

**"Agent"** means Anglo Irish Bank Corporation plc as agent and security trustee for the other Finance Parties.

**"Arranger"** means Anglo Irish Bank Corporation plc.

**"Assigned Agreements"** means such of the agreements specified in schedule 2 to the Debenture together with each other agreement supplementing or amending the same and any other document designated as an Assigned Agreement by the Agent and the Parent.

**"Bank"** means Anglo Irish Bank Corporation plc.

**"Charged Assets"** means in respect of the Charging Company, all the undertaking, goodwill, property, assets and rights of the Charging Company described in clauses 3.1, 3.2 and 3.3 of the

Debenture.

**"Collateral Instruments"** means negotiable and non-negotiable instruments, guarantees, indemnities and other assurances against financial loss and any other documents or instruments which contain or evidence an obligation (with or without security) to pay, discharge or be responsible directly or indirectly for any liabilities of any person and including without limitation any document or instrument creating or evidencing Security.

**"Counter-party"** means Anglo Irish Bank Corporation plc.

**"Debenture"** means the debenture dated on or about the date hereof made between the Trustee and those persons listed in Schedule 1 therein as the Initial Charging Companies (as defined therein).

**"Debenture Accession Deed"** means the accession deed in the form set out in Schedule 4 to the Debenture pursuant to which the Charging Company, among others, accedes to the Debenture.

**"Default Rate"** means the rate of interest specified in clause 8.3 (Default Interest) of the Facility Agreement.

**"Due Diligence Report"** means (a) a legal due diligence report prepared by Travers Smith dated on or about the date of this statutory declaration (b) a financial due diligence report prepared by Ernst & Young dated on or about the date of this statutory declaration and (c) an insurance report prepared by AON dated on or about the date of this statutory declaration.

**"Event of Default"** means any event or circumstance described as such in clause 24 (Events of Default) of the Facility Agreement.

**"Exchange Agreement"** means an agreement between Gaucho Grill Limited, Gaucho Grill Holdings Limited and Charles Mclean dated on or about the date of this statutory declaration pursuant to which, inter alia, Gaucho Grill Limited agrees to issue and allot certain shares in itself to Charles Mclean.

**"Facility Agreement"** means the facility agreement dated on or about the date of this statutory declaration made between, among others, the Purchaser and the Bank (in various capacities).

**"Facility Agreement Accession Letter"** means the accession letter in the form set out in Schedule 7 to the Facility Agreement pursuant to which, the Charging Company, among others, accedes to the Facility Agreement.

**"Fee Letter"** means the Fee Letter as defined in the Facility Agreement.

**"Finance Document"** means the Facility Agreement, an Accession Letter, a Security Document, the Subordination Deed, the Subordination Accession Deed, the Fee Letter, a Hedging Strategy letter, a Transfer Certificate, the Hedging Arrangements and any other document designated as such by the Agent and the Purchaser.

**"Finance Party"** means the Agent, Arranger, Counter-party, Issuing Bank or a Lender.

**"General Account"** means each account designated as such under the terms of the Facility Agreement.

**"Guarantor"** means Gaucho Group Limited and from the date completion of the Acquisition occurs, each of the companies listed in Part 1 of Schedule 1 to the Facility Agreement or an Additional Guarantor.

**"Hedging Arrangements"** means Hedging Arrangement as defined in the Facility Agreement.

**"Hedging Strategy Letter"** means Hedging Strategy Letter as defined in the Facility Agreement.

**"Initial Charging Companies"** means those persons listed in Schedule 1 to the Debenture as Initial Charging Companies.

**"Insurances"** means all policies of insurance either now or in the future held by or written in favour of the Charging Company or in which the Charging Company is otherwise interested but excluding any third party liability or public liability insurance and any directors or officers insurance.

**"Intellectual Property"** means all patents (including applications, improvements, prolongations, extensions and rights to apply for them in any part of the world) designs (whether registered or unregistered) copyrights, design rights, trade marks and service marks (whether registered or unregistered) utility models, trade names, business names, domain names and brand names, knowhow, formulae, confidential information, trade secrets, computer software programs and systems and any similar rights existing in any country (including the benefit of any licences or consents relating to any of the above) and all fees, royalties or other rights derived from them or incidental to them in any part of the world.

**"Intra-group Loan Agreement"** means the up-stream intra-group loan agreement dated on or about the same date of this statutory declaration made between Gaucho Grill Holdings Limited, Inhoco 4065 Limited, the Company, Gaucho Grill Limited and the Charging Company (as lenders) and Gaucho Group Limited and the Purchaser (as borrowers).

**"Investment Document"** means an Investment Document as defined in the Facility Agreement.

**"Issuing Bank"** means Anglo Irish Bank Corporation plc, each Lender identified as an issuing bank in the Facility Agreement and any other Lender which has notified the Agent that it has agreed to be an issuing bank pursuant to the terms of the Facility Agreement.

**"Lender"** means (a) the financial institutions listed in Part II of Schedule 1 to the Facility Agreement as a lender and (b) any bank, financial institution, trust fund or other entity which has become a Party in accordance with Clause 25 (Changes to the Lenders) of the Facility Agreement.

**"Obligor"** means the Purchaser or a Guarantor.

**"Operating Document"** means an Operating Document as defined in the Facility Agreement.

**"Party"** means a party to the Facility Agreement.

**"Purchaser"** means Gaucho Acquisitions Limited, a company incorporated in England and Wales with company number 5869370.

