

Derby Healthcare PLC

(incorporated with limited liability in England and Wales under company number 4668140)

£446,588,000 5.564 per cent. Guaranteed Secured Bonds due 2041

(including up to £35,000,000 Variation Bonds)

unconditionally and irrevocably guaranteed as to
scheduled payments of principal and interest only pursuant to a financial guarantee issued by

MBIA

MBIA Assurance S.A.

(Originally registered in France on 3 May 1990 with the Nanterre Register of Trade and Companies.

Currently registered with the Paris Register of Trade and Companies under No. B377883293 (98 B 05130))

Issue price: 99.993 per cent.

The £446,588,000 5.564 per cent. Guaranteed Secured Bonds due 2041 including up to £35,000,000 Variation Bonds (as defined below) (the "Bonds") of Derby Healthcare PLC (the "Issuer") will be issued pursuant to the bond trust deed (the "Bond Trust Deed") to be dated 9 September 2003 (the "Issue Date") between the Issuer, MBIA Assurance S.A. ("MBIA") and BNP Paribas Trust Corporation UK Limited as bond trustee (the "Bond Trustee"), which expression includes the trustee or trustees for the time being of the Bond Trust Deed. The issue price of the Bonds will be 99.993 per cent. The Bonds will be unconditionally and irrevocably guaranteed as to scheduled payments of principal and interest (other than any additional amounts relating to prepayment or acceleration) in respect of the Bonds pursuant to a financial guarantee (the "Financial Guarantee") to be issued by MBIA and as set out in the section entitled "MBIA Financial Guarantee" below, subject to the arrangements relating to Variation Bonds.

Interest on the Bonds will be payable semi-annually in arrear on 30 June and 31 December in each year (each a "Scheduled Payment Date"), except that the first Scheduled Payment Date will be 31 December 2003 in respect of the period from, and including, the Issue Date (as defined below) to, but excluding, 31 December 2003.

Unless previously redeemed or purchased and cancelled, the Bonds will mature on 30 June 2041 and will be subject to redemption in part from, and including, 30 June 2009 in accordance with the amortisation schedule set out in the section entitled "Terms and Conditions of the Bonds – Payments and Exchange of Talons – Scheduled Payments" below. The Bonds are also subject to redemption in whole but not in part, at the Early Redemption Price (as defined below) at the option of the Issuer (as provided in Condition 5(b)) (see "Terms and Conditions of the Bonds – Redemption and Purchase – Redemption at the Option of the Issuer").

The Issuer is a special purpose vehicle whose principal purposes are:

- (a) to design, build and maintain on a site (the "Site") known as Derby City General Hospital a new acute general hospital together with supporting infrastructure and amenities and certain refurbishment of the existing buildings of the hospital (together the "Hospital") on the Site; and
- (b) to provide certain non-clinical services in connection with the completed and refurbished Hospital; and
- (c) to provide certain existing services to the existing hospital known as the Derbyshire Royal Infirmary and other associated locations.

The Issuer will operate certain non-clinical services (listed below) at the Hospital over the term of the Concession (as defined below) as well as certain non-clinical interim/mobilisation services (over a much shorter period) at the existing hospital on the Site and at the Derbyshire Royal Infirmary. The Southern Derbyshire Acute Hospitals National Health Service Trust (the "Trust") will operate all clinical services at the Hospital, the existing hospital on the Site and at the Derbyshire Royal Infirmary.

Derby Healthcare (Holdings) Limited ("HoldCo") is a special purpose vehicle established for the principal purpose of acting as the holding company of the Issuer (and HoldCo, together with the Issuer, the "Obligors"). There is no recourse to any shareholder of HoldCo except to the extent described in this Offering Circular.

The obligations of the Issuer under the Bonds will be secured in favour of BNP Paribas Trust Corporation UK Limited as security trustee (the "Security Trustee") as described in the section entitled "The Financing of the Project – The Security Arrangements" below.

The Bonds are expected to be rated upon issue AAA by Fitch Ratings Limited ("Fitch") and Aaa by Moody's Investors Services Limited ("Moody's") (each a "Rating Agency" and together, the "Rating Agencies"). These ratings will be based solely upon the financial strength rating of MBIA. A credit rating is not a recommendation to buy, sell or hold securities and may be subject to revision, suspension or withdrawal at any time by any one or all of the Rating Agencies. A suspension, reduction or withdrawal of the rating assigned to the Bonds may adversely affect the market price of the Bonds.

The Bonds will be in bearer form and in the denominations of £1,000, £10,000 and £100,000. The Bonds will initially be in the form of a temporary global bond (the "Temporary Global Bond"), without coupons or talons attached, which will be deposited on or around the Issue Date with a common depositary for Euroclear S.A./N.V., as operator of the Euroclear System ("Euroclear") and Clearstream Banking, société anonyme, Luxembourg ("Clearstream, Luxembourg"). The Temporary Global Bond will be exchangeable, in whole or in part, not earlier than 40 days after the Issue Date upon certification of non-U.S. beneficial ownership, for interests in a permanent global bond (the "Permanent Global Bond"), without coupons or talons attached, which will also be deposited with such common depositary for Euroclear and Clearstream, Luxembourg. Interest payments in respect of the Bonds cannot be collected without such certification of non-U.S. beneficial ownership. The Permanent Global Bond will be exchangeable in whole, but not in part, for Bonds in definitive form in the denominations of £1,000, £10,000 and £100,000, with coupons for principal and interest and talons for further coupons attached, only in the limited circumstances described in the section entitled "Summary of Provisions relating to the Bonds while in Global Form" below.

PARTICULAR ATTENTION IS DRAWN TO THE SECTION ENTITLED "RISK FACTORS" BELOW.

Lead Manager

BNP PARIBAS

Co-Lead Manager

Barclays Capital



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COMPANIES HOUSE

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IMPORTANT NOTICE

*This Offering Circular, together with the Appendix hereto, comprises listing particulars ("**Listing Particulars**") in accordance with the listing rules (the "**Listing Rules**") made under section 74 of the Financial Services and Markets Act 2000 (the "**FSMA**"). Copies of this Offering Circular have been delivered for registration to the Registrar of Companies in England and Wales as required by section 83 of the FSMA. Applications have been made for the Bonds to be admitted to listing on the Official List of the Financial Services Authority (in its capacity as competent authority for the purposes of Part VI of the FSMA, the "**UK Listing Authority**") and to trading on the London Stock Exchange plc's (the "**London Stock Exchange**") market for listed securities.*

The Issuer accepts responsibility for the information contained in this Offering Circular. To the best of the knowledge and belief of the Issuer (which has taken all reasonable care to ensure that such is the case), such information is in accordance with the facts and does not omit anything likely to affect the import of such information.

*The Southern Derbyshire Acute Hospitals National Health Service Trust (the "**Trust**") accepts responsibility for the information contained in the section of this Offering Circular entitled "**Southern Derbyshire Acute Hospitals National Health Service Trust**" (the "**Trust Information**"). To the best of the knowledge and belief of the Trust (having taken all reasonable care to ensure that such is the case), such information is in accordance with the facts and does not omit anything likely to affect the import of such information. The Trust accepts no responsibility for any other information contained in this Offering Circular.*

*MBIA accepts responsibility for the information contained in the sections of this Offering Circular entitled "**MBIA Financial Guarantee**" (see page 44), "**MBIA Assurance S.A.**" (see page 52), "**MBIA Insurance Corporation**" (see page 56), "**Financial Statements of MBIA Assurance S.A. for the year ended 31 December 2002**" (see page 105), and in paragraphs 2, 4, 6 and 8 of "**General Information**" (see page 98) (together the "**MBIA Information**"). To the best of the knowledge and belief of MBIA (which has taken all reasonable care to ensure that such is the case), such information is in accordance with the facts and does not omit anything likely to affect the import of such information. MBIA accepts no responsibility for any other information contained in this Offering Circular. Save for the MBIA Information, MBIA has not separately verified the information contained herein. No representation, warranty or undertaking, expressed or implied is made and no responsibility or liability is accepted by MBIA as to the accuracy or completeness of any information contained in this Offering Circular (other than the MBIA Information) or any other information supplied in connection with the Bonds or their distribution. Each person receiving this Offering Circular acknowledges that such person has not relied on MBIA nor on any person affiliated with it in connection with its investigation of the information contained herein (other than the MBIA Information).*

*The Issuer has confirmed to BNP Paribas and Barclays Bank PLC (together, the "**Managers**") that this Offering Circular contains all information on the Issuer, HoldCo, the Project, the Finance Documents, the Project Documents and the Bonds which is (in the context of the issue, offering and sale of the Bonds) material; such information is true and accurate in all material respects and is not misleading in any material respect; any opinions, predictions or intentions expressed in this Offering Circular are honestly held or made and are not misleading in any material respect; this Offering Circular does not contain any untrue statement of a material fact and does not omit to state any material fact necessary to make such information, opinions, predictions or intentions (in the context of the issue, offering and sale of the Bonds) not misleading in any material respect; and all proper enquiries have been made to ascertain and to verify the foregoing.*

The Financial Guarantee has not been and will not be executed as at the date of this Offering Circular. Listing of the Bonds on the Official List of the UK Listing Authority and admission of the Bonds to trading on the London Stock Exchange's market for listed securities will be granted subject to the execution by MBIA of the Financial Guarantee.

No person has been authorised to give any information or to make representations other than the information or the representations contained in this Offering Circular in connection with the Issuer, HoldCo, MBIA, the Trust or the issue or sale of the Bonds and, if given or made, such information or representations must not be relied upon as having been authorised by any of the Issuer, HoldCo, MBIA, the Trust, the Managers, the Bond Trustee or the Security Trustee. Neither the delivery of this Offering Circular nor the offering, sale or delivery of any Bond shall in any circumstances, create any implication that there has been no adverse change, or any event reasonably likely to involve any adverse change, in the condition (financial or otherwise) of the Issuer, HoldCo or MBIA since the date hereof. Unless otherwise indicated herein, all information in this Offering Circular is given as of the date of this Offering Circular.

The Managers, the Bond Trustee and the Security Trustee have not separately verified the information contained herein. Accordingly, no representation, warranty or undertaking, express or implied, is made and no responsibility or liability is accepted by the Managers, the Bond Trustee or the Security Trustee as to the accuracy or completeness of the information contained in this Offering Circular or any other information supplied in connection with the Bonds or their distribution. The statements made in this paragraph are without prejudice to the respective responsibilities of the Issuer and MBIA. Each person receiving this Offering Circular acknowledges that such person has not relied on the Managers, the Bond Trustee or the Security Trustee nor on any person affiliated with any of them in connection with its investigation of the accuracy of the information or its investment decision.

Each person contemplating making an investment in the Bonds must make its own investigation and analysis of the creditworthiness of the Issuer, HoldCo and MBIA and its own determination of the suitability of any such investment, with particular reference to its own investment objectives and experience and any other factors which may be relevant to it in connection with such investment. A prospective investor who is in any doubt whatsoever as to the risks involved in investing in the Bonds should consult independent professional advisers.

The Bonds have not been and will not be registered under the United States Securities Act of 1933 (as amended) (the "Securities Act") and are subject to U.S. tax law requirements. The Bonds may not be offered, sold or delivered, directly or indirectly, within the United States or to, or for the account or benefit of, U.S. persons except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act. The Bonds are being offered outside the United States in accordance with Regulation S under the Securities Act. See the section entitled "Subscription and Sale" below.

The distribution of this Offering Circular and the offering, sale and delivery of the Bonds in certain jurisdictions may be restricted by law. The Issuer does not represent that the Bonds may at any time lawfully be sold in compliance with any applicable registration or other requirements in any jurisdiction, or pursuant to any exemption available thereunder, and does not assume any responsibility for facilitating such sale. Persons into whose possession this Offering Circular comes are required by the Issuer, HoldCo, MBIA and the Managers to inform themselves about and to observe any such restrictions. For a description of certain restrictions on offers and sales of the Bonds and on the distribution of this Offering Circular, see the section entitled "Subscription and Sale" below. This Offering Circular does not constitute, and may not be used for the purposes of, an offer or solicitation by any person to subscribe or purchase any Bonds in any jurisdiction where to do so would be unlawful.

All references herein to "pounds", "sterling", "Sterling" or "£" are to the lawful currency of the United Kingdom, all references to "\$", "U.S.\$", "US\$", "U.S. dollars" and "Dollars" are to the lawful currency of the United States of America and references to "euro" are to the single currency introduced at the start of the third stage of the European Economic and Monetary Union pursuant to the Treaty establishing the European Community, as amended.

In connection with the issue of the Bonds, BNP Paribas (the "Stabilising Manager") (or any person acting for the Stabilising Manager) may over-allot or effect transactions with a view to supporting the market price of the Bonds at a level higher than that which might otherwise prevail for a limited period after the Issue Date. However, there is no obligation on the Stabilising Manager (or any agent of the Stabilising Manager) to do this. Such stabilising, if commenced, may be discontinued at any time and must be brought to an end after a limited period. Such stabilising shall be in compliance with all applicable laws, regulations and rules.

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SUMMARY OF THE PROJECT

The following is a summary of the Project and should be read in conjunction with the rest of this Offering Circular.

The Issuer has entered into a project agreement with the Trust to be dated on or before the Issue Date (the **"Project Agreement"**) pursuant to which the Issuer will agree to design and build the Hospital, together with supporting infrastructure and amenities, on and around the Site (the **"Works"**) and thereafter provide certain services in relation to the same (the **"Services"**) (together with the Works, the **"Project"**).

The Trust was given approval by the Department of Health pursuant to section 1 of the National Health Service (Private Finance) Act 1997 on 27 August 2003 to enter into the Project. Except for the Mobilisation Services Agreement and the ancillary agreements relating thereto which are all dated on or around 28 March 2003, each of the Project Documents (as defined below) is dated on or around the date of the Project Agreement and is subject to the laws of England and Wales and the jurisdiction of the English courts.

The Project Agreement has a term which lasts for a period of 40 years from 9 September 2003 (the **"Concession"**) unless terminated early (as more particularly described below in **"Summary of the Project Documents"**).

"Completion" means the completion of the main acute building of the Hospital. The **"Completion Date"** is the date on which the final section of the main acute building of the Hospital is scheduled to be completed. The **"Actual Completion Date"** is the date on which the final section of the main acute building of the Hospital is completed. **"Actual Sectional Completion Date"** is the date on which the Section to which such term applies is completed.

Services

The Project Agreement provides for the Issuer to provide non-clinical services to the Trust for the term of the Concession.

The services comprise domestic services, portering (including waste portering), linen and laundry (including sterile linen), catering, reception, receipt and distribution, switchboard and telecommunications services (the **"Soft FM Services"**), and estates management, information management and technology (**"IM&T"**), and waste management (the **"Hard FM Services"**) and provision and maintenance of sterile services (the **"Sterile Services"**) (Hard FM Services, Soft FM Services and Sterile Services together being the **"Services"**).

Mobilisation Services

On 28 March 2003, the Issuer entered into an agreement (the **"Mobilisation Services Agreement"**) with the Trust to govern the provision of non-clinical services in the existing hospital at the Site, the Derbyshire Royal Infirmary and other associated sites in Derby, such services comprising the same services as those provided under the Project Agreement (other than IM&T which will be introduced as a variation to the Mobilisation Services Agreement) (the **"Mobilisation Services"**). The provision of such services are risk neutral for the Issuer since all risks are passed down to the Mobilisation Services Providers.

Design and Build Sub-Contract

The Issuer has entered into a sub-contract with Skanska Construction UK Limited and Skanska Rashleigh Weatherfoil Limited acting jointly and severally in an unincorporated joint venture known as the Skanska Derby Joint Venture (the **"Design and Build Sub-Contract"** and the **"Design and Build Sub-Contractor"** respectively) to carry out the design, construction and building commissioning of the Works. The obligations of the Design and Build Sub-Contractor under the Design and Build Sub-Contract are guaranteed (the **"Design and Build Sub-Contract Guarantee"**) by Skanska AB (the **"Design and Build Sub-Contractor Guarantor"**). The Design and Build Sub-Contractor's obligations are supported by an on-demand performance bond provided by HSBC Bank Plc up to an agreed maximum liability of 10 per cent. of the initial contract sum being payable under the Design and Build Sub-Contract until the Actual Completion Date (the **"Works Bond"**) and a further on-demand performance bond provided by Svenska Handelsbanken AB (publ) up to an agreed maximum liability of 5 per cent. of the initial contract sum payable under the Design and Build Sub-Contract until the Section 1(c) Actual Sectional Completion Date (the **"Section 1(c) Performance Bond"**) (together the **"Performance Bonds"**).

