



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

**155(6)b**

133519

Please do not  
write in this  
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**Please complete  
legibly, preferably  
in black type, or  
bold block  
lettering**

The assistance is to be given to: (note 2) Prestbury Hotels Limited whose registered  
office is at 11-12 Wigmore Place, London W1U 2LU

See Schedule 1 attached

Prestbury Hotels Limited whose registered office is at 11-12 Wigmore Place, London W1U 2LU

† delete as appropriate

See Schedule 2 attached

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

Please do not  
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The date on which the assistance is to be given is within 8 weeks of the date hereof

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

I/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) [I/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) ~~I/We intend to commence the winding up of the company within 12 months of that date, and 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 I/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 UPPER BANK STREET  
LONDON E14

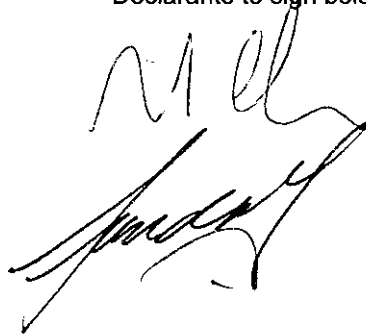
Declarants to sign below

Day Month Year  
on 

1	9	1	0	2	0	0	4
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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.  
*Kedric Gibson*



## 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

**SCHEDULE 1**  
**to Form 155(6)b**  
**The Form of the Financial Assistance**

**1 Definitions**

If not otherwise defined in these Schedules 1 and 2, the following expressions shall have the following meanings:

**Additional Guarantor** means a member of the Group which becomes a guarantor in accordance with Clause 28.7 (Additional Guarantors) of the Loan Agreement;

**Agreement for Lease** means an agreement to grant an Occupational Lease of all or part of a Property;

**Assignment of Rents** means an assignment of rents by the relevant company in favour of the Security Agent in respect of the Secured Liabilities over Rental Income under all Permitted Occupational Leases relating to Scottish heritable or leasehold property held by that relevant company in a form satisfactory to the Security Agent and duly intimated to the tenants;

**Borrower** means Prestbury Hotels Limited;

**Chargor** means TLLC CMSubPropCo11 Limited;

**Debt** means any or all of the Senior Debt, the Hedging Debt, the Investor Debt and the Intercompany Debt, as the context requires;

**Facility Agent** means The Governor and Company of the Bank of Scotland;

**Finance Document** (as defined in the Loan Agreement)

**Finance Party** (as defined in the Loan Agreement)

**Group** means the Borrower and its Subsidiaries;

**Hedging Debt** means all liabilities of any Obligor to any Hedging Bank (as defined in the Loan Agreement) under or in connection with the Hedging Documents;

**Hedging Documents** (as defined in the Loan Agreement);

**Intercompany Debt** means all liabilities of any Obligor to any other Obligor:

- (a) under or in connection with the Intercompany Documents; or
- (b) in respect of any Financial Indebtedness (as defined in the Loan Agreement), including all Financial Indebtedness payable or owing by one Obligor to another Obligor,

but excluding in each case any trading liabilities arising in the ordinary course of business;

**Intercompany Documents** means all documents evidencing (or guaranteeing) any Financial Indebtedness payable or owing by one Obligor to another Obligor;

**Intercompany Loan Agreement** means a revolving facility loan agreement to be made between the Chargor, among others, and Prestbury Hotels Limited;

**Investor Debt** means all liabilities of any Obligor to any Investor (or any of its affiliates):

- (a) under or in connection with the Investor Documents (as defined in the Loan Agreement), including any dividends or other distributions and any amount payable to any Investor on a liquidation or other insolvency of any Obligor; or
- (b) in respect of any advisory, monitoring, management or other fees or expenses;

**Lease Document** means:

- (a) a Permitted Occupational Lease; or
- (b) any other document designated as such by the Facility Agent and the Borrower;

**Loan Agreement** means £364,670,000 loan agreement made between the Borrower, The Governor and Company of the Bank of Scotland (as "Mandated Lead Arranger, Facility Agent and Security Agent") and certain financial institutions listed in Part 1 of Schedule 1 thereto as (the "Original Lenders");

**Obligor** means the Borrower, Prestbury Hotels Assets Limited or an Additional Guarantor;

**Occupational Lease** means any lease or licence or other right of occupation or right to receive rent to which a Property may at any time be subject;