**"Receivables"** means in respect of the Charging Company: (i) all present and future book debts and other debts, rentals, royalties fees, VAT and monetary claims and all other amounts recoverable or receivable by the Charging Company from other persons or due or owing to the Charging Company (whether actual or contingent and whether arising under contract or in any other manner whatsoever); (ii) the benefit of all rights and remedies relating to any of the items in (i) above including, without limitation, claims for damages and other remedies for non-payment of the same, all entitlements to interest, negotiable instruments, guarantees, indemnities, Security, Collateral Instruments, reservations of property rights, rights of tracing and unpaid vendor's liens and similar associated rights; and (iii) all proceeds of any of the items listed in (i) or rights and remedies in (ii) above.

**"Receiver"** means any one or more receivers and/or managers or administrative receivers appointed by the Trustee pursuant to the Debenture in respect of the Charging Company or over all or any of its Charged Assets.

**"Related Property Rights"** means in relation to any property or asset, (i) the proceeds of sale and/or other realisation of that property or asset (or any part thereof or interest therein); (ii) all Security, options, agreements, rights, benefits, indemnities, guarantees, warranties or covenants for title in respect of such property or asset; and (iii) all rights under any agreement in respect of such property or asset.

**"Related Securities Rights"** means all allotments, rights, benefits and advantages (including all voting rights) whatsoever at any time accruing, offered or arising in respect of or incidental to any Shares or Securities and all money or property accruing or offered at any time by way of conversion, redemption, bonus, preference, option, dividend, distribution, interest or otherwise in respect of Shares or Securities.

**"Secured Obligations"** means all monies, obligations and liabilities now or at any time in the future due, owing or incurred to the Finance Parties (or any of them) or to the Trustee from or by any Obligor when the same become due for payment or discharge, whether by acceleration or otherwise, and whether such monies obligations or liabilities are express or implied, present or future, actual or contingent, joint or several, incurred as principal or surety and whether unascertained, collateral or unmatured, and whether originally owing to the Finance Parties or any of them or to the Trustee or purchased or otherwise acquired by it or any of them and whether denominated in sterling or in any other currency, or incurred on any banking account or in any other manner whatsoever and all other

amounts payable by the Charging Company under the Debenture provided that no obligation or liability shall be included in the definition of "Secured Obligations" to the extent that, if it were so included, the Debenture (or any part of it) would constitute unlawful financial assistance within the meaning of Sections 151 and 152 of the Companies Act 1985.

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

**"Securities"** means the assets of the Charging Company described in clause 3.1.3 of the Debenture.

**"Security Document"** means Security Documents as defined in the Facility Agreement.

**"Shareholders' Agreement"** means the shareholders' agreement dated on or about the date of this statutory declaration made between Mr Zeev Godik and Phoenix Equity Partners 2006 Guernsey Limited.

**"Shares"** means (i) the shares specified in Schedule 3 to the Debenture legally and beneficially owned by an Initial Charging Company; (ii) the shares specified in schedule 3 of any Deed of Accession legally and beneficially owned by the Charging Company; (iii) all Related Securities Rights in respect thereof; and (iv) all Related Property Rights in respect thereof.

**"Subordination Accession Deed"** means the accession deed in the form set out in Schedule 2 to the Subordination Deed pursuant to which, the Charging Company, among others, accedes to the Subordination Deed.

**"Subordination Deed"** means the subordination deed dated on or about the date hereof made between, among others, the Purchaser, the Bank and the Investors (as defined therein).

**"Surplus Deposit Account"** means the blocked account designated as such under the terms of the Facility Agreement.

**"Tax Deed"** means the Tax Deed as dated on or about the date of this statutory declaration made between, among others, the Purchaser and Swingline Holdings Limited in connection with the Acquisition Agreement.

**"Transaction Document"** means (a) a Finance Document, (b) an Acquisition Document, (c) an Investment Document or (d) any other document designated as such by the Agent and the Purchaser.

**"Transfer Certificate"** means Transfer Certificate as defined in the Facility Agreement.

**"Trustee"** means Anglo Irish Bank Corporation plc as agent and security trustee for the other Finance Parties.

**PAN EUROPEAN RESTAURANTS LIMITED**

**(Registered number 4278268)**

**ANNEXURE 5 TO FORM 155(6)b**

Up to £75,000,000 (or such other amount as may be agreed between the parties to the Intra-Group Loan Agreement from time to time) being the maximum amount available under the Intra-Group Loan Agreement.



**PAN EUROPEAN RESTAURANTS LIMITED**

**(Registered number 4278268)**

**ANNEXURE 6 TO FORM 155(6)b**

The date hereof or within eight weeks of the date hereof.

**INDEPENDENT AUDITORS' REPORT TO THE DIRECTORS OF PAN EUROPEAN RESTAURANTS LIMITED ("THE COMPANY") PURSUANT TO SECTION 156(4) OF THE COMPANIES ACT 1985**

We have examined the attached statutory declaration of the directors dated [2] August 2006, prepared in accordance with applicable United Kingdom law, in connection with the proposal that the company's subsidiary Gioma (UK) Limited should give financial assistance for the purpose of the acquisition of the entire issued share capital of Gaucho Grill Holdings Limited, being the company's holding company.

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

**Basis of opinion**

We have enquired into the state of affairs of the company so far as necessary 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.

Ernst & Young LLP  
Registered Auditor  
Belfast  
Date

*Ernst & Young LLP*  
*20 August 2006.*