Service Providers

The Issuer has entered into sub-contracts with Skanska Rashleigh Weatherfoil Limited (the "**Hard FM Provider**") for provision of the Hard FM Services (the "**Hard FM Contract**"), with Medirest, a division of Compass Services (UK) Limited (the "**Soft FM Provider**") for the provision of Soft FM Services (the "**Soft FM Contract**") and with Synergy Healthcare plc (the "**Sterile Services Provider**") for the provision of Sterile Services (the "**Sterile Services Contract**"), all in accordance with the service specifications set out in the Project Agreement. The Hard FM Contract includes the provision of planned and reactive maintenance. The obligations of the Hard FM Provider under the Hard FM Contract are guaranteed by Skanska Construction Group Limited (the "**Hard FM Guarantor**"). The obligations of the Soft FM Provider under the Soft FM Contract are guaranteed by Compass Contract Services (UK) Limited (the "**Soft FM Guarantor**"). The obligations of the Sterile Services Provider are not guaranteed as Synergy Healthcare plc does not have a parent company.

The Soft FM Provider, the Hard FM Provider and the Sterile Services Provider are together the "**Service Providers**" and each a "**Service Provider**". The Soft FM Contract, the Hard FM Contract and the Sterile Services Contract are together the "**Service Contracts**" and each, a "**Service Contract**". The Design and Build Sub-Contract, the Hard FM Contract, the Soft FM Contract and the Sterile Services Contract are together known as the "**Sub-Contracts**" and each a "**Sub-Contract**". The Design and Build Sub-Contractor, the Hard FM Provider, the Soft FM Provider, the Sterile Services Provider are together known as the "**Sub-Contractors**" and each a "**Sub-Contractor**".

The Issuer has entered into a contract with Gentian (Derby) Limited ("**Gentian**") to provide retail services within the Site (see the section entitled "*Summary of the Project Documents – Property Arrangements*").

Certain Services will be market tested at intervals, the first to occur on the earlier of one year after the Actual Completion Date and two years after the programmed Completion Date, the second to occur seven years after the first market test, and thereafter at 5-yearly intervals. The Issuer and the Trust will meet informally to agree revised service specifications and relevant groupings/divisions of services to be market tested, agree the process and thereafter proceed to market testing. Following such testing the Unitary Charge shall be revised to reflect the results from the relevant Market Testing Date or (if later) the date the new service provider commences service provision. The waste management service provided by the Hard FM Provider will be benchmarked every three years, the first such benchmarking to take place in 2006. Sterile Services will be benchmarked in 2011, and thereafter at five-yearly intervals except for those Sterile Services that relate to packs containing certain disposable items for specific non-surgical procedures ("**Soft Pack Items**"). Prices for Soft Pack items will be checked each year according to a "**value-for-money**" benchmarking test. The IM&T Service to be provided by the Hard FM Provider will be market tested at intervals, the first to occur on the earlier of the Actual Completion Date and one year after the programmed Completion Date, and thereafter at five-yearly intervals.

Mobilisation Service Providers

The Issuer has entered into subcontracts with the Hard FM Provider, the Soft FM Provider and the Sterile Services Provider (for these purposes the "**Mobilisation Service Providers**") for the provision of the Mobilisation Services all in accordance with the service specifications set out in the Mobilisation Services Agreement. Guarantees will be provided as set out above.

Direct Agreements

The Trust, the Security Trustee and the Issuer have entered into a direct agreement (the "**Trust Direct Agreement**") relating, *inter alia*, to rights of step-in and step-out in default situations which might otherwise cause termination of the Project Agreement (see the section entitled "*The Financing of the Project – Security Arrangements*" below). Similarly, the Issuer, the Security Trustee and each of the Sub-Contractors and the guarantors (where the Service Contracts are guaranteed) of each of the Sub-Contractors respectively, have entered into contractor direct agreements (the "**Design and Build Sub-Contractor Direct Agreement**", the "**Soft FM Direct Agreement**", the "**Hard FM Direct Agreement**" and the "**Sterile Services Direct Agreement**" respectively and together the "**Direct Agreements**") regulating step-in rights under the Sub-Contracts.

Sub-Contractor Co-Operation Agreements

Each of the Hard FM Provider, Soft FM Provider, Sterile Services Provider and the Issuer has entered into an agreement (the "**Mobilisation Sub-Contractor Co-Operation Agreement**") dated 28 March 2003 with the Issuer for the period during which Mobilisation Services are provided, in accordance with the Mobilisation Services Agreement (the "**Mobilisation Period**"). The Sub-Contractor Co-Operation Agreement defines the

terms by which the Issuer may or must allocate or reallocate deductions (summarised below under "*Payment Structure*") and the terms by which the Sub-Contractors may be directly liable and make claims against each other, subject to caps on their respective liabilities.

Upon the Project Agreement coming into effect, each of the Design and Build Sub-Contractor, the Hard FM Provider, the Soft FM Provider and the Sterile Services Provider shall enter into a revised Sub-Contractor Co-Operation Agreement and the existing Mobilisation Sub-Contractor Co-Operation Agreement will have no further force or effect, except in respect of antecedent claims.

Project Agreement Payment Structure

In consideration of the performance by the Issuer of its Services obligations under the Project Agreement, the Trust will make payments to the Issuer (the "**Unitary Charge**") which have been set at a level in the base case that are sufficient to meet operating costs (including utility payments, on-going buildings and equipment replacement), tax obligations, minimum debt service cover ratios and shareholder returns. The Unitary Charge except for the element of the payment in respect of the seconded staff (see the section entitled "*The Project Agreement – Employees*" below) is adjusted annually in accordance with a compounded indexation factor percentage designed to meet payments of interest and principal on the Bonds.

The Unitary Charge is payable monthly two weeks in advance.

The Unitary Charge is subject to a detailed unavailability and performance measurement regime and may be subject to deductions for unavailability and/or non-compliant performance of the Services. The Unitary Charge continues (subject to deductions, force majeure and insured risks, see "*Summary of the Project Documents*" below) until the termination or expiry of the Concession.

Mobilisation Payment Structure

In consideration of performance by the Issuer of its Mobilisation Service obligations under the Mobilisation Services Agreement, the Trust shall make payments (the "**Mobilisation Payments**") to the Issuer which (unless specifically priced) have been set on the basis of the Trust's existing services and budgets. The provision of such services are risk neutral for the Issuer since all risks are passed down to the Mobilisation Services Providers. The Mobilisation Services Agreement is ringfenced from the Project Agreement; deduction from the Mobilisation Payments cannot affect payment flow under the Project Agreement; likewise breaches or sub-contractor failure cannot result in damages/termination claims under the Project Agreement.

THE FINANCING OF THE PROJECT

The following is a summary of the financing of the Project and should be read in conjunction with the rest of this Offering Circular. The summaries of the documents do not purport to be complete and are subject to the detailed provisions of the relevant documents.

1. GENERAL

The Project will be financed by the issue of the Bonds by the Issuer (see the section entitled "*The Bonds and the Financial Guarantee*" below) together with subordinated loan stock to be subscribed for by the Initial Shareholders in HoldCo (the "**HoldCo Loan Stock**") (the proceeds of which will be used by HoldCo to subscribe for loan stock to be issued by the Issuer (the "**Issuer Loan Stock**")) all as described in the paragraph entitled "*The Security Arrangements – Shareholders' Support Agreement*" below. The proceeds of the Bonds (excluding the Variation Bonds) and the proceeds of the Issuer Loan Stock will be deposited into an escrow account and may only be applied by the Issuer for the purpose of the Project and payment of issue expenses in accordance with the terms of the Collateral Deed (as defined below) and the other relevant Senior Finance Documents (as defined below) pursuant to which, *inter alia*, MBIA will agree to issue the Financial Guarantee subject to satisfaction of certain conditions precedent, in particular the payment of a financial guarantee fee (the "**Financial Guarantee Fee**") by the Issuer to MBIA as consideration for MBIA's agreement to make payments under the Financial Guarantee.

The Bonds will have the benefit of the Financial Guarantee which will be issued pursuant to a guarantee and indemnity agreement between the Issuer, HoldCo and MBIA (the "**Guarantee and Indemnity Agreement**") to be entered into on or before the Issue Date. Under the Financial Guarantee, MBIA will unconditionally and irrevocably agree to pay to the Bond Trustee amounts unpaid by the Issuer in respect of scheduled payments of principal and interest in respect of the Bonds (other than certain amounts including additional amounts relating to prepayment or acceleration pursuant to the Financial Guarantee). MBIA will, in the event of the imposition of French Republic withholding taxes on payments made by it under the Financial Guarantee, pay to the Bond Trustee certain additional amounts in respect of such withholding taxes, subject to the exceptions set out in the Financial Guarantee. Under the Guarantee and Indemnity Agreement, MBIA shall be entitled to reimbursement by the Issuer for any payment made by it under the Financial Guarantee (including additional amounts paid in respect of French Republic withholding taxes). In addition, MBIA will be subrogated to the rights of the Bondholders and the Bond Trustee in respect of any payments made by MBIA under the Financial Guarantee. MBIA's rights to reimbursement in respect of the Financial Guarantee will have the benefit of the security granted to the Security Trustee. Under a collateral deed (the "**Collateral Deed**") to be entered into on or before the Issue Date between the Issuer, HoldCo, the Security Trustee, the Bond Trustee and MBIA, HoldCo will grant a guarantee of the Issuer's obligations, *inter alia*, to make reimbursements to MBIA under the Guarantee and Indemnity Agreement.

Payments in respect of the Bonds will be made pursuant to a paying agency agreement (the "**Paying Agency Agreement**", which expression includes any modification or supplement thereto) to be entered into on or before the Issue Date between the Issuer, the Bond Trustee, BNP Paribas Securities Services, Luxembourg Branch as principal paying agent (the "**Principal Paying Agent**", which expression includes any successor principal paying agent appointed in accordance with the Paying Agency Agreement) and BNP Paribas, London Branch as paying agent (the "**Paying Agent**" and together with the Principal Paying Agent and any additional paying agent appointed in accordance with the Paying Agency Agreement, the "**Paying Agents**"). Under the Collateral Deed, the Issuer agrees to ensure that it will maintain a Paying Agent with a specified office in London.

The Issuer will pay, *inter alia*, or procure to be paid to:

- (i) MBIA, the Financial Guarantee Fee in consideration for the issuance of the Financial Guarantee;
- (ii) the Bond Trustee for its services as Bond Trustee, remuneration on the issue of the Bonds and on each anniversary of the issue of the Bonds and upon such terms agreed between the Issuer and the Bond Trustee;
- (iii) the Principal Paying Agent (for the account of the Paying Agents) for their services as Paying Agents under the Paying Agency Agreement, fees in such amounts and upon such terms agreed between the Principal Paying Agent and the Issuer;

- (iv) the authorised adviser of the Issuer for the authorised adviser's services in respect of the listing of the Bonds, fees in such amounts as agreed between the authorised adviser and the Issuer;
- (v) the Security Trustee, for its services as Security Trustee, such remuneration and upon such terms agreed between the Issuer, MBIA and the Security Trustee; and
- (vi) the Managers, a combined selling, management and underwriting commission.

The Issuer will also pay to each of the Bond Trustee, the Security Trustee, the Paying Agents, the Managers and MBIA their costs and expenses in connection with the Documents (as defined below), including (if applicable) their legal fees.

2. THE BONDS AND THE FINANCIAL GUARANTEE

The following is a summary of the principal terms of the Terms and Conditions of the Bonds as set out in the section of this Offering Circular entitled "Terms and Conditions of the Bonds" and should be read in conjunction with such section.

Issuer	Derby Healthcare PLC.
Issue	£446,588,000 5.564 per cent. Guaranteed Secured Bonds due 2041 (including up to £35,000,000 Variation Bonds).
Issue Price	99.993 per cent.
Managers	BNP Paribas and Barclays Bank PLC.
Interest and Redemption	Payments of principal and interest on the Bonds will be due as set out in the section entitled " <i>Terms and Conditions of the Bonds – Payments and Exchange of Talons</i> " below. The Bonds may be redeemed as set out in the section entitled " <i>Terms and Conditions of the Bonds – Redemption and Purchase</i> ".
Financial Guarantee	<p>An unconditional and irrevocable financial guarantee provided by MBIA as to scheduled payments of principal and interest (but excluding certain amounts including default interest and any additional amounts relating to prepayment and accelerated amounts) on the Bonds will be issued in favour of the Bond Trustee.</p> <p>To the extent that the Default Amount exceeds the Outstanding Principal Amount of any Bonds (as defined in Condition 5 (<i>Redemption and Purchase</i>)), payment of such excess is not guaranteed by MBIA under the Financial Guarantee.</p>
Guarantee and Indemnity Agreement	The Issuer will be obliged to reimburse MBIA in respect of payments made by MBIA under the Financial Guarantee (including payments made by MBIA in respect of French Republic withholding tax). In addition, MBIA will be subrogated to the rights of the Bondholders (as defined below) and the Bond Trustee in respect of any payments made by it under the Financial Guarantee.
Status of Bonds	The Bonds will constitute direct, secured obligations of the Issuer which will rank <i>pari passu</i> and rateably without any preference or priority among themselves and will rank in priority to all unsecured obligations of the Issuer, save for such obligations as may be preferred by provisions of law that are both mandatory and of general application.
Status of Financial Guarantee	The Financial Guarantee to be provided by MBIA in respect of the Bonds will constitute an unsubordinated and unsecured obligation of MBIA which will rank at least <i>pari passu</i> with all other unsubordinated and unsecured obligations of MBIA, save for such obligations as may be preferred by provisions of law that are both mandatory and of general application.

Listing	Applications have been made for the Bonds to be admitted to listing on the Official List of the UK Listing Authority and to trading on the London Stock Exchange's market for listed securities.
Rating	The Bonds are expected to be rated, upon issue, AAA by Fitch and Aaa by Moody's.
Settlement/Clearance	Euroclear and Clearstream, Luxembourg and any additional or substitute clearing system (nominated by the Issuer and the Bond Trustee and approved by MBIA (if MBIA is then the Credit Provider) in accordance with the Bond Trust Deed).
Bond Trustee	BNP Paribas Trust Corporation UK Limited.
Security Trustee	BNP Paribas Trust Corporation UK Limited.
Principal Paying Agent	BNP Paribas Securities Services, Luxembourg Branch.
Paying Agent	BNP Paribas, London Branch.
Form and Denomination	<p>The Bonds will be in bearer form in the denominations of £1,000, £10,000 and £100,000 each.</p> <p>The Bonds will initially be represented by a Temporary Global Bond, without coupons or talons attached, deposited with a common depositary for Euroclear and Clearstream, Luxembourg. The Temporary Global Bond will be exchangeable, in whole or in part, not earlier than 40 days after the Issue Date of the Bonds, and upon certification of non-U.S. beneficial ownership, for interests in a Permanent Global Bond, without coupons or talons attached, which will also be deposited with such common depositary for Euroclear and Clearstream, Luxembourg. Interest payments in respect of the Bonds cannot be collected without such certification of non-U.S. beneficial ownership. The Permanent Global Bond will be exchangeable in whole, but not in part, for Bonds in definitive form in the denominations of £1,000, £10,000 and £100,000, with coupons for principal and interest and talons for further coupons attached in the limited circumstances described in the section entitled "<i>Summary of Provisions relating to the Bonds while in Global Form</i>" below.</p>
Taxes	<p>All payments of principal and interest in respect of the Bonds by the Issuer will be made free and clear of, and without withholding or deduction for, taxes, duties, assessments or governmental charges of whatsoever nature, unless required by law. In that event, the Issuer will pay principal and/or interest after such withholding or deduction has been made. The Issuer shall consult with the Bond Trustee in good faith to consider such steps as may be reasonably open to the Issuer to mitigate the effect of such withholding or deduction on the Bondholders or Couponholders (as defined below). The Issuer will not be obliged to make any additional payments to Bondholders or Couponholders (as defined below) in respect of any such withholding or deduction.</p> <p>All payments under the Financial Guarantee will be made free and clear of, and without withholding or deduction for, taxes, duties, assessments or governmental charges of whatsoever nature, unless required by law. If such taxes, duties, assessments or governmental charges are imposed by the French Republic or any political subdivision or authority thereof or therein with power to tax, subject to certain exceptions, MBIA will pay such additional amounts so that the Bondholders and Couponholders receive the full amount which would otherwise have been received under the Financial Guarantee had no such withholding or deduction been made. If such taxes are imposed</p>

by any other jurisdiction, political subdivision or authority with power to tax, MBIA will not pay any additional amounts to the Bond Trustee or the Bondholders or Couponholders under the Financial Guarantee in respect of any such withholding or deduction.