**Original Property** (as defined in the Loan Agreement);

**Party** means a party to the Loan Agreement;

**Permitted Occupational Lease** (as defined in the Loan Agreement).

**the Priority Deed** means the priority deed to be entered into between, among others, the Parties and certain other investors in and creditors of the Group;

**Property** means the Original Property and any other real or heritable property which is, now or in the future, wholly, legally and beneficially owned by one or more members of the Group;

**Rental Income** (as defined in the Loan Agreement);

**Secured Liabilities** means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of each Obligor to any Finance Party under the Finance Documents, except for any obligation which, if it were so included, would result in the Security Agreement contravening any law (including Section 151 of the Companies Act 1985);

**Security Agent** means The Governor and Company of the Bank of Scotland;

**Security Agreement** means the security agreement to be entered into between among others the Company and the Security Agent;

**Security Assets** means all assets of any Obligor the subject of any security created by the Security Agreement or any document entered into pursuant thereto;

**Senior Creditor** means each of:

- (a) the persons named in Schedule 1 (Senior Creditors) to the Priority Deed in their capacity as Lenders under the Loan Agreement; and
- (b) the Mandated Lead Arranger under and as defined in the Loan Agreement, the Facility Agent and the Security Agent;

**Senior Debt** means all liabilities of any Obligor to any Senior Creditor under or in connection with the Senior Finance Documents;

**Senior Finance Document** means the Finance Documents but for the purpose of the Priority Deed excludes the Hedging Documents;

**Standard Security** means a standard security by an Obligor in favour of the Security Agent in security of the Secured Liabilities over all Scottish heritable or long leasehold property held by an Obligor in a form satisfactory to the Security Agent;

**Subsidiary** means an entity of which a person has direct or indirect control or owns directly or indirectly more than 50 per cent. of the voting capital or similar right of ownership;

## **2 The Form of Financial Assistance**

2.1 The financial assistance by the Chargor shall be effected by:

- (a) the Chargor entering into an accession agreement in order to accede to the Loan Agreement as an Additional Guarantor (the "**Accession Agreement**") and performing its obligations under the Loan Agreement;
- (b) the Chargor entering to and performing its obligations under the Security Agreement;
- (c) the Chargor entering into a deed of accession in order to accede to the Priority Deed (the "Priority Deed Accession Deed") and performing its obligations under the Priority Deed;
- (d) the Chargor entering into and performing its obligations under the Intercompany Loan Agreement;

(the Accession Agreement, Loan Agreement, the Security Agreement, the Priority Deed Accession Deed, the Priority Deed, the Intercompany Loan Agreement, Standard Security and the Assignment of Rents being referred to as the "**Financial Assistance Documents**"); and

- (e) the Chargor assuming liabilities and obligations under and pursuant to each Financial Assistance Document in accordance with and subject to the terms of each such document.

This is Schedule 1 referred to in the Form 155(6)b declared by the directors of the Company.



Signed

Solicitor

## **SCHEDULE 2**

### **to Form 155(6)b**

#### **The Principal Terms of the Financial Assistance**

#### **1 General**

- 1.1 The principal terms of each Financial Assistance Document are summarised and separately described below.
- 1.2 Clause and other document references as used in each part of this Schedule are to clause and other references in the particular Financial Assistance Document to which that particular part of this Schedule relates.

#### **2 Security Agreement**

##### **2.1 General**

- (a) All the security created under the Security Agreement:
- (i) is created in favour of the Security Agent;
  - (ii) is created over present and future assets of the Chargor;
  - (iii) is security for the payment, discharge and performance of all the Secured Liabilities; and
  - (iv) is made with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994 or in respect of property governed by Scots law, subject to the Permitted Occupational Leases, with absolute warrandice.
- (b) The Security Agent holds the benefit of the Security Agreement on trust for the Finance Parties.

##### **2.2 Land**

The Chargor charges:

- (a) by way of a first priority legal mortgage all estates or interests in any freehold or leasehold property owned by it and all rights under any licence or other agreement or document which gives the Chargor a right to occupy or use property; and
- (b) (to the extent that they are not the subject of a mortgage under paragraph (b) above) by way of first fixed charge all estates or interests in any freehold or leasehold property owned by it and all rights and licences or other agreement or document which gives the Chargor a right to occupy or use property.

##### **2.3 Investments**

The Chargor charges:

- (a) by way of a first priority legal mortgage all shares in any member of the Group (other than itself) owned by it or held by any nominee on its behalf; and
- (b) (to the extent that they are not the subject of a mortgage under paragraph (b) above) by way of a first fixed charge its interest in all shares, stocks, debentures, bonds or other securities and investments owned by it or held by any nominee on its behalf.



#### **2.4 Plant and machinery**

The Chargor charges by way of a first fixed charge all plant and machinery owned by it and its interest in any plant or machinery in its possession.

#### **2.5 Credit balances**

The Chargor charges by way of a first fixed charge all of its rights in respect of any amount standing to the credit of any account (including any account contemplated by the Security Agreement) it has with any person and the debt represented by it.

#### **2.6 Books debts etc.**

The Chargor charges by way of a first fixed charge:

- (a) all of its book and other debts;
- (b) all other moneys due and owing to it; and
- (c) the benefit of all rights, securities or guarantees of any nature enjoyed or held by it in relation to any item under paragraph (a) or (b) above.

#### **2.7 Insurances**

The Chargor assigns absolutely by way of security, subject to a proviso for re-assignment on redemption, all of its rights in respect of any contract or policy of insurance taken out by it or on its behalf or in which it has an interest.

#### **2.8 Other contracts**

The Chargor assigns absolutely by way of security, subject to a proviso for re-assignment on redemption, all of its rights in respect of:

- (a) its Relevant Contracts (as defined therein);
- (b) any letter of credit issued in its favour; and
- (c) any bill of exchange or other negotiable instrument held by it.

#### **2.9 Intercompany loans**

The Chargor assigns absolutely by way of security, subject to a proviso for re-assignment on redemption, all of its rights in respect of any intercompany loans to which it is a party provided that while no Event of Default (as defined in the Loan Agreement) is outstanding the Chargor may, subject to the terms of the Loan Agreement, exercise all its rights in respect of any intercompany loan to which it is a party and receive and exercise all rights in respect of the proceeds thereof.

#### **2.10 Miscellaneous**

The Chargor charges by way of first fixed charge:

- (a) any beneficial interest, claim or entitlement it has in any pension fund;
- (b) its goodwill;
- (c) the benefit of any authorisation (statutory or otherwise) held in connection with its use of any Security Asset;
- (d) the right to recover and receive compensation which may be payable to it in respect of any authorisation referred to in paragraph (c) above; and
- (e) its uncalled capital.



## **2.11 Floating charge**

The Chargor charges by way of a first priority floating charge all its assets whatsoever and wheresoever not otherwise effectively mortgaged, charged or assigned under the Security Agreement and all its assets located in Scotland or otherwise governed by Scots law (irrespective of whether or not such assets are effectively mortgaged, charged or assigned under the Security Agreement).

## **2.12 Covenant to pay**

The Chargor must pay or discharge the Secured Liabilities in the manner provided for in the Finance Documents.

## **2.13 Covenants and representations**

The Chargor will make certain representations and agree to comply with certain covenants in the security deed.

## **2.14 Further assurance**

The Chargor must, at its own expense, take whatever action the Security Agent or receiver may require for creating, perfecting or protecting any security intended to be created by the Security Agreement or facilitating the realisation of any Security Asset, or the exercise of any right, power or discretion exercisable, by the Security Agent or any receiver or any of its delegates or sub-delegates in respect of any Security Asset.

# **3 Accession Agreement and Loan Agreement**

## **3.1 Guarantee and indemnity**

Pursuant to the terms of the Loan Agreement, the Chargor jointly and severally and irrevocably and unconditionally:

- (a) guarantees to each Finance Party punctual performance by each Obligor of all its payment obligations under the Finance Documents;
- (b) undertakes with each Finance Party that, whenever any Obligor does not pay any amount when due under any Finance Document, the Chargor must immediately on demand by the Facility Agent pay that amount as if it were the principle obligor; and
- (c) indemnifies each Finance Party immediately on demand against any 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 loss or liability under this indemnity will be equal to the amount the Finance Party would otherwise have been entitled to recover.