Governing Law

The Bonds and the Financial Guarantee will be governed by English law.

3. THE COLLATERAL DEED

The following is a summary of certain of the provisions of the Collateral Deed. It is not exhaustive and is subject to the Collateral Deed's detailed provisions. Copies of the Collateral Deed are available for inspection by Bondholders during normal business hours at the Specified Offices (as set out below) of each of the Paying Agents.

The Issuer, HoldCo, the Security Trustee, the Bond Trustee and MBIA will on or before the Issue Date enter into the Collateral Deed in which the Obligors will give certain representations and covenants to MBIA, the Bond Trustee and the Security Trustee.

Definitions

"Bond Documents" means the Bonds, the Bond Trust Deed, a bond custody agreement between BNP Paribas Security Services, Luxembourg Branch, the Issuer and the Security Trustee (the **"Bond Custody Agreement"**), the Paying Agency Agreement and the Subscription Agreement.

"Credit Provider" means MBIA unless and until such time as the Security Trustee has received notice from the Bond Trustee that an MBIA Event of Default (as defined in **"The Security Agreements – Security Trust and Intercreditor Deed"** below) has occurred, in which case, unless such MBIA Event of Default has been cured to the satisfaction of the Bond Trustee or waived by the Bond Trustee, the Credit Provider means the Bond Trustee.

"Direct Agreements" means the Trust Direct Agreement, the Design and Build Sub-Contractor Direct Agreement, the Hard FM Direct Agreement, the Soft FM Direct Agreement and the Sterile Services Direct Agreement.

"Finance Documents" means the Senior Finance Documents and the Junior Finance Documents.

"Junior Finance Documents" means the instruments dated on or about the date of the Collateral Deed which constitute the HoldCo Loan Stock and the Issuer Loan Stock.

"Project Documents" means the Project Agreement, the Design and Build Sub-Contract, the Design and Build Sub-Contract Guarantee, the Direct Agreements, the Service Contracts, the Hard FM Guarantee, the Soft FM Guarantee, the Mobilisation Services Agreement, the CEMA, all other documents entered into by the Issuer in connection with the Project and such other documents as may from time to time be agreed between MBIA and the Issuer (each acting reasonably) to be a **"Project Document"** and **"Project Document"** means any of them.

"Relevant Documents" means, in relation to any person, each of the Project Documents and each of the Finance Documents to which in each case that person is expressed to be a party.

"Security Documents" means the Issuer Debenture, the HoldCo Debenture, the Shareholders' Support Agreement, the Security Trust and Intercreditor Deed, any other document from time to time executed in favour of the Security Trustee for the purpose of securing all or any of the Secured Obligations and any deed of accession entered into in respect of any of the above.

"Senior Finance Documents" means the Bond Documents, the Financial Guarantee, a financial guarantee fee letter between the Issuer and MBIA for payment of certain fees in connection with the issuance of the Financial Guarantee (the **"Financial Guarantee Fee Letter"**), the Guarantee and Indemnity Agreement, the Accounts Agreement, the Deposit Agreements, the Direct Agreements, the Collateral Deed and the Security Documents.

Covenants by the Issuer

The covenants contained in the Collateral Deed will, *inter alia*, require the Issuer:

- (i) to sell the Variation Bonds in the market by private treaty, only if agreed or required by the Credit Provider;
- (ii) to maintain specified levels of insurance with insurance providers agreed by the Credit Provider;

- (iii) to replace any Service Provider within six months of the termination of a Service Provider other than the Sterile Services Provider where the Issuer must use reasonable endeavours to replace the Sterile Services Provider;
- (iv) to carry out the Project, Works and the Services in accordance with, *inter alia*, the Project Agreement, Design Build Sub-Contract, Services Contracts and other Project Documents;
- (v) not to create or permit to subsist any encumbrance over all or any of its present or future rights, claims, revenues or assets except as permitted in the Collateral Deed;
- (vi) not to incur, assume or permit to exist any financial indebtedness except as permitted in the Collateral Deed;
- (vii) not to dispose of assets except as permitted in the Collateral Deed;
- (viii) not to make any loan or provide any other form of credit or make any deposit with any person except deposits made into the Accounts or as otherwise permitted in the Collateral Deed;
- (ix) save as permitted in the Collateral Deed not to enter into any transaction with any person except on the basis of an arm's-length transaction;
- (x) not to carry on any business or engage in any business (including any property redevelopment activities) other than the Project and the Mobilisation Services or as otherwise permitted in the Collateral Deed;
- (xi) not voluntarily to enter into liquidation, dissolution or voluntarily enter into a merger or consolidation with any other person; and
- (xii) not to incur expenditures or commitments for expenditures for fixed and other non-current assets or operating expenditure, other than as permitted in the Collateral Deed.

Trigger Events

Following the occurrence of any of the trigger events ("**Trigger Events**") specified in the Collateral Deed and at any time thereafter until such Trigger Event has been waived or deemed remedied in accordance with the Collateral Deed or otherwise remedied to the satisfaction of the Credit Provider, the Credit Provider will have certain additional rights to investigate, monitor and influence (including by the appointment of experts and procurement of certain reports) certain of the activities of the Issuer (as more particularly provided in the Collateral Deed) and the Issuer will not (subject to certain exceptions) be permitted to pay any dividends or make any distributions or other payments to HoldCo.

The Trigger Events will include, *inter alia*:

- (i) receipt by the Issuer from the Trust of certain warning notices or the accumulation by the Issuer of a certain number of service failure points or availability failure points within a certain time period pursuant to the Project Agreement;
- (ii) the occurrence of any Potential Event of Default (as defined below) other than a Potential Event of Default in respect of the Events of Default constituted by either a shortfall in the lifecycle reserve account or the failure by the Issuer to meet certain specified financial coverage ratios;
- (iii) the Credit Provider is notified that completion of certain key sections has not been or will not be completed within specified grace periods;
- (iv) certain specified financial coverage ratios are not met by the Issuer on the dates they are required by the Collateral Deed to be tested;
- (v) the life cycle reserve account contains less than its specified minimum balance;
- (vi) if either of the parties to the Design and Build Sub-Contract has a right to terminate the Design and Build Sub-Contract;
- (vii) not to pay any dividends or make any distributions or other payments to HoldCo following the occurrence of certain specified circumstances; and

- (viii) where the aggregate of the amounts projected to be payable by the Obligor in respect of the Project during the period prior to the Completion Date exceeds the aggregate of amounts available to the Obligor in order to fund the Project (a "**Funding Shortfall**").

Events of Default

The Collateral Deed provides that the occurrence and continuance of any of the following events (amongst others) will constitute an event of default ("**Event of Default**") unless and until such Event of Default has been remedied to the reasonable satisfaction of the Credit Provider or waived for the purposes of the Collateral Deed:

- (i) failure by any Obligor to pay any sum due from it under any of the Senior Finance Documents within certain specified grace periods;
- (ii) any representation or statement made or deemed repeated by any Obligor in the Documents or certain documents connected therewith is or proves to have been incorrect or misleading in any material respect and, in specified cases, if it has or would reasonably be expected to have a Material Adverse Effect and, in certain other cases where no Material Adverse Effect has arisen and the breach is capable of remedy, it is not remedied within 30 days;
- (iii) failure by any Obligor duly to perform or comply with certain of its covenants and obligations under the Collateral Deed and under the other Senior Finance Documents subject in some cases to specified grace periods and materiality;
- (iv) the occurrence of an event which, with the giving of notice, would become an event under the Project Agreement which entitles either party to terminate the Project Agreement;
- (v) insolvency, rescheduling, winding-up, dissolution, administration, reorganisation, the appointment of a liquidator, receiver, administrator, administrative receiver or similar officer or an analogous event occurs with respect to the Issuer, HoldCo and (subject to materiality) certain others, subject to remedy or replacement within specified time periods, or a distress or execution is levied in respect thereof and is not discharged within a specified period;
- (vi) transfers of ownership of the equity share capital or loan stock in the Issuer and HoldCo otherwise than as permitted in the Collateral Deed;
- (vii) specified financial coverage ratios are not met by the Issuer on the dates they are required by the Collateral Deed to be tested;
- (viii) subject to materiality, the Issuer or certain other parties do not have certain licences, approvals or consents necessary to carry out its business;
- (ix) reserves held by the Issuer against future obligations for maintenance, change of law and debt service fall below certain required minimum amounts for certain periods;
- (x) the Design and Build Sub-Contract is terminated unless the Design and Build Sub-Contractor is replaced to the satisfaction of the Credit Provider;
- (xi) the Credit Provider is notified that certain key Sections have not been or will not be completed within specified grace periods;
- (xii) the Issuer exceeds a certain threshold of service failure points and availability failure points within a certain period;
- (xiii) the Issuer fails to maintain the insurances required by the Collateral Deed;
- (xiv) by or under the authority of any government, the management as a whole of any Obligor is wholly or partly curtailed and as a result the effective control of such Obligor in the conduct of its business is transferred or the authority of any Obligor in the conduct of its business is curtailed to a material extent or all or a majority of the shares or assets of any Obligor is seized, nationalised or compulsorily acquired subject to expropriation or intervention;
- (xv) any of the Initial Shareholders fail to apply and pay for HoldCo Loan Stock in accordance with the Shareholders' Support Agreement; or

(xvi) a Funding Shortfall has been continuing for a certain period.

Any event which (with the passage of time, the giving of notice, the making of any determination under the Collateral Deed or any combination thereof), if not remedied or waived, would constitute an Event of Default, is a **"Potential Event of Default"**.

If an Event of Default has occurred and has not been waived by, or remedied to the reasonable satisfaction of the Credit Provider, the Credit Provider may be entitled to exercise, *inter alia*, the following remedies: (i) the Security Trustee to take all steps to perfect or enforce the security granted by the Obligors, (ii) drawstops on the Escrow Account, (iii) the exercise of powers in respect of Trigger Events (which include the power to appoint appropriate experts to investigate the Issuer and the prevention of certain payments by the Issuer), (iv) to instruct the Issuer to exercise its right to terminate existing contracts where the other party has committed a breach, (v) the exercise of any of the rights under the Direct Agreements, (vi) acceleration of the obligation of the Initial Shareholders to subscribe for HoldCo Loan Stock and (vii) the acceleration of the Bonds (see the section entitled **"Terms and Conditions of the Bonds"** below).

4. THE SECURITY ARRANGEMENTS

The Bonds will also have the benefit of the security arrangements summarised below. Attention is drawn to **"Security Trust and Intercreditor Deed"** below. The ability of the Bond Trustee to exercise rights in respect of such security arrangements will be restricted by the Security Trust and Intercreditor Deed and Bondholders will have no independent entitlement to exercise such rights.

Security from the Issuer

Pursuant to a debenture to be granted by the Issuer in favour of the Security Trustee on or before the Issue Date (the **"Issuer Debenture"**), the obligations of the Issuer to any of the Beneficiaries under the Senior Finance Documents will be secured by charges and assignments in favour of the Security Trustee over all the undertaking and assets of the Issuer, which will include *inter alia*:

- (i) fixed charges over all the property, goodwill and intellectual property of the Issuer;
- (ii) assignments of all right, title and interest of the Issuer in and to (a) all rights and claims which the Issuer may have in connection with its property, (b) all rights and claims which the Issuer may have in connection with certain of its accounts, (c) investments, (d) all rights and claims which the Issuer may have in connection with certain specified contracts, (e) all rights and claims which the Issuer may have in connection with the proceeds of any insurance policies and (f) all present and future book and other debts and monetary claims; and
- (iii) a floating charge over all the undertaking and assets of the Issuer which have not been secured by way of fixed charge or assignment.

Security from HoldCo

Pursuant to a debenture to be granted by HoldCo in favour of the Security Trustee on or before the Issue Date (the **"HoldCo Debenture"**), the obligations of HoldCo under the Senior Finance Documents will be secured by charges and assignments in favour of the Security Trustee over the undertaking and the assets of HoldCo which will include (*inter alia*):

- (i) fixed charges over all the property, goodwill and ordinary shares in the Issuer;
- (ii) assignments of all right, title and interest of HoldCo in and to (a) all rights and claims which HoldCo may have in connection with its property, (b) all rights and claims which HoldCo may have in connection with certain of its accounts, (c) certain specified contracts to which HoldCo is a party; and (d) all present and future book and other debts and monetary claims; and
- (iii) a floating charge over all the undertaking and assets of HoldCo which have not been secured by way of fixed charge or assignment.

Guarantee

Pursuant to the terms of the Collateral Deed, HoldCo will grant a guarantee in respect of the Issuer's obligations to the Beneficiaries (as defined below).

Security Trust and Intercreditor Deed

The following is a summary of certain of the provisions of the Security Trust and Intercreditor Deed. It is not exhaustive and is subject to the Security Trust and Intercreditor Deed's detailed provisions.

The Issuer, HoldCo, the Security Trustee, the Bond Trustee, MBIA, Innisfree PFI Fund II and Innisfree PFI Fund III (English limited partnerships acting by their manager Innisfree Limited ("Innisfree")), and Skanska BOT Investment UK Limited ("Skanska") have entered into a security trust and intercreditor deed (the "**Security Trust and Intercreditor Deed**") on or before the Issue Date pursuant to which certain claims of junior creditors will be subordinated to the claims of the Beneficiaries. "**Beneficiaries**" means each of the Security Trustee, the Bond Trustee, the Bondholders and MBIA.

Each of the Beneficiaries will appoint the Security Trustee to act as trustee in connection with the Security Trust and Intercreditor Deed. In such capacity the Security Trustee will agree in the Security Trust and Intercreditor Deed that it will exercise any right which it may have in respect of the Senior Finance Documents only as directed by the Credit Provider, save for certain rights which the Security Trustee will reserve for itself. Such reserved rights of the Security Trustee include any right, power, authority or discretion of or exercisable by the Security Trustee, *inter alia*:

- (i) to agree any amendment to any of the Finance Documents which affects the manner in which any amounts owing to the Security Trustee are paid;
- (ii) to agree to any amendment to Schedule 2 of the Security Trust and Intercreditor Deed (which sets out the order of application of enforcement proceeds available to the Security Trustee) or to any other provision of the Security Documents which has the effect of amending Schedule 2 of the Security Trust and Intercreditor Deed;
- (iii) which is provided for the purposes of enabling the Security Trustee to protect its own interests including receipt of any amount due to the Security Trustee for its own account, to determine the amount thereof and to make any claim in respect thereof.

Pursuant to the terms of the Security Trust and Intercreditor Deed, the Bond Trustee will be granted certain reserved rights which the Bond Trustee will reserve for itself (acting for itself and on behalf of the Bondholders). Such reserved rights of the Bond Trustee include (but are not limited to) any right, power, authority or discretion of or exercisable by the Bond Trustee, *inter alia*: to make any amendment to the Financial Guarantee; to make any amendment to the Conditions (including to change any date fixed for payment of principal or interest in respect of the Bonds, or the amount or currency thereof); to agree to any amendment to any Finance Document which affects the manner in which any amounts owing to the Bond Trustee are paid; to agree to any amendment to Schedule 2 of the Security Trust and Intercreditor Deed (which sets out the order of application of enforcement proceeds available to the Security Trustee) or to any other provision of the Security Documents which has the effect of amending Schedule 2 of the Security Trust and Intercreditor Deed; or to agree to any amendment in respect of its reserved rights.

Subject as otherwise provided in the Security Trust and Intercreditor Deed, the Credit Provider has exclusive full right, power and authority to exercise its rights under the Finance Documents or to direct the exercise of such rights without regard to the interests of any other person, and will not be a fiduciary or owe any fiduciary duties to any person under the Security Trust and Intercreditor Deed (except where the Credit Provider is the Bond Trustee, who will have regard solely to its interests and those of the Bondholders).