## **3.2 Continuing guarantee**

The guarantee in clause 16 of the Loan Agreement is a continuing guarantee and will extend to the ultimate balance of all sums payable by each Obligor under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

## **3.3 Representations and covenants**

By entering into the Loan Agreement, the Chargor makes certain representations contained in Clause 17 of the Loan Agreement to each Finance Party and agrees to be bound by the Covenants in Clauses 18, 19 and 20 of the Loan Agreement. These covenants include a covenant by the Chargor not to allow to exist any Security Interest (as defined in the Loan Agreement) on

any of its assets and a covenant not to dispose of any of its assets, in each case, subject to the exceptions provided in the Loan Agreement.

#### 3.4 **Set-Off**

A Finance Party may set off any matured obligation owed to it by the Chargor under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to the Chargor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

#### 4 **Priority Deed**

By entering into the Priority Deed the Chargor will agree to be bound by the covenants contained in the Priority Deed including the following priority arrangements:

(a) Unless expressly provided to the contrary in the Priority Deed:

- (i) the Debt shall rank in right and priority of payment; and
- (ii) the Security shall rank and secure the Senior Debt,

in each case in the following order:

**First** the Senior Debt and the Hedging Debt (pari passu, without any preference between themselves);

**Second** the Intercompany Debt; and

**Third** the Investor Debt.

(b) The ranking and priority in paragraph (a) above applies regardless of:

- (i) the order of registration, filing, notice or execution of any document;
- (ii) the date upon which the Debt was incurred or arose;
- (iii) whether a person is obliged to advance any such Debt; and
- (iv) any fluctuations in the outstanding amount, or any intermediate discharge in whole or in part of any Debt.

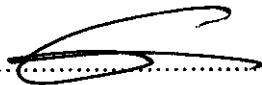
(c) The Priority Deed does not purport to rank any elements of the Intercompany Debt or Investor Debt, in each case, as between themselves. The Intercompany Debt and the Investor Debt are and will remain unsecured.

#### 5 **Intercompany Loan Agreement**

The Chargor together with certain other group companies, agrees to make an on-demand intercompany revolving loan facility available to Prestbury Hotels Limited for the purpose of enabling, among other things, Prestbury Hotels Limited to pay any amounts in accordance with the terms of the Loan Agreement. The rate of interest applicable to advances made by the Chargor pursuant to the Intercompany Loan Agreement shall be such rate as is agreed between Prestbury Hotels Limited and the Chargor.

This is Schedule 2 referred to in the Form 155(6)b as declared by the directors of the Company.

Signed .....

A handwritten signature in black ink, consisting of a stylized, cursive letter 'S' followed by a horizontal line.

Solicitor


**SCHEDULE 3**

**to Form 155(6)b**

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

Any amounts lent under the Intercompany Loan Agreement.

This is Schedule 3 referred to in the Form 155(6)b as declared by the directors of the Company.

Signed ..... 

Solicitor



**BDO Stoy Hayward**  
Corporate Finance

BDO Stoy Hayward LLP  
Emerald House East Street  
Epsom Surrey KT17 1HS  
Telephone +44 (0)1372 734300  
Facsimile +44 (0)1372 734301  
Web Site: [www.bdo.co.uk](http://www.bdo.co.uk)

**Private and Confidential**

The Directors  
TLLC CmPropCo11 Limited  
11/12 Wigmore Place  
London  
W1U 2LU

19 October 2004

Our ref: NSW001/C

Dear Sirs

**Independent auditors' report to the directors of TLLC CmPropCo11 Limited  
pursuant to Section 156(4) of the Companies Act 1985**

We have examined the attached statutory declaration of the directors of TLLC CmPropCo11 Limited (the "Company") dated 19 October 2004 in connection with the proposal that the Company's subsidiary undertaking, TLLC Cmsubpropco11 Limited, should give financial assistance for the purchase of the entire share capital of the Company.

Our report has been prepared pursuant to the requirements of section 156(4) the Companies Act 1985 and for no other purpose. No person is entitled to rely on this report unless such a person is a person entitled to rely upon this report by virtue of and for the purpose of section 156(4) of the Companies Act 1985 or has been expressly authorised to do so by our prior written consent. Save as above, we do not accept responsibility for this report to any other person or for any other purpose and we hereby expressly disclaim any and all such liability.

**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

BDO Stoy Hayward LLP  
*Chartered Accountants and Registered Auditors*

000/CR/BDO Sec 156 letter re holding co-1  
Fin asst letter c.doc