Subject to certain matters and with certain exceptions, following an enforcement any proceeds of enforcement or other monies held by the Security Trustee under the Security Trust and Intercreditor Deed or under the Finance Documents will be applied by the Security Trustee in payment to the Beneficiaries in the following order:

- (1) to payment to MBIA until MBIA has received all amounts due under the Financial Guarantee Fee Letter;
- (2) to payment *pro rata* of expenses incurred in connection with a step-in under the Direct Agreements and any unpaid remuneration of the Security Trustee and the Bond Trustee and all costs, liabilities and other

expenses of the Security Trustee, any receiver acting under the Senior Finance Documents or the Bond Trustee acting pursuant to the Bond Trust Deed;

- (3) to payment to the Principal Paying Agent or if so instructed by the Bond Trustee to the Bond Trustee, until:
 - (a) first, the Bond Trustee or the Principal Paying Agent has received an amount equal to all amounts of due and payable scheduled interest;
 - (b) secondly, the Bond Trustee or the Principal Paying Agent has received all amounts of accrued interest due and payable on an early repayment, prepayment or acceleration of the Bonds excluding any premium above par payable pursuant to Condition 8 (*Acceleration*); and
 - (c) thirdly, the Bond Trustee or the Principal Paying Agent has received an amount equal to all amounts of due and payable scheduled principal;
- (4) to payment to MBIA until MBIA has received all amounts then due and payable to it under the Guarantee and Indemnity Agreement;
- (5) if any indebtedness of the Obligors to the Beneficiaries under the Senior Finance Documents (the "**Senior Finance Liabilities**") remains outstanding, to retain an amount equal to such Senior Finance Liabilities which, even though due and payable under the relevant Senior Finance Document, may not have been paid at any time;
- (6) if there are any Senior Finance Liabilities (actual or contingent) which will become payable, to retain an amount equal to such Senior Finance Liabilities pending any such amounts becoming payable and being paid; and
- (7) the surplus (if any) after the payment in full of the other amounts referred to above shall be paid to or to the order of the Issuer or to such other person as the Issuer may notify to the Security Trustee, or as otherwise required by any court of competent jurisdiction or applicable law.

The order of payments above (other than (1) and (2) above) is subject to (a) any rights of subrogation MBIA may have, (b) account being taken of certain payments made to the Principal Paying Agent in accordance with the Paying Agency Agreement. The order of payments above (including (1) and (2) above) is subject to the terms and conditions of the Project Documents in relation to a mobilisation services account and a trust insurance proceeds account.

For the purposes of the Collateral Deed and the Security Trust and Intercreditor Deed, "**MBIA Event of Default**" means any of the following events:

- (i) any amount guaranteed by or payable by MBIA under the Financial Guarantee falls due for payment in accordance with the terms of the Financial Guarantee, is unpaid by reason of non-payment and is not paid by MBIA on the date stipulated in the Financial Guarantee; or
- (ii) MBIA disclaims, repudiates and/or challenges the validity of any of its obligations under the Financial Guarantee or seeks to do so; or
- (iii) MBIA:
 - (a) presents any petition, commences any case or takes any proceedings for the winding-up or the appointment of an administrator or receiver (including an administrative receiver or manager), conciliator, trustee, assignee, custodian, sequestrator, liquidator or similar official under any Bankruptcy Law, of MBIA (or, as the case may be, of a material part of its property or assets) under any Bankruptcy Law; or
 - (b) makes or enters into any general assignment, composition, arrangement (including a voluntary arrangement under Part 1 of the UK Insolvency Act 1986) or equivalent legislation or compromise with or for the benefit of any of its creditors; or
 - (c) has a final and non-appealable order for relief entered against it under any Bankruptcy Law; or
 - (d) has a final and non-appealable order, judgment or decree of a court of competent jurisdiction entered against it appointing any conciliator, receiver, administrative receiver, trustee, assignee, custodian, sequestrator, liquidator, administrator or similar official under any Bankruptcy Law (each a

"Custodian") for MBIA or all or any material portion of its property or authorising the taking of possession by a Custodian of MBIA.

For the purpose of this definition, **"Bankruptcy Law"** means articles L620-1 et seq. and L611-1 et seq. of the French Commercial Code, any similar or future federal or state bankruptcy, insolvency, reorganisation, moratorium, rehabilitation, liquidation, conservation, fraudulent conveyance or similar law, statute or regulation of the French Republic or any other applicable jurisdiction for the relief of debtors.

The ability of the Bond Trustee to exercise any rights it may have under the Documents in respect of the Bonds and under the Bond Trust Deed will be restricted by the Security Trust and Intercreditor Deed. Bondholders will have no independent entitlement to exercise such rights.

Shareholders' Support Agreement

Pursuant to the Shareholders' Support Agreement to be dated on or before the Issue Date between the Issuer, HoldCo, the Security Trustee, the Bond Trustee, Innisfree and Skanska (for the purposes of the Shareholders' Support Agreement, Innisfree and Skanska together the **"Initial Shareholders"**) and MBIA, the Initial Shareholders covenant to each of the Security Trustee, the Issuer, HoldCo and MBIA to subscribe and pay for HoldCo Loan Stock at par at the times and in the amounts specified in the Shareholders' Support Agreement.

Subject to the subscription by the Initial Shareholders for HoldCo Loan Stock, HoldCo has agreed to subscribe for Issuer Loan Stock at par at the times and in the amounts specified in the Shareholders' Support Agreement.

Of the 50,000 issued and fully paid up ordinary shares of £1 each in the capital of HoldCo (the **"HoldCo Equity"**), Innisfree has subscribed at par for 37,500 (held on trust for Innisfree by Innisfree Nominees Limited) and Skanska has subscribed at par for 12,500. HoldCo has subscribed for 49,999 fully paid up ordinary shares of £1 each in the Issuer. One ordinary £1 share in the capital of the Issuer is, in order to satisfy the legal requirements for a public limited company, held by Derby Healthcare Nominee Limited (**"NomineeCo"**), a wholly-owned subsidiary of HoldCo on trust for HoldCo.

The obligations of the Initial Shareholders are supported by letters of credit.

Following (amongst other things) the occurrence of an Event of Default, the Security Trustee may serve a notice accelerating the Initial Shareholders' obligation to apply and pay for HoldCo Loan Stock and HoldCo's obligation to apply and pay for Issuer Loan Stock.

Certain representations and covenants made by each Initial Shareholder to the Bond Trustee for itself and for the benefit of the Bondholders are set out in the Shareholders' Support Agreement. However, attention is drawn to the section entitled "The Security Trust and Intercreditor Deed" above. The ability of the Bond Trustee to exercise rights under the Shareholders' Support Agreement will be restricted by the Security Trust and Intercreditor Deed and Bondholders will have no independent entitlement to exercise such rights.

5. TRUST DIRECT AGREEMENT

The Trust, the Security Trustee and the Issuer have entered into the Trust Direct Agreement in connection with the Project pursuant to which the Trust, following an event of default under the Project Agreement, agrees not to terminate the Project Agreement for a limited period subject to the Security Trustee (*inter alia*) agreeing to procure the performance of certain of the Issuer's obligations under the Project Agreement (including to pay for a specified period of time certain unpaid sums due to the Trust under the Project Agreement). The Security Trustee is entitled to propose a substitute entity to step-in and undertake the Issuer's obligations under the Project Agreement, which entity will, subject to demonstration of its technical and financial capacity, assume such obligations in place of the Issuer, provided always that the obligations of MBIA under the Financial Guarantee are not affected in any way.

The Bond Trustee will not at any time whilst MBIA is the Credit Provider be able to control the exercise of step-in rights under the Trust Direct Agreement. For the ranking of step-in expenses, see the section entitled "The Security Trust and Intercreditor Deed" above.

6. ACCOUNTS AGREEMENT

The Issuer has entered into an accounts agreement with HoldCo, the Security Trustee, the Bond Trustee, MBIA and BNP Paribas, London Branch, or any other bank or banks agreed between the parties which is or are party to

such accounts agreement, as account bank (the "**Account Bank**") (the "**Accounts Agreement**") on or before the Issue Date, which will regulate payments into and out of each of the accounts intended, *inter alia*, to ensure the paying up of the relevant debt service accounts and the prevention of certain prohibited payments.

Sums standing to the credit of certain of the accounts may be invested (subject to certain restrictions as to maturity) in certain authorised investments approved in accordance with the provisions of the Accounts Agreement including, but not limited to, the accounts opened pursuant to the deposit agreements (as described below).

Amounts will be drawn from the escrow account to meet expenditure related to the Project subject to the satisfaction of certain conditions, including there being no Event of Default, as more fully set out in the Collateral Deed.

Neither the Bond Trustee nor the Security Trustee will be required to monitor or supervise the performance or observance of any obligations comprised in the security arrangement summarised above or to monitor or supervise the operation of the accounts opened pursuant to the Accounts Agreement.

7. DEPOSIT AGREEMENTS

The Issuer has entered into a fixed rate guaranteed investment contract (the "**Fixed Rate GIC**"), and a guaranteed investment contract linked to RPI (the "**RPI-Linked GIC**"), each with an authorised deposit provider approved by MBIA (respectively, the "**Fixed Rate GIC Provider**" and the "**RPI-Linked GIC Provider**") on or before the Issue Date. The proceeds of the issue of the Bonds (excluding the Variation Bonds and net of issue expenses) will be initially deposited into an escrow account and subsequently transferred to deposit accounts (respectively, the "**Fixed Rate GIC Account**" and the "**RPI-Linked GIC Account**") to be opened in the name of the Issuer. The amount and timing of repayments from the Fixed Rate GIC Account and the RPI-Linked GIC Account will be regulated under the Fixed Rate GIC and RPI-Linked GIC.

In order to hedge the Issuer's exposure to deposit rates during the anticipated construction period, scheduled proceeds from the Fixed Rate GIC will be used to pay for construction costs, payments to be made under the Bonds and other fixed costs over the construction period.

Similarly, in order to hedge the Issuer's exposure to RPI during the anticipated construction period prior to commencement of receipt of the Unitary Charge, scheduled proceeds from the RPI-Linked GIC will be used for payments to be made under RPI-Linked obligations of the Issuer.

The General Index of Retail Prices ("**RPI**") measures the average change from month to month in the prices of goods and services in the United Kingdom. The spending pattern on which the RPI is based is revised each year. The expenditure of certain higher income households, and of pensioner households mainly dependent on state pensions, is excluded. The RPI is compiled using a selection of more than 600 separate goods and services intended to be representative for most UK households and for which price movements are regularly measured in 146 areas throughout the United Kingdom. The RPI is updated monthly and is published monthly by the Office for National Statistics in the Monthly Digest of Statistics.

The Bond Trustee is not under any obligation to monitor or supervise the functions of any other person under the Project Documents or the Documents and the Security Trustee is not under any obligation to investigate or make enquiry into the title of the Issuer or HoldCo to the property charged under the security arrangements.

RISK FACTORS

This section summarises certain risks involved in the Project which may materially affect the ability of the Issuer to make payments of interest and principal on the Bonds. This could lead to either (i) an Event of Default (see "The Financing of the Project Documents – The Collateral Deed – Events of Default") and hence, at the option of MBIA (so long as it is Credit Provider), acceleration of the Bonds (see "Terms and Conditions of the Bonds" below) or (ii) non-payment in respect of the Bonds if, additionally, MBIA was to default on its obligations under the Financial Guarantee. This section is not intended to be exhaustive and should be read together with information appearing elsewhere in this Offering Circular.

Introduction

The contractual arrangements for the Project are structured so as to minimise risks inherent to the Project which are retained by the Issuer. The Issuer is allocated numerous responsibilities under the Project Agreement. To the extent borne by the Issuer under the Project Agreement, risks are passed on to insurers or to the Sub-Contractors under the relevant Sub-Contracts, any residual risk being retained by the Issuer. However, to the extent that the Sub-Contractors, their respective guarantors, the Trust or insurers fail to meet their obligations in respect of risks under the Project Documents that have been passed on to them by the Issuer, or claims by the Issuer exceed agreed limits on liability, the Issuer will continue to bear such risks to the extent defined in the Project Agreement.

Cost Overrun and Construction/Installation Delay

Principally, during the construction period, the following risks arise:

- (i) Works are not completed within the agreed price;
- (ii) the Works are not completed on time.

In relation to the Works, the Issuer has entered into the Design and Build Sub-Contract under which most of the risk relating to price and time of the Works is borne by the Design and Build Sub-Contractor. The obligations of the Design and Build Sub-Contractor under the Design and Build Sub-Contract are guaranteed by Skanska AB pursuant to the Design and Build Sub-Contractor Guarantee. HSBC Bank Plc has granted to the Issuer the Works Bond and Svenska Handelsbanken AB (publ) has granted to the Issuer the Section 1(c) Performance Bond in respect of the obligations of the Design and Build Sub-Contractor under the Design and Build Sub-Contract subject to the respective agreed maximum liabilities.

Delays to the Works will delay or cancel receipt of elements of full Unitary Charge from the Trust by the Issuer and also reduce the period in which such payments are due.

Timely completion of the Works depends, amongst other things, on the Trust granting ancillary rights in respect of access to, egress from and occupation of the Site and such other parts of the Hospital as necessary. If there is a delay on the part of the Trust in granting such rights of access, egress and occupation, the Issuer may have a right to compensation from the Trust under the Project Agreement which compensation will put the Issuer in no better or worse position than it would have been had the relevant delay not occurred.

Under the Design and Build Sub-Contract, the Design and Build Sub-Contractor is required to pay liquidated damages to the Issuer for failure to complete the Works by the appropriate dates for each Section. These liquidated damages have been calculated by reference to loss suffered by the Issuer so as to enable the Issuer *inter alia* to cover its projected debt service obligations under the Bonds for an agreed period. The Issuer will benefit from advance loss of profit/business interruption insurance cover in specified circumstances.

Interface risks between the Sub-Contractors are dealt with by a sub-contractors co-operation agreement, in accordance with which each of the Sub-Contractors undertakes to the other to comply with its Sub-Contract and pursuant to which the Design and Build Sub-Contractor pays agreed rates of liquidated damages to the Service Providers for delay to completion of construction.

Termination

The Project Agreement incorporates termination rights for the Trust and the Issuer. The Project Agreement provides for compensation from the Trust in the case of a termination, with the amount received varying depending on the reason for the termination and other circumstances. The amount of compensation payable by the Trust if termination is by reason of the occurrence of a Trust event of default or a Force Majeure Event (as defined in the section entitled "*Risk Factors – Force Majeure*" below) has been structured so as to enable the Issuer to meet its obligations under the Bonds. However, payment by the Trust of such compensation may not be

sufficiently timely to enable the Issuer to meet its obligations under the Bonds as they fall due. For termination by reason of default of the Issuer, the compensation has been structured differently and in certain circumstances may not be sufficient or sufficiently timely to enable the Issuer to meet its obligations under the Bonds. In relation to such default, the Security Trustee (or as the case may be the receiver) will have step-in and cure rights under the Trust Direct Agreement (see the section entitled "*The Financing of the Project – Trust Direct Agreement*" below).

If the Issuer sells Variation Bonds to meet cost overruns in an aggregate amount of more than £17,500,000 and if the Trust has not given its written consent to the issue of the amount of Variation Bonds above such threshold, then the Trust will not be liable to pay termination compensation on the amount of Variation Bonds above such threshold, although MBIA's Financial Guarantee will cover such Variation Bonds. If the Issuer sells Variation Bonds of more than £17,500,000 for reasons other than to meet cost overruns without the Trust's written consent, the Trust will not be liable to pay termination compensation on the amount of such Variation Bonds, although MBIA's Financial Guarantee will cover such Variation Bonds. The Trust will be liable to pay termination compensation on the amount of any Variation Bonds which are sold as a result of a variation requested by the Trust, or where the Trust has given its written consent to the sale of such Variation Bonds. If there is any shortfall in termination compensation as a result of any Variation Bonds being sold without the Trust's consent, there will be correspondingly less termination compensation available to all Bondholders.

Default Interest

The amounts payable by the Trust following a delay in payment to the Issuer may not be sufficient or sufficiently timely to enable the Issuer to pay Default Interest under the Bonds.

Retention of Employment

The Composite Employment Matters Agreement ("CEMA") (and ancillary documents) contains a secondment mechanism (the Retention of Employment Model) whereby certain categories of the Trust's employees engaged in providing specific services will be seconded to the Soft FM Provider rendering such staff subject to the supervision and management of the Soft FM Provider. In previous contracts of this type such staff would have been transferred directly to and become the employees of such sub-contractor by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 1981 ("TUPE"). The Project Agreement and the relevant ancillary documents have therefore been negotiated wherever possible on the basis that no additional risk will accrue to the Issuer or the Soft FM Provider by virtue of the fact that the Retained Employees (as defined in "*Summary of the Project Documents – Retention of Employment*") are seconded rather than directly transferred.

The "**management**" risk of the Retained Employees taking industrial action (therefore putting at risk the ability of the Soft FM Provider to provide the Soft FM Services for reasons related to the operation of the Retention of Employment Model (it should be noted that this would not include strikes arising out of actions by the Issuer or its Sub-Contractors)) is addressed by ensuring that payment would continue unabated in such circumstances. Further, the ability of the Trust to direct its (seconded) staff is likewise severely restricted with any such retained control resulting in similar exemptions from payment interruptions. Employment costs of the seconded employees which continue to be calculated on standard NHS terms are paid directly by the Soft FM Provider. Increased costs arising as a result of any change in such terms are borne by the Trust ("**Whitley Costs**"). There is a risk of equal pay claims by the seconded staff; indemnity protection is given in the Project Agreement in respect of equal pay claims brought by the seconded staff at any time, save in relation to changes to their terms and conditions introduced by the Issuer or the Soft FM Provider, such risk is passed down into the Soft FM Contract and is managed by the Soft FM Provider. The Retention of Employment Model could be held void or the secondment structure dismantled in the future; again this risk has been considered and the Issuer will be given protection by the Trust against the possibility (for example) that due to the termination of secondment, insufficient staff are available to provide the contracted services to the standards required in the Project Agreement – see the section entitled "*Summary of Project Documents – Retention of Employment*" below for further information.

Lifecycle

During the term of the Concession the Issuer will need to undertake certain major maintenance and plant replacement work in order to satisfy its obligations under the Project Agreement (see the section entitled "*Summary of the Project Documents – whole life maintenance*" below).

The Issuer will be responsible for routine funded maintenance ("**Funded Maintenance**") including a degree of replacement of certain categories of equipment (but which, for the avoidance of doubt will not include medical equipment). The timing and expenditure of such maintenance and replacement has been estimated by the Issuer's

professional advisers in conjunction with the Hard FM Provider (who will carry out such work as sub-contractor to the relevant Service Provider) and reviewed by the lenders' technical advisers as being appropriate for the Project. There are a variety of factors which could lead to a higher than projected cost, such as shorter than anticipated asset lifespans or higher inflation than predicted affecting specific items of plant and machinery.

Under the financing arrangements, an account (the "Life Cycle Reserve Account") has been opened and will be maintained by the Issuer with the Account Bank in order to reserve designated cashflows in respect of Funded Maintenance expenditure.

Market Testing of Services

Certain Services (other than waste management, Sterile Services and IM&T) will be market tested at intervals, the first to occur on the earlier of one year after the Actual Completion Date and two years after the programmed Completion Date, the second to occur seven years after the first market test, and thereafter at 5-yearly intervals. The Issuer and the Trust will meet informally to agree revised service specifications and relevant groupings/divisions of services to be market tested, agree the process and thereafter proceed to market testing. Following such testing the Unitary Charge shall be revised to reflect the results from the relevant Market Testing Date or (if later) the date the new service provider commences service provision. The waste management service provided by the Hard FM Provider will be benchmarked every three years, the first such benchmarking to take place in 2006. Sterile Services will be benchmarked in 2011, and thereafter at five-yearly intervals except for those of the Sterile Services that relate to Soft Pack Items. Prices for Soft Pack Items will be checked each year according to a "value-for-money" benchmarking test. The IM&T Service to be provided by the Hard FM Provider will be market tested at intervals, the first to occur on the earlier of the Actual Completion Date and one year after the programmed Completion Date, and thereafter at five-yearly intervals.

Service Performance and Availability

Each Service (see the section entitled "*Summary of the Project Documents – The Project Agreement*" below) will be monitored against agreed measures. Deficient performance can lead progressively to a reduction in that part of the Availability Payment or Performance Related Payment (subject to caps) (as defined in the section entitled "*Summary of the Project Documents – Payment Mechanism Overview*" below) payable in respect of such Services. Upon a certain level of poor performance the Trust can require the Issuer to terminate the relevant Service Contract or procure that the relevant Service Provider replaces an existing sub-contractor of such Service Provider in respect of the relevant Service.

If the relevant Service Contract is terminated or the relevant Service Provider becomes insolvent, the Issuer may bear the risk and costs of procuring that a replacement Service Provider enter into a contract in substantially the same form as the previous relevant Service Contract.

A certain level of deficient performance may (save in relation to Sterile Services and the IM&T Service provided by the Hard FM Provider) lead to unavailability of certain areas within the Hospital. The extent of these areas (and any consequential unavailability of an area linked to an unavailable area) is set out exhaustively in the Project Agreement. The payment arising from continuing availability is the primary source of revenue enabling the Issuer to pay principal and interest in respect of the Bonds.

Failure to achieve the stipulated levels of availability may result in a lower than forecast Unitary Charge, for which recourse (subject to caps) should generally be available against the relevant Service Provider and Design and Build Sub-Contractor in defined circumstances. To the extent that deductions from unavailability exceed such caps or are not subject to such recourse, nor are subject to advance loss of profit and/or business interruption insurance cover and/or reserves, the liability will fall to the Issuer and the ability of the Issuer to make payments in respect of the Bonds may be adversely affected.

At a further level of default in any Service or combination of Services, the Issuer can terminate the entire Service Contract. Ultimately, at higher levels of default the Trust will be able to terminate the Project Agreement for poor service performance. Poor performance of the Sterile Services cannot result in termination of the Project Agreement in its entirety but can result in Sterile Services being removed from the Project Agreement. Poor performance of the IM&T Service cannot result in termination of the Project Agreement in its entirety but can result in the IM&T Service being removed from the Project Agreement.

Sterile Services

The Issuer is responsible for installing and maintaining specialist sterile services equipment as well as providing sterile services and sterile linen services. The installation of the equipment will be undertaken by the Design and Build Sub-Contractor under the Design and Build Sub-Contract and maintenance of the same will be undertaken

by the Hard FM Provider under the Hard FM Contract. The sterile services will be undertaken by the Sterile Services Provider under the Sterile Services Contract and the sterile linen services will be undertaken by a subcontractor to the Soft FM Provider under the Soft FM Contract. The sterile service provision is ringfenced from the Project and the Project Agreement cannot be terminated as a result of performance failure under the Sterile Services Contract.

Planning and Consents

Planning permission was obtained on 31 January 2002. Further planning permission for reserved matters was achieved on 20 December 2002. See paragraph 4(a) (*Planning Permission*) of the Section entitled "*Summary of the Project Documents*" for further details. The planning authority has the right to review, amend or revoke any planning permission at any time if it finds exceptional circumstances or the planning permission was defective from inception.

Site and Soil Conditions

The condition of the Site is the responsibility of the Issuer. This risk has been passed to the Design and Build Sub-Contractor under the Design and Build Sub-Contract. However risk in relation to the Site underneath the footprint of any building which was not revealed by investigation and could not be discovered by a reasonably skilled structural or geotechnical engineer is borne by the Trust.

The Trust is taking latent defect risk on Section 1(a) (a refurbished building) to the extent that the Issuer was not permitted to survey prior to close. The risk for the Issuer is passed down to the Design and Build Sub-Contractor. Trust retained latent defects result in protection from service deductions as well as delay compensation protection in the building phase.

Protester Action and Strikes

The risk of any strike by the Trust, or NHS staff (but not staff seconded to the Issuer or a Service Provider) during the term is borne by the Trust. Protestor action or general construction industry or service industry strikes constitute a "**Relief Event**" under the Project Agreement (see the section entitled "*Summary of the Project Documents – Completion*"). The Sub-Contractors will bear the risk of non-general strikes in their respective industries, and there is an Excusing Cause in respect of RoE strikes (see the section entitled "*Retention of Employment*" above).

Change of Law

The Trust undertakes to compensate the Issuer in respect of certain changes in law enacted after the execution of the Project Agreement which were not reasonably foreseeable prior to the date of the Project Agreement.

Subject to a de minimis provision, those certain changes of law for which the Trust undertakes to compensate the Issuer comprise those which:

- (i) discriminate against PFI hospitals, or against PFI projects, PFI companies or the facilities constructed pursuant to the Project as against other hospitals or the Issuer; or
- (ii) are NHS or healthcare premises specific; or
- (iii) (subject to sharing provisions based on cumulative costs of such changes and an overall cap on the Issuer's liability) are other than those described in (i) and (ii) and cause the Issuer to incur cost after the relevant sectional completion date of the Works.

The effect of changes of law which are not of the type described in (i) to (iii) above are passed to the relevant Service Provider in accordance with the risk sharing provisions based on cumulative costs of changes.

Changes in NHS requirements with which the Issuer is obliged to comply by the terms of the Project Agreement are compensated on a basis similar to (i) and (ii) above.

The Trust undertakes to compensate the Issuer in respect of changes in the VAT status of the Services which adversely affect the recoverability of VAT by the Issuer.

In all cases, compensation is calculated so as to leave the Issuer in no better and no worse position.

Force Majeure

Various events are characterised in the Project Agreement as force majeure events ("**Force Majeure Events**"), such as war, terrorism, nuclear/chemical/biological contamination and pressure waves from aircraft which prevent the performance of the obligations of the parties thereunder.

Prior to completion of construction of any Section of the Works, the occurrence of a Force Majeure Event entitles the Issuer to extend the scheduled completion dates for any Section of the Works. After completion of any Section of the Works the risk of the occurrence of a Force Majeure Event resulting in the unavailability of the Hospital or any part or an inability to perform to the standards required in the Project Agreement is shared between the Issuer and the Trust as follows:

- (i) upon the occurrence of a Force Majeure Event, each party is otherwise relieved from liability to the extent that it is unable to perform its obligations although it must use reasonable endeavours to continue to perform;
- (ii) if an event of Force Majeure Event has a material effect and has been subsisting for six months either party may terminate the Project Agreement and compensation is payable to the Issuer (see the section entitled "*Summary of the Project Documents – The Project Agreement*" below);
- (iii) payment continues to be made by the Trust during the subsistence of an event of force majeure to the extent that Services are actually provided/the Facilities are available with the disapplication of weighting factors applicable to the relevant area.

Uninsurable Risks

"**Uninsurable Risks**" are risks against which the Issuer is required to insure and for which insurance is not available within the worldwide insurance market with reputable insurers of good standing in respect of that risk or the terms and/or conditions offered in respect of that risk are such that the risk is not generally being insured against in the worldwide insurance market with reputable insurers of good standing to the extent that the Issuer and other prudent contractors in the health sector or the same or substantially similar businesses would cease to operate such businesses to mitigate the effect of the risk becoming uninsurable.

Where an Uninsurable Risk occurs, the Project Agreement will continue unless the Trust elects to terminate it and, on election for termination, compensation will be on the non-default basis, as for force majeure.

Where the Project Agreement continues and an Uninsurable Risk occurs the Trust will either (i) pay the Issuer a sum equal to the proceeds payable had the relevant insurance continued to be available (except in the case of the business interruption insurance where the amount payable will equal proceeds for any unavoidable costs only, being principal or interest repayments under the senior debt, fixed costs for which the Issuer is legally liable (excluding dividends to shareholders and interest on junior or subordinated debt and any future profits of Sub-Contractors) and costs incurred in mitigation of business interruption losses) within the same time period as insurers would have been required to pay such insurance proceeds or (ii) terminate and pay compensation on the non-default basis, as for force majeure.

There is a separate regime for uninsurability in respect of the required employer's liability insurance for Retained Employees. In such an instance, the Issuer is relieved of its obligation to insure and correlating indemnity and the Trust indemnifies the Issuer against Retained Employees' employers' liability claims until insurance can be replaced.

Trust Status and Performance

The Secretary of State for Health or a duly empowered official has certified that the Project Agreement, the Trust Direct Agreement and certain other Project Documents are "**Externally Financed Development Agreements**" as defined under the National Health Service (Private Finance) Act 1997, thereby clarifying that the Trust has the statutory power to enter into such agreements.

NHS Foundation Trusts

The Health and Social Care (Community Health and Standards) Bill currently before Parliament makes provision for an NHS trust, such as the Trust, to become an NHS Foundation Trust through an authorisation process, whereby it ceases to be an NHS trust. NHS Foundation Trusts would remain within the NHS but are intended (subject to regulation) to be subject to reduced levels of central NHS control.

Although the Bill may be amended through the Parliamentary process, the effect of the Bill, if it was enacted as introduced, would seem to be that certain statutory protections would cease to apply to an NHS trust which was

authorised as an NHS Foundation Trust, although the NHS trust as a body corporate would continue and there would be continuity of its property and liabilities.

An additional deed (summarised in “*Summary of the Project Documents – Deed of Safeguard*” below) has been entered into to address, *inter alia*, this issue.

Inflation Risk, Deflation Risk and Deposit Interest Risk

The greater part of the Issuer’s expected outgoings under the Hard FM Contract are indexed by reference to RPI. Part of the Unitary Charge under the Project Agreement is also indexed by reference to RPI.

The effect of indexation and inflation on the Issuer’s costs may not, however, entirely or exactly match the indexation of the Unitary Charge under the Project Agreement.

During the Works period, when the effect of any such mismatch would be most significant, the Issuer will hedge the risk of a fall in the rate of interest earned on the proceeds of the Bonds by investing a certain amount of the principal amount of the Bonds (i) pursuant to the Fixed Rate GIC entered into on or about the Issue Date with the Fixed Rate GIC Provider under which scheduled payments with a fixed rate of return will be made by the Fixed Rate GIC Provider on scheduled payment dates and (ii) pursuant to the RPI-Linked GIC entered into on or about the Issue Date with the RPI-Linked GIC Provider under which scheduled payments with an RPI-linked rate of return will be made by the RPI-Linked GIC Provider on scheduled payment dates.

The Enterprise Act

The Enterprise Act 2002 (the “**Enterprise Act**”) sets out reforms to competition law, consumer protection law, personal bankruptcy law and corporate insolvency law. These reforms include (i) prohibition of the appointment of administrative receivers and (ii) the setting aside (or “ringfencing”), on an insolvency, of a certain proportion of realisations (in an amount to be determined) in respect of assets subject to a floating charge, such realisations to be made available for the satisfaction of unsecured debts. The corporate insolvency provisions of the Enterprise Act will come into force on 15 September 2003. Further details regarding the reforms set out in the Enterprise Act are contained in the section below entitled “*Changes in United Kingdom Insolvency Regime*”.

European Monetary Union

It is possible that prior to the maturity of the Bonds the United Kingdom may become a participating Member State in European and Monetary Union (“EMU”) and the euro may become the lawful currency of the United Kingdom. In that event the Issuer may redenominate the Bonds into euros in accordance with Condition 15 (*Redenomination*) of the Conditions of the Bonds and all amounts payable in respect of the Bonds will become payable in euros.

United Kingdom Taxation

European Union Savings Directive: on 3 June 2003, the EU Council of Economic and Finance Ministers adopted a new directive regarding the taxation of savings income. The directive is scheduled to be applied by Member States from 1 January 2005, provided that certain non-EU countries adopt similar measures from the same date. Under the directive each Member State will be required to provide to the tax authorities of another Member State details of payments of interest or other similar income paid by a person within its jurisdiction to an individual resident in that other Member State; however, Austria, Belgium and Luxembourg may instead apply a withholding system for a transitional period in relation to such payments, deducting tax at rates rising over time to 35 per cent. The transitional period is to commence on the date from which the directive is to be applied by Member States and to terminate at the end of the first fiscal year following agreement by certain non-EU countries to the exchange of information relating to such payments (see the section entitled “*United Kingdom Taxation*” below).

Payments by MBIA: payments by MBIA in respect of certain amounts due under the Bonds may be subject to withholding tax (see the section entitled “*United Kingdom Taxation*” below).

TERMS AND CONDITIONS OF THE BONDS

The following is the text, subject to completion and amendment and save for the text in italics, of the terms and conditions which will be endorsed on each Bond in definitive form. Bonds in definitive form will only be issued in certain limited circumstances. For a summary of the provisions of the Bonds in global form, see the section entitled "Summary of Provisions relating to the Bonds while in Global Form" below.

The issue of the £446,588,000 5.564 per cent. Guaranteed Secured Bonds due 2041 (including up to £35,000,000 Variation Bonds (as defined in Condition 1(c) (*Variation Bonds*)) (the "**Bonds**") was authorised by resolutions of the Board of Directors of Derby Healthcare PLC (the "**Issuer**") passed on 16 July 2003 and 1 September 2003. The Bonds are subject to, and have the benefit of, a bond trust deed dated on or before the Issue Date (as defined in Condition 3 (*Interest*)) (as amended, supplemented, restated, novated or replaced from time to time, the "**Bond Trust Deed**") between the Issuer, MBIA Assurance S.A. ("**MBIA**") and BNP Paribas Trust Corporation UK Limited as bond trustee (the "**Bond Trustee**", which expression includes the trustee or trustees for the time being of the Bond Trust Deed). These terms and conditions include summaries of and are subject to the detailed provisions of the Bond Trust Deed and a security trust and intercreditor deed dated on or before the Issue Date (as amended, supplemented, restated, novated or replaced from time to time, the "**Security Trust and Intercreditor Deed**") between Innisfree PFI Fund II and Innisfree PFI Fund III acting by their manager Innisfree Limited and Skanska BOT Investment UK Limited (together, the "**Initial Shareholders**"), the Issuer, Derby Healthcare (Holdings) Limited ("**HoldCo**" and, together with the Issuer, the "**Obligors**"), BNP Paribas Trust Corporation UK Limited as security trustee (the "**Security Trustee**", which expression includes all persons for the time being the trustee or trustees of the Security Trust and Intercreditor Deed), the Bond Trustee and MBIA.

The Bonds (except any Bonds to the extent they are then held by or on behalf of the Issuer) are unconditionally and irrevocably guaranteed as to scheduled payments of principal and interest in respect of the Bonds, pursuant to a financial guarantee dated the Issue Date (the "**Financial Guarantee**") issued by MBIA.

Payments in respect of the Bonds will be made pursuant to a paying agency agreement dated on or before the Issue Date (as amended or supplemented from time to time, the "**Paying Agency Agreement**") between the Issuer, the Bond Trustee, BNP Paribas Securities Services, Luxembourg Branch as principal paying agent (the "**Principal Paying Agent**", which expression includes any successor principal paying agent appointed in accordance with the Paying Agency Agreement) and BNP Paribas, London Branch as paying agent (the "**Paying Agent**" and, together with the Principal Paying Agent and any additional paying agents appointed thereunder, the "**Paying Agents**").

The holders for the time being of one or more Bonds (the "**Bondholders**") and the holders of the related interest coupons (the "**Couponholders**" and the "**Coupons**", respectively) will be entitled to the benefit of, will be bound by and are deemed to have notice of, all the provisions of the Bond Trust Deed, the Financial Guarantee, the Collateral Deed (as defined in Condition 2(e) (*Security*)), the Security Documents (as defined in Condition 2(e) (*Security*)), the Paying Agency Agreement and the other Senior Finance Documents (as defined in Condition 12 (*Meetings of Bondholders*)) applicable to them.

Copies of the Bond Trust Deed, the Financial Guarantee, the Collateral Deed, the Security Documents, the Paying Agency Agreement and the other Senior Finance Documents (as defined in Condition 12 (*Meetings of Bondholders*)) are available for inspection by Bondholders during normal business hours at the Specified Offices (as defined in the Paying Agency Agreement) of each of the Paying Agents.

1. Form, Denomination and Title

(a) Form and Denomination

The Bonds are in bearer form, serially numbered, in denominations of £1,000, £10,000 and £100,000 each with Coupons for principal and interest and talons (each a "**Talon**") for further Coupons attached at the time of issue. Bonds of one denomination will not be exchangeable for Bonds of another denomination.

(b) Title and Ownership

Title to the Bonds, the Coupons and the Talons will pass by delivery. The holder of any Bond, Coupon or Talon shall (except as otherwise required by law) be treated as its absolute owner for all purposes (whether or not it is overdue and regardless of any notice of ownership, trust or any other interest herein, any writing thereon or any notice of any previous loss or theft thereof) and no person shall be liable for so treating such holder and the Issuer, the Bond Trustee, the Paying Agents and MBIA shall not be required to obtain any proof thereof or as to

the identity of such holder. No person shall have any right to enforce any term or condition of the Bonds under the Contracts (Rights of Third Parties) Act 1999.

(c) *Variation Bonds*

- (i) £35,000,000 in principal amount of the Bonds issued on the Issue Date (as defined below) will initially constitute "**Variation Bonds**". Such Variation Bonds (including related Coupons and Talons) will be held for the account of the Issuer following issue, may not be sold or otherwise disposed of in whole or in part except in accordance with the provisions of the Collateral Deed, and shall cease to be Variation Bonds to the extent of and upon sale and will be fungible with the other Bonds.
- (ii) Variation Bonds shall, pending sale by the Issuer or cancellation, carry the same rights and be subject in all respects to the same Conditions as other Bonds, except that the Variation Bonds, pending sale by the Issuer, will not be treated as outstanding for purposes of determining quorum or voting at meetings of Bondholders save as otherwise provided in the Bond Trust Deed. Bonds which have ceased to be Variation Bonds shall carry the same rights and be subject in all respects to the same Conditions as other Bonds.
- (iii) The Issuer may, following an Event of Default (other than certain Events of Default relating to, *inter alia*, the insolvency or winding up of and rescheduling, execution, distress or analogous events relating to the Issuer), if required by the Credit Provider, promptly sell the Variation Bonds in the market by private treaty.

2. **Status, Financial Guarantee and Security**

(a) *Status of the Bonds*

The Bonds constitute direct, secured obligations (as more particularly described in the Security Documents (as defined below)) of the Issuer which rank *pari passu* and rateably without any preference or priority among themselves and will rank in priority to all unsecured obligations of the Issuer, save for such obligations as may be preferred by provisions of law that are both mandatory and of general application.

(b) *Financial Guarantee*

The Bonds (except any Bonds to the extent they are then held by or on behalf of the Issuer) have the benefit of the Financial Guarantee which has been issued pursuant to a guarantee and indemnity agreement dated on or before the Issue Date between the Issuer, HoldCo and MBIA. Pursuant to the Financial Guarantee, MBIA has unconditionally and irrevocably agreed to pay to the Bond Trustee all sums due and payable but unpaid by the Issuer in respect of scheduled principal and interest (but always excluding Default Interest (as defined in Condition 4 (*Default Interest*))) on the Bonds, all as more particularly described in the Financial Guarantee.

The terms of the Financial Guarantee provide that amounts of principal on any Bonds (except any Bonds to the extent they are held by or on behalf of the Issuer) which have become immediately due and payable (whether by virtue of acceleration, prepayment or otherwise) other than on the relevant Scheduled Payment Date will not be treated as Guaranteed Amounts (as defined in the Financial Guarantee) which are Due for Payment (as defined in the Financial Guarantee) unless MBIA in its sole discretion elects so to do by notice in writing to the Bond Trustee. If no such election is made, MBIA will continue to be liable to make payments in respect of the Bonds pursuant to the Financial Guarantee on the dates on which such payments would have been required to be made if such amounts had not become immediately due and payable.

To the extent that the Early Redemption Price (as defined in Condition 5(b) (Redemption and Purchase)) exceeds the outstanding principal amount of any Bonds to be redeemed payment of such excess is not guaranteed by MBIA under the Financial Guarantee.

(c) *Status of Financial Guarantee*

The Financial Guarantee constitutes an unsubordinated and unsecured obligation of MBIA which will rank at least *pari passu* with all other unsubordinated and unsecured obligations of MBIA, save for such obligations as may be preferred by provisions of law that are both mandatory and of general application.

(d) *Subrogation of MBIA*

The Bond Trust Deed and the Financial Guarantee provide that MBIA shall be subrogated to any rights of the Bond Trustee and the Bondholders against the Issuer in respect of amounts due in respect of the Bonds which have been paid by MBIA under the Financial Guarantee.

(e) *Security*

The obligations of the Issuer under the Bonds have the benefit of the security constituted by:

- (i) the Security Trust and Intercreditor Deed;
 - (ii) a fixed and floating charge debenture dated on or before the Issue Date (as defined below) granted by each of the Issuer and HoldCo in favour of the Security Trustee (respectively the "**Issuer Debenture**" and the "**HoldCo Debenture**");
 - (iii) a guarantee by HoldCo of the Issuer's obligations *inter alia* under the Bonds pursuant to the terms of a collateral deed (the "**Collateral Deed**") dated on or before the Issue Date between the Issuer, HoldCo, MBIA, the Bond Trustee and the Security Trustee; and
 - (iv) a shareholders' support agreement dated on or before the Issue Date and made between the Issuer, HoldCo, the Initial Shareholders, the Security Trustee, the Bond Trustee and MBIA (the "**Shareholders' Support Agreement**"),
- (together, the "**Security Documents**").

(f) *Collateral Deed*

The Bond Trustee on behalf of the Bondholders has the benefit of certain representations and covenants set out in the Collateral Deed. In accordance with the Collateral Deed, MBIA will be the Credit Provider (the "**Credit Provider**") unless and until such time as the Security Trustee has received notice from the Bond Trustee that an MBIA Event of Default (as defined below) has occurred, in which case, unless such MBIA Event of Default has been cured to the satisfaction of the Bond Trustee or waived by the Bond Trustee, the "**Credit Provider**" means the Bond Trustee, where:

"**MBIA Event of Default**" means any of the following events:

- (i) any amount guaranteed by or payable by MBIA under the Financial Guarantee falls due for payment in accordance with the terms of the Financial Guarantee, is unpaid by reason of non-payment and is not paid by MBIA on the date stipulated in the Financial Guarantee; or
- (ii) MBIA disclaims, repudiates and/or challenges the validity of any of its obligations under the Financial Guarantee or seeks to do so; or
- (iii) MBIA:
 - (a) presents any petition, commences any case or takes any proceedings for the winding-up or the appointment of an administrator or receiver (including an administrative receiver or manager), conciliator, trustee, assignee, custodian, sequestrator, liquidator or similar official under any Bankruptcy Law of MBIA (or as the case may be, of a material part of its property or assets) under any Bankruptcy Law; or
 - (b) makes or enters into any general assignment, composition, arrangement (including a voluntary arrangement under Part 1 of the UK Insolvency Act 1986) or equivalent legislation or compromise with or for the benefit of any of its creditors; or
 - (c) has a final and non-appealable order for relief entered against it under any Bankruptcy Law; or
 - (d) has a final and non-appealable order, judgment or decree of a court of competent jurisdiction entered against it appointing any conciliator, receiver, administrative receiver, trustee, assignee, custodian, sequestrator, liquidator, administrator or similar official under any Bankruptcy Law (each a "**Custodian**") for MBIA or all or any material portion of its property or authorising the taking of possession by a Custodian of MBIA, where:

"**Bankruptcy Law**" means article L620-1 et seq and L611 et seq of the French Commercial Code, any similar future federal or state bankruptcy, insolvency, reorganisation, moratorium, rehabilitation, liquidation.

conservation, fraudulent conveyance or similar law, statute or regulation of the French Republic or any other applicable jurisdiction for the relief of debtors.

The Bond Trustee on behalf of the Bondholders also has the benefit of certain representations and covenants set out in the Shareholders' Support Agreement.

(g) *Effect on Bondholders and Couponholders*

The Bondholders and the Couponholders have the benefit of and are deemed to have notice of all the provisions of the Security Documents, the Collateral Deed, the Financial Guarantee, the Bond Trust Deed and the Paying Agency Agreement.

3. Interest

(a) *Interest on the Bonds*

The Bonds bear interest on their Outstanding Principal Amount ("**Scheduled Interest**") from 9 September 2003 (the "**Issue Date**") at the rate of 5.564 per cent. per annum (the "**Rate of Interest**"). Scheduled Interest will be payable semi-annually in arrear on each scheduled payment date listed in Condition 6 (*Payments and Exchange of Talons*) (each a "**Scheduled Payment Date**"), subject as provided in Condition 6 (*Payments and Exchange of Talons*). Each period beginning on (and including) the Issue Date or any Scheduled Payment Date and ending on (but excluding) the next Scheduled Payment Date is herein called an "**Interest Period**". The first Scheduled Payment Date will be 31 December 2003 in respect of the Interest Period from (and including) the Issue Date, to (but excluding) 31 December 2003. The amount of interest payable in respect of each Bond for any Interest Period shall be calculated by applying the Rate of Interest to the Outstanding Principal Amount of such Bond, dividing the product by two, and rounding the resulting figure in accordance with Condition 16 (*Rounding*).

The amount of interest payable on the first Scheduled Payment Date shall be £17.09 in respect of each Bond of £1,000 denomination, £170.90 in respect of each Bond of £10,000 denomination and £1,709.00 in respect of each Bond of £100,000 denomination.

(b) *Calculation of Interest in respect of periods other than Interest Periods*

If interest is required to be paid in respect of a Bond for a period which is not an Interest Period, it shall be calculated by applying the Rate of Interest to the Outstanding Principal Amount of such Bond, multiplying the product by the relevant Day Count Fraction and rounding the resulting figure in accordance with Condition 16 (*Rounding*), where:

"**Day Count Fraction**" means:

- (a) if the Calculation Period is equal to or shorter than the Regular Period during which it falls, the number of days in the Calculation Period divided by the product of (1) the number of days in such Regular Period and (2) two; and
- (b) if the Calculation Period is longer than the Regular Period, the sum of:
 - (i) the number of days in such Calculation Period falling in the Regular Period in which it begins divided by the product of (1) the number of days in such Regular Period and (2) two; and
 - (ii) the number of days in such Calculation Period falling in the next Regular Period divided by the product of (1) the number of days in such Regular Period and (2) two;

"**Calculation Period**" means the relevant period for which interest is to be calculated from (and including) the first day in such period to (but excluding) the last day in such period; and

"**Regular Period**" means each period from (and including) 30 June or 31 December in any year to (but excluding) the next 31 December or 30 June.

4. Default Interest

(a) *Default Interest*

The Outstanding Principal Amount of the Bonds will cease to bear interest from the Scheduled Payment Date for the payment of such principal amount (or part thereof) unless, upon due presentation, payment is improperly

withheld or refused, in which case the unpaid amount will bear default interest ("**Default Interest**") at the Rate of Interest (after as well as before judgment) until whichever is the earlier of:

- (i) the day on which all principal sums due in respect of such Bond up to that day are received by or on behalf of the relevant Bondholder; and
- (ii) the day which is seven days after the Principal Paying Agent or the Bond Trustee has notified the Bondholders that it has received all principal sums due in respect of the Bonds up to such seventh day (except to the extent that there is any subsequent default in payment in which case interest shall continue to accrue on any principal amount until such principal amounts are received by or on behalf of the relevant Bondholders).

(b) *Default Interest Payment*

Accrued Default Interest shall be payable prior to the final Scheduled Payment Date on each date (each a "**Default Interest Payment Date**") on which the amount of Scheduled Principal as set out opposite any Scheduled Payment Date in Condition 6 (*Payments and Exchange of Talons*) remains unpaid and which is an integral multiple of six months after the due date for payment of such scheduled principal. Any amounts of Default Interest arising after the final Scheduled Payment Date shall be immediately due and payable. Each period beginning on (and including) the date on which the relevant payment is improperly withheld or refused or any Default Interest Payment Date ending on (but excluding) the next Default Interest Payment Date is herein called a "**Default Interest Period**".

(c) *Default Interest Calculation*

The amount of Default Interest payable in respect of each Bond for any Default Interest Period shall be calculated on the basis of the Day Count Fraction.

Default Interest does not accrue on Scheduled Interest or Default Interest. The payment of Default Interest is not guaranteed by MBIA under the Financial Guarantee.

5. Redemption and Purchase

(a) *Scheduled redemption*

Unless previously redeemed, or purchased and cancelled, the Issuer will redeem the Bonds in 61 instalments by the payment on the Scheduled Payment Dates provided in Condition 6 (*Payments and Exchange of Talons*) of the scheduled principal (which, in respect of each Bond of £1,000 denomination, will be such amounts set out in Condition 6 (*Payments and Exchange of Talons*) under "Scheduled Principal" and, in respect of each Bond of £10,000 or £100,000 denomination, will be such corresponding amounts calculated on the basis of the amounts provided in Condition 6 (*Payments and Exchange of Talons*) in respect of a Bond of £1,000) (the "**Scheduled Principal**"). The first instalment will be payable on the Scheduled Payment Date falling in June 2009. The final Scheduled Payment Date is the Scheduled Payment Date falling in June 2041. The Outstanding Principal Amount of each Bond will be reduced for each payment of principal on the Scheduled Payment Dates as provided in Condition 6 (*Payments and Exchange of Talons*) and such payment will not result in a reduction of the number of Bonds in issue.

(b) *Redemption at the option of the Issuer*

Subject to the terms of the Security Trust and Intercreditor Deed, the Issuer may at any time with the approval of MBIA (so long as it is the Credit Provider), having given not less than 30 nor more than 60 days' notice of redemption to the Bondholders in accordance with Condition 14 (*Notices*) (which notice shall be irrevocable and shall oblige the Issuer to redeem the Bonds), redeem each of the Bonds in whole, but not in part, at an amount (the "**Early Redemption Price**") equal to the Outstanding Principal Amount of that Bond (less any amount of outstanding principal in respect of such Bond which has fallen due for payment but remains unpaid) multiplied by the higher of:

- (i) one; and
- (ii) the price (as reported to the Bond Trustee and the Issuer by a leading broker and/or primary dealer operating in the gilt-edged market selected by the Gilt Expert) expressed as a percentage and rounded up to four decimal places at which the Gross Redemption Yield (as defined below) would be equal to the Gross Redemption Yield (determined by the middle-market price) at 3.00 p.m. (London time) on the Determination Date of the Reference Gilt,

together with (a) any payment of principal and interest due but unpaid on or prior to the Determination Date (other than the Early Redemption Price itself) and (b) any interest (other than under (a)) accrued up to and including the date of redemption.

For the purposes of this Condition 5(b)(ii):

“**business day**” means a day on which banks are generally open for business in London;

“**Determination Date**” means the date which is two business days prior to the despatch of the notice of redemption under this Condition 5(b);

“**Gilt Expert**” means a leading broker, primary dealer or other expert operating in the fixed rate gilt market appointed by the Bond Trustee and approved by the Issuer and MBIA (so long as it is the Credit Provider) (each such approval not to be unreasonably withheld or delayed);

“**Gross Redemption Yield**” means a yield calculated in accordance with principles consistent with those used in the United Kingdom Debt Management Office notice “Formulae for Calculating Gilt Prices from Yields” page 4, Section One: Price/Yield Formulae “Conventional Gilts; Double-dated and Undated Gilts with Assumed (or Actual) Redemption on a Quasi-Coupon Date” published on 8 June 1998 and updated on 15 January 2002 (and as further updated, supplemented, amended or replaced from time to time);

“**Outstanding Principal Amount**” means the aggregate principal amount of the Bonds (or, as the context may require, the relevant number thereof or an individual Bond) outstanding for the time being as reduced (i) by payments of Scheduled Principal or other amounts in respect of principal and (ii) in accordance with this Condition 5 (*Redemption and Purchase*); and

“**Reference Gilt**” means the Sterling obligation of the United Kingdom Government listed on the Official List of the UK Listing Authority and traded on the London Stock Exchange whose duration most closely matches that of the Bonds on the Determination Date as determined by the Bond Trustee with the advice of the Gilt Expert.

On the date specified for redemption in the notice given by the Issuer, the Issuer shall redeem the Bonds specified in the notice at the Early Redemption Price.

To the extent that the Early Redemption Price exceeds the Outstanding Principal Amount such excess is not guaranteed by MBIA under the Financial Guarantee.

(c) *No other redemption*

Without prejudice to Condition 8 (*Acceleration*), the Issuer shall not be entitled to redeem the Bonds in whole or in part otherwise than as provided in Conditions 5(a) (*Scheduled redemption*) and 5(b) (*Redemption at the option of the Issuer*) above.

(d) *Purchase*

Subject to the terms of the Security Trust and Intercreditor Deed, the Issuer may at any time purchase Bonds in the open market or otherwise and at any price, provided that all unmatured Coupons and unexchanged Talons appertaining thereto are purchased therewith. Any purchase by tender shall be made available to all Bondholders alike (other than any purchase by the Issuer within 5 business days of the Issue Date). Any Bonds so purchased will not be treated as outstanding for purposes of determining quorum or voting at meetings of Bondholders, save as provided otherwise in the Bond Trust Deed and will not have the benefit of the Financial Guarantee. In this paragraph, “**business day**” means a day on which banks are generally open for business in London.

(e) *Cancellation*

All Bonds so redeemed or purchased and surrendered for cancellation by the Issuer and any unmatured Coupons or unexchanged Talons attached to or surrendered with them, shall be cancelled and may not be reissued or resold.

6. Payments and Exchange of Talons

(a) *Scheduled payments*

Unless previously redeemed or purchased and cancelled, the Issuer will in respect of each Bond then issued and outstanding make a total payment (comprising the relevant payment of Scheduled Interest and, if applicable, the relevant payment of Scheduled Principal) on each Scheduled Payment Date.

The figures for Outstanding Principal Amount, Scheduled Principal, Scheduled Interest and Total Payments set out below provide the Outstanding Principal Amount (assuming all payments are made on the due date in full), Scheduled Principal, Scheduled Interest and Total Payments in respect of a Bond of £1,000 denomination.

A. Scheduled Payment Date	B. Outstanding Principal Amount £	C. Scheduled Principal £	D. Scheduled Interest £	E. Total Payments £
31 December 2003	1,000.00	—	17.09	17.09
30 June 2004	1,000.00	—	27.82	27.82
31 December 2004	1,000.00	—	27.82	27.82
30 June 2005	1,000.00	—	27.82	27.82
31 December 2005	1,000.00	—	27.82	27.82
30 June 2006	1,000.00	—	27.82	27.82
31 December 2006	1,000.00	—	27.82	27.82
30 June 2007	1,000.00	—	27.82	27.82
31 December 2007	1,000.00	—	27.82	27.82
30 June 2008	1,000.00	—	27.82	27.82
31 December 2008	1,000.00	—	27.82	27.82
30 June 2009	999.35	0.65	27.82	28.47
31 December 2009	999.35	—	27.80	27.80
30 June 2010	999.35	—	27.80	27.80
31 December 2010	999.35	—	27.80	27.80
30 June 2011	999.35	—	27.80	27.80
31 December 2011	999.19	0.16	27.80	27.96
30 June 2012	998.72	0.47	27.80	28.27
31 December 2012	998.18	0.54	27.78	28.32
30 June 2013	997.61	0.57	27.77	28.34
31 December 2013	996.42	1.19	27.75	28.94
30 June 2014	995.45	0.97	27.72	28.69
31 December 2014	993.63	1.82	27.69	29.51
30 June 2015	992.90	0.73	27.64	28.37
31 December 2015	990.38	2.52	27.62	30.14
30 June 2016	988.11	2.27	27.55	29.82
31 December 2016	984.78	3.33	27.49	30.82
30 June 2017	982.20	2.58	27.40	29.98
31 December 2017	978.25	3.95	27.32	31.27
30 June 2018	972.95	5.30	27.21	32.51
31 December 2018	968.36	4.59	27.07	31.66
30 June 2019	963.07	5.29	26.94	32.23
31 December 2019	956.65	6.42	26.79	33.21
30 June 2020	949.43	7.22	26.61	33.83
31 December 2020	942.14	7.29	26.41	33.70
30 June 2021	934.64	7.50	26.21	33.71
31 December 2021	926.81	7.83	26.00	33.83
30 June 2022	917.58	9.23	25.78	35.01
31 December 2022	910.27	7.31	25.53	32.84
30 June 2023	902.35	7.92	25.32	33.24
31 December 2023	892.84	9.51	25.10	34.61
30 June 2024	883.20	9.64	24.84	34.48
31 December 2024	874.25	8.95	24.57	33.52
30 June 2025	864.15	10.10	24.32	34.42
31 December 2025	849.80	14.35	24.04	38.39
30 June 2026	837.72	12.08	23.64	35.72
31 December 2026	826.26	11.46	23.31	34.77
30 June 2027	813.96	12.30	22.99	35.29
31 December 2027	800.65	13.31	22.64	35.95
30 June 2028	786.76	13.89	22.27	36.16
31 December 2028	768.71	18.05	21.89	39.94
30 June 2029	752.36	16.35	21.39	37.74
31 December 2029	734.04	18.32	20.93	39.25
30 June 2030	712.94	21.10	20.42	41.52
31 December 2030	691.33	21.61	19.83	41.44
30 June 2031	668.69	22.64	19.23	41.87
31 December 2031	646.10	22.59	18.60	41.19
30 June 2032	620.57	25.53	17.97	43.50
31 December 2032	597.86	22.71	17.26	39.97
30 June 2033	573.89	23.97	16.63	40.60
31 December 2033	548.35	25.54	15.97	41.51
30 June 2034	521.81	26.54	15.26	41.80
31 December 2034	495.10	26.71	14.52	41.23
30 June 2035	467.01	28.09	13.77	41.86
31 December 2035	434.20	32.81	12.99	45.80
30 June 2036	403.72	30.48	12.08	42.56
31 December 2036	375.69	28.03	11.23	39.26
30 June 2037	343.24	32.45	10.45	42.90
31 December 2037	308.24	35.00	9.55	44.55
30 June 2038	271.74	36.50	8.58	45.08
31 December 2038	228.86	42.88	7.56	50.44

A. Scheduled Payment Date	B. Outstanding Principal Amount £	C. Scheduled Principal £	D. Scheduled Interest £	E. Total Payments £
30 June 2039	186.84	42.02	6.37	48.39
31 December 2039	145.23	41.61	5.20	46.81
30 June 2040	99.33	45.90	4.04	49.94
31 December 2040	50.75	48.58	2.76	51.34
30 June 2041	—	50.75	1.41	52.16

The number of Bonds in issue will not be reduced by the scheduled payments of Scheduled Principal in column B above. Payments of Scheduled Principal will reduce the Outstanding Principal Amount of each Bond.

(b) *Payments only against presentation*

Payments in respect of the Bonds by the Issuer will be made only against:

- (i) presentation and surrender of the appropriate Coupons;
- (ii) in the case of final redemption (provided that payment is made in full) surrender of the relevant Bonds; and
- (iii) in any other case, against presentation of the relevant Bond,

at the Specified Office of any Paying Agent outside the United States by sterling cheque drawn on, or by transfer to a sterling account maintained by the payee with, a bank in London.

(c) *Payments subject to fiscal laws*

All payments in respect of the Bonds are subject in all cases to any applicable fiscal or other laws and regulations in the place of payment, but without prejudice to the provisions of Condition 7 (*Taxation*). No commissions or expenses shall be charged to the Bondholders or Couponholders in respect of such payments.

(d) *Unmatured Coupons void*

On the early redemption in full of any Bond pursuant to Conditions 5(b) (*Redemption at the option of the Issuer*) or 8 (*Acceleration*), all unmaturing Coupons and Talons relating thereto (whether or not still attached) shall become void and no payment will be made in respect thereof. Where any Bond is presented for redemption without all unmaturing Coupons or Talons relating to it, redemption shall only be made against the provision of such indemnity or security as the Issuer may require.

(e) *Payments on business days*

If the due date for payment of any amount in respect of any Bond or Coupon is not a business day in the place of presentation, the holder shall not be entitled to payment in such place of the amount due until the next following business day in such place and shall not be entitled to any further interest or other payment in respect of any such delay. In this paragraph, “business day” means, in respect of any place of presentation, any day on which banks are open for presentation and payment of bearer debt securities and for dealings in foreign currencies in such place of presentation and, in the case of payment by transfer to a sterling account as referred to above, on which dealings in foreign currencies may be carried on both in London and in such place of presentation.

(f) *Payments otherwise than against surrender of Coupons*

If a Paying Agent makes a payment in respect of any Bond in circumstances where no Coupon is surrendered, such Paying Agent will endorse on such Bond a statement indicating the amount and date of such payment.

(g) *Exchange of Talons*

On or after the maturity date of the final Coupon which is (or was at the time of issue) part of a coupon sheet relating to the Bonds (each a “**Coupon Sheet**”), the Talon forming part of such Coupon Sheet may be exchanged at the Specified Office of the Principal Paying Agent for a further Coupon Sheet excluding any Coupons in respect of which claims have already become void pursuant to Condition 9 (*Prescription*). Upon the due date for redemption of any Bond, any unexchanged Talon relating to such Bond shall become void and no Coupon will be delivered in respect of such Talon.

(h) *Fractions*

In respect of any payments to Bondholders any fractions of one pound will be rounded in accordance with Condition 16 (*Rounding*).

7. Taxation

All payments of principal and interest in respect of the Bonds by the Issuer shall be made free and clear of, and without withholding or deduction for, any taxes, duties, assessments or governmental charges of whatsoever nature, unless such withholding or deduction is required by law. In that event, the Issuer shall account to the relevant authorities for the amount to be withheld or deducted and shall make such payment of principal or interest, as the case may be, after such withholding or deduction has been made.

The Issuer shall notify the Bond Trustee of any such withholding or deduction. The Issuer shall consult with the Bond Trustee in good faith with the intention of considering such steps as may be reasonably open to the Issuer to mitigate against the impact on Bondholders or a class thereof of such withholding or deduction, including without limitation, giving consideration to but without any obligation to undertake the conversion of the Bonds into registered form and the appointment of a Paying Agent in a jurisdiction through which payments may be made free of withholding and, if such steps are agreed between the Issuer and the Bond Trustee, executing the same. Should the Issuer still be obliged to make the withholding or deduction, it will, on written request from any Bondholder, provide to such Bondholder copies of any documentation or correspondence with the tax authority regarding the deduction or withholding as the Bondholder may reasonably require to assist it to claim a repayment of some or all of the amounts so withheld or deducted. In consulting with the Issuer pursuant to this Condition 7, the Bond Trustee shall be entitled (but shall not be obliged), notwithstanding the provisions of Condition 11 (*Bond Trustee, Security Trustee and Paying Agents*), to have regard to the interests of individual Bondholders or a class thereof.

The Issuer shall not be obliged to make any additional payments to Bondholders or Couponholders in respect of any such withholding or deduction.

To the extent that the Issuer is obliged to make any such deduction or withholding, the amount so deducted or withheld is not guaranteed by MBIA under the Financial Guarantee.

8. Acceleration

Subject to the terms of the Security Trust and Intercreditor Deed and the Collateral Deed, if any event of default pursuant to the terms of the Collateral Deed occurs and is continuing (an "Acceleration Event") then:

- (a) if and for so long as MBIA is the Credit Provider (as defined in the Collateral Deed), the Bond Trustee shall, upon being (i) so directed by MBIA in accordance with the Security Trust and Intercreditor Deed and (ii) indemnified or furnished with security to its satisfaction, declare by written notice to the Issuer that each Bond is immediately due and payable; and
- (b) if and for so long as MBIA is not the Credit Provider, the Bond Trustee may at any time and shall, upon being (i) so requested in writing by the holders of at least 25 per cent. in Outstanding Principal Amount of the Bonds or so directed by an Extraordinary Resolution (as defined below) and (ii) indemnified or furnished with security to its satisfaction, declare by written notice to the Issuer that each Bond is immediately due and payable,

whereupon without further action or formality each Bond shall become due and payable at the Default Amount (as defined below) together with accrued interest.

If: (i) the project agreement (the "Project Agreement") dated on or before the Issue Date and made between the Issuer and The Southern Derbyshire Acute Hospitals National Health Service Trust (the "Trust") is terminated as a result of any of the Spens Acceleration Events (as defined below); (ii) an amount equal to the full Default Amount (as defined below) together with accrued interest is paid into an account designated by the Issuer and/or the Security Trustee which is secured in favour of the Security Trustee under the Issuer Debenture; and (iii) the Bonds have not been previously declared due and payable pursuant to Condition 8(a) and (b) above, then each Bond shall become immediately due and payable by the Issuer at the Default Amount together with (a) any payment of principal and interest due but unpaid on or prior to the Determination Date (as defined below) (other than the Default Amount itself) and (b) any accrued interest.

For the purposes of this Condition 8, "Default Amount" means:

(A) in the event of an event of default triggered by:

- (i) the Issuer terminating the Project Agreement in its entirety, as a result of default by the Trust under the terms of the Project Agreement ("Trust Default"); or
- (ii) the Trust voluntarily terminating the Project Agreement ("Trust Voluntary Default"); or
- (iii) the Trust exercising its right not to reinstate in accordance with the terms of the Project Agreement ("Trust Election Not to Reinstate"),

(each a "Spens Acceleration Event"), the Outstanding Principal Amount of the relevant Bond multiplied by the higher of:

- (a) one; and
- (b) the price (as reported to the Bond Trustee and the Issuer by a leading broker and/or primary dealer operating in the gilt-edged market selected by the Gilt Expert) expressed as a percentage and rounded up to four decimal places at which the Gross Redemption Yield would be equal to the Gross Redemption Yield (determined by the middle-market price) at 3.00 p.m. (London time) on the Determination Date of the Reference Gilt.

For the purposes of this Condition 8(A)(b), "**Determination Date**" means the date which is two business days prior to the date on which the notice is given that the Bonds are immediately due and payable, "**business day**" means a day on which banks are generally open for business in London and "**Gross Redemption Yield**" has the meaning set out in Condition 5(b) (*Redemption at the Option of the Issuer*), or

(B) in all other circumstances, the Outstanding Principal Amount of the Bonds.

On the termination of the Project Agreement, the Trust will pay compensation in an amount and at times which will vary according to the circumstances of termination and which may not be sufficient or sufficiently timely to enable the Issuer to pay the Default Amount.

To the extent that the Default Amount exceeds the Outstanding Principal Amount, such excess is not guaranteed by MBIA under the Financial Guarantee.

9. Prescription

Claims for principal and interest shall become void unless the relevant Coupons and/or the relevant Bonds (as the case may be) are presented for payment within ten years of the later of (i) the date on which the payment in question first becomes due and (ii) if the full amount payable has not been received in London by the Principal Paying Agent or the Bond Trustee on or prior to such due date, the date on which (the full amount having been so received) notice to that effect has been given to the Bondholders.

10. Replacement of Bonds, Coupons and Talons

If any Bond, Coupon or Talon is lost, stolen, mutilated, defaced or destroyed, it may be replaced at the Specified Office of the Principal Paying Agent, subject to all applicable laws and stock exchange, listing authority or quotation system (or other relevant authority) requirements, upon payment by the claimant of the expenses incurred in connection with such replacement and on such terms as to evidence, security, indemnity and otherwise as the Issuer may reasonably require. Mutilated or defaced Bonds, Coupons or Talons must be surrendered before replacements will be issued.

11. Bond Trustee, Security Trustee and Paying Agents

- (a) Under the Bond Trust Deed, the Bond Trustee is entitled to be indemnified and relieved from responsibility in certain circumstances and to be paid its costs and expenses in priority to the claims of the Bondholders. In addition, the Bond Trustee is entitled to enter into business transactions with the Issuer, HoldCo, MBIA, the Bondholders, the Couponholders and any entity related to the Issuer, HoldCo or MBIA without accounting for any profit.
- (b) In the exercise of its powers and discretions under these Conditions, the Financial Guarantee and the Bond Trust Deed, the Bond Trustee will have regard to the interests of the Bondholders as a class and will not have regard to the consequences of such exercise for individual Bondholders or Couponholders and the Bond Trustee shall not be entitled to require from the Issuer, HoldCo, MBIA or the Security Trustee, nor shall any Bondholder or Couponholder be entitled to claim from the Issuer, HoldCo, MBIA, the Bond Trustee or the Security Trustee, any indemnification or other payment in respect of any consequence (including without limitation, any tax consequence) for individual Bondholders or Couponholders of any such exercise.
- (c) Under the Security Trust and Intercreditor Deed, the Security Trustee is entitled to be indemnified and relieved from responsibility in certain circumstances and to be paid its costs and expenses in priority to the claims of the Bondholders. In addition, the Security Trustee is entitled to enter into business transactions with the Issuer, HoldCo, MBIA, the Bondholders, the Couponholders and any entity related to the Issuer, HoldCo or MBIA without accounting for any profit.

- (d) Neither the Bond Trustee nor the Security Trustee has investigated nor shall either of them be responsible or liable for any loss arising as a result of any failure to investigate the validity, value, sufficiency or enforceability of the security created by the Security Documents or the validity or enforceability of any contracts over which such security is created and both the Bond Trustee and the Security Trustee shall accept without investigation, requisition or objection and without any responsibility or liability for doing so such right and title as the Issuer and HoldCo have to the property, assets and rights over which security is created pursuant to the Security Documents.

Neither the Bond Trustee nor the Security Trustee will be responsible for or liable for loss which results should any deficiency arise between the amount realised in respect of the property assets and rights over which security is given by the Security Documents and sums due in respect of the Bonds because the Security Trustee or the Bond Trustee is liable to tax in respect of the property assets and rights over which such security is created.

Neither the Security Trustee nor the Bond Trustee shall be responsible for monitoring the obligations of any person to the Issuer and each of them shall, until they have actual knowledge to the contrary, assume that all such persons are duly performing the same.

Neither the Security Trustee nor the Bond Trustee will be obliged to take any action under the Bond Trust Deed or the Security Trust and Intercreditor Deed unless either or each is indemnified to its satisfaction in respect of any personal liability or expense which it may in its opinion incur. Protection and realisation of the security may be prevented or delayed as a result.

- (e) In acting under the Paying Agency Agreement and in connection with the Bonds and the Coupons, the Paying Agents act solely as agents of the Issuer and (to the extent provided therein) the Bond Trustee and do not assume any obligations towards or relationship of agency or trust for or with any of the Bondholders or Couponholders.
- (f) The initial Principal Paying Agent and Paying Agent and their initial Specified Offices are listed below. The Issuer reserves the right (with the prior approval of the Bond Trustee) at any time to vary or terminate the appointment of any Paying Agent and to appoint a successor principal paying agent and additional or successor paying agents; provided, however, that the Issuer shall at all times maintain (i) a Principal Paying Agent, (ii) so long as the Bonds are admitted to listing on the Official List of the UK Listing Authority and trading on the London Stock Exchange, at least one Paying Agent with a Specified Office in London, (iii) if required by the Bond Trustee, at least one Paying Agent with a Specified Office outside the European Union. Notice of any change in any of the Paying Agents or in their Specified Offices shall promptly be given by the Issuer to the Bondholders.
- (g) The Issuer has covenanted in the Bond Trust Deed to make available its annual report, technical and operational reports, model summaries and ratios and details of any material breaches or approvals granted, to the Paying Agents at their Specified Offices for inspection by Bondholders.

12. Meetings of Bondholders: Modification and Waiver

(a) Meetings of Bondholders

- (i) The Bond Trust Deed contains provisions for convening meetings of Bondholders to consider matters affecting their interests, including the modification of these Conditions, the Bond Trust Deed, the Financial Guarantee, the Security Documents, the Collateral Deed and the other Senior Finance Documents (as defined below). Any such modification may, subject to the prior written consent of MBIA if it is the Credit Provider and the terms of the Security Trust and Intercreditor Deed, be made in respect of the Bonds only if sanctioned by a resolution passed at a duly convened meeting of the Bondholders by a majority of not less than three quarters of the votes cast (an "**Extraordinary Resolution**"). A meeting of Bondholders will also have the power (exercisable by Extraordinary Resolution) to advise or instruct the Bond Trustee in connection with the exercise by the Bond Trustee, subject to Condition 13(a) (*Exercise and Enforcement*) of any of its rights, powers and discretions under the Senior Finance Documents (as defined below) to appoint any persons (whether Bondholders or not) as a committee to represent the interests of the Bondholders and to confer upon such committee any powers which the Bondholders could themselves exercise by Extraordinary Resolution.
- (ii) The quorum at any meeting of Bondholders convened to vote on all business other than that requiring an Extraordinary Resolution will be two or more persons holding or representing not less than 10 per cent. of the aggregate Outstanding Principal Amount of the Bonds and the quorum at any

meeting convened to vote on an Extraordinary Resolution will be two or more persons holding or representing not less than 25 per cent. of the aggregate Outstanding Principal Amount of the Bonds or, at any adjourned meeting, two or more persons being or representing Bondholders whatever the principal amount of the Bonds held or represented; provided, however, that certain proposals, including any proposal to:

- (a) change any date fixed for payment of principal or interest in respect of the Bonds, to reduce the amount of principal or interest payable on any date in respect of the Bonds, to alter the method of calculating the amount of any payment in respect of the Bonds or the date for any such payment;
- (b) effect any exchange of the Bonds for, or the conversion of the Bonds into, shares, bonds or other obligations of the Issuer, MBIA or any other person or to approve the substitution of any person for the Issuer as principal obligor under the Bonds or the substitution of any person for MBIA as guarantor under the Financial Guarantee;
- (c) to change the currency of payments under the Bonds (other than any change from sterling into euro pursuant to Condition 15 (*Redenomination*));
- (d) to modify any provision of the Financial Guarantee in a way which, in the opinion of the Bond Trustee is materially prejudicial to the Bondholders;
- (e) to change the quorum required at any meeting of the Bondholders or the majority required to pass an Extraordinary Resolution;
- (f) to release the security other than in accordance with the Collateral Deed or Security Documents;
- (g) to alter the rights of priority on enforcement of the Bondholders under the Security Trust and Intercreditor Deed or the Collateral Deed;
- (h) to waive or amend the Issuer's covenant to make available its annual report to the Paying Agents at their Specified Offices for inspection by Bondholders; or
- (i) to amend any of the above reserved matters,

(each a "**Reserved Matter**" and together the "**Reserved Matters**") may only be sanctioned by an Extraordinary Resolution passed at a meeting of Bondholders at which two or more persons holding or representing not less than three-quarters or, at any adjourned meeting, at least 25 per cent. of the aggregate Outstanding Principal Amount of the Bonds form a quorum. Any Extraordinary Resolution duly passed at any such meeting shall be binding on all the Bondholders and Couponholders whether present or not.

In addition, a resolution in writing signed by or on behalf of all Bondholders who for the time being are entitled to receive notice of a meeting of Bondholders under the Bond Trust Deed will take effect as it were an Extraordinary Resolution. Such a resolution in writing may be contained in one document or several documents in the same form, each signed by or on behalf of one or more Bondholders.

(b) *Modification and waiver*

The Bond Trustee may, without the consent of the Bondholders or Couponholders, concur with the Issuer and MBIA (so long as MBIA is then the Credit Provider) or any other relevant parties in making:

- (i) any modification to these Conditions, the Bond Trust Deed, the Financial Guarantee, the Security Documents, the Collateral Deed and the other Senior Finance Documents which is of a formal, minor or technical nature or is made to correct a manifest error; or
- (ii) except in the case of Reserved Matters any other modification of any such document which is in the opinion of the Bond Trustee not materially prejudicial to the interests of Bondholders.

Any such modification, shall be binding on all Bondholders and Couponholders and, unless the Bond Trustee otherwise agrees, notice thereof shall be given by the Issuer to the Bondholders as soon as practicable thereafter in accordance with Condition 14 (*Notices*).

In addition, the Bond Trustee may, without the consent of the Bondholders or Couponholders authorise or waive any breach or proposed breach of the covenants or provisions contained in the Bonds or the Bond Trust Deed

(other than a proposed breach or breach relating to the subject of a Reserved Matter) if, in the opinion of the Bond Trustee, the interests of the Bondholders will not be materially prejudiced thereby.

Any such authorisation or waiver shall be binding on all Bondholders and Couponholders and, if the Bond Trustee so requires, the Issuer shall cause any such authorisation or waiver to be notified to the Bondholders as soon as practicable thereafter in accordance with Condition 14 (*Notices*).

For the purposes of these Conditions, "**Senior Finance Documents**" means the Bonds, the Bond Trust Deed, the Paying Agency Agreement, a subscription agreement dated 4 September 2003 between the Issuer, HoldCo, MBIA, BNP Paribas and Barclays Bank PLC, the Financial Guarantee, a financial guarantee fee letter between the Issuer and MBIA for payment of certain fees in connection with the issuance of the Financial Guarantee, a guarantee and indemnity agreement to be entered on or before the Issue Date between the Issuer, HoldCo and MBIA, an accounts agreement to be entered on or before the Issue Date between the Issuer, HoldCo, the Security Trustee, the Bond Trustee, BNP Paribas, London Branch and MBIA, a fixed rate investment contract with a guaranteed return between an authorised deposit provider approved by MBIA and the Issuer, a bond custody agreement between BNP Paribas Securities Services, Luxembourg Branch, the Issuer and the Security Trustee, the Collateral Deed and the Security Documents.

13. Exercise and Enforcement

(a) Exercise and Enforcement

As more particularly provided in the Security Trust and Intercreditor Deed, the Bond Trustee will, in certain circumstances, be obliged to take action to exercise or enforce its rights under the Bond Trust Deed or the Security Documents or in respect of the Bonds if required to do so by MBIA if MBIA is the Credit Provider (provided that the Bond Trustee has been indemnified or furnished with security to its satisfaction) and will not in most circumstances be entitled to take any such action without the prior written consent of MBIA (so long as it is the Credit Provider). Subject as aforesaid but subject to the terms of the Security Trust and Intercreditor Deed, the Bond Trustee shall not be bound as against the Bondholders to take any such action unless:

- (i) it has been so requested in writing by the holders of at least 25 per cent. in Outstanding Principal Amount of the outstanding Bonds or has been so directed by an Extraordinary Resolution; and
- (ii) it has been indemnified or provided with security to its satisfaction.

Whether or not MBIA is the Credit Provider, the Bond Trustee is entitled to exercise certain rights reserved for the Bond Trustee's exercise in its sole discretion.

(b) Action by Bondholders

No Bondholder or Couponholder may take any action against the Issuer to enforce its rights in respect of the Bond Trust Deed or the Bonds or to enforce all or any of the security constituted by the Security Documents otherwise than through the Bond Trustee, unless the Bond Trustee having become bound so to proceed fails to do so within a reasonable time and such failure is continuing.

14. Notices

Notices to the Bondholders shall be valid if published in a leading English language daily newspaper published in London (which is expected to be the *Financial Times*). Any such notice shall be deemed to have been given on the date of first publication. Couponholders shall be deemed for all purposes to have notice of the contents of any notice given to the Bondholders. A copy of every notice to Bondholders will be supplied by the Issuer to Euroclear S.A./N.V., as operator of the Euroclear System and Clearstream Banking, société anonyme for so long as the Bonds are cleared and settled through those clearing systems or to any additional or substitute clearing system from time to time nominated by the Issuer or the Bond Trustee and approved by MBIA (so long as it is the Credit Provider) through which the Bonds are cleared and settled.

15. Redenomination

(a) Notice of Redenomination

If the United Kingdom becomes or, announces its intention to become, a Participating Member State (as defined below), the Issuer may, without the consent of the Bondholders and Couponholders, on giving at least 30 days' prior notice to MBIA (so long as it is the Credit Provider), the Bondholders, the Bond Trustee and the Paying Agents, designate a date (the "**Redenomination Date**"), being a Scheduled Payment Date under the Bonds falling on or after the date on which the United Kingdom becomes a Participating Member State.

(b) *Redenomination*

Notwithstanding the other provisions of these Conditions, with effect from the Redenomination Date:

- (i) the Bonds shall be deemed to be redenominated into euro in the denomination of euro 0.01, with an Outstanding Principal Amount for each Bond equal to the Outstanding Principal Amount of that Bond in sterling, converted into euro at the rate for conversion of sterling into euro established by the Council of the European Union pursuant to the Treaty (including compliance with rules relating to rounding in accordance with European Community regulations); provided however that, if the Issuer determines, with the agreement of the Bond Trustee, that the then market practice in respect of the redenomination into euro 0.01 of internationally offered securities is different from that specified above, such provisions shall be deemed to be amended so as to comply with such market practice and the Issuer shall promptly notify MBIA, the Bond Trustee, the Bondholders and Couponholders, each listing authority, stock exchange and/or quotation system (if any) by which the Bonds have then been admitted to listing, trading and/or quotation and the Paying Agents of such deemed amendments;
- (ii) if Bonds have been issued in definitive form prior to the Redenomination Date:
 - (a) all unmatured Coupons denominated in sterling (whether or not attached to the Bonds) will become void with effect from the date (the "**Euro Exchange Date**") on which the Issuer gives notice (the "**Euro Exchange Notice**") to the Bondholders, Couponholders and the Bond Trustee that replacement Bonds and Coupons denominated in euro are available for exchange (provided that such Bonds and Coupons are available) and no payments will be made in respect of such void Coupons; and
 - (b) the payment obligations contained in all Bonds denominated in sterling will become void on the Euro Exchange Date but all other obligations of the Issuer thereunder (including the obligation to exchange such Bonds in accordance with this Condition 15) shall remain in full force and effect;
- (iii) new Bonds and Coupons denominated in euro will be issued at the expense of the Issuer in exchange for Bonds and Coupons denominated in sterling in such manner as the Principal Paying Agent may specify and as shall be notified to the Bondholders in the Euro Exchange Notice;
- (iv) all payments in respect of the Bonds (other than, unless the Redenomination Date is on or after such date as sterling ceases to be a sub-division of the euro, payments of interest in respect of periods commencing before the Redenomination Date) will be made solely by euro cheque drawn on, or by credit or transfer to a euro account (or any other account to which euro may be credited or transferred) maintained by the payee with, a bank in a city in which banks have access to the TARGET System; and
- (v) a Bond or Coupon may only be presented for payment on a day which is a business day in the place of presentation. In this Condition 15, "**business day**" means, in respect of any place of presentation, any day which is a day on which banks are open for business in such place of presentation and which is also a day on which the TARGET System is operating.

(d) *Interest*

Following redenomination of the Bonds pursuant to this Condition 15:

- (i) where Bonds have been issued in definitive form, the amount of interest due in respect of the Bonds will be calculated by reference to the aggregate principal amount outstanding of the Bonds presented (or, as the case may be, in respect of which Coupons are presented) for payment by the relevant holder and the amount of such payment shall be rounded in accordance with Condition 16 (*Rounding*); and
- (ii) the amount of interest payable in respect of each Bond for any Scheduled Payment Date shall be calculated by applying the Rate of Interest to the principal amount outstanding of such Bond, dividing the product by two and rounding the resulting figure in accordance with Condition 16 (*Rounding*). If interest is required to be calculated for any other period, it will be calculated on the basis of the actual number of days elapsed divided by 365 (or, if any of the days elapsed fall in a leap year, the sum of (x) the number of those days falling in a leap year divided by 366 and (y) the number of those days falling in a non-leap year divided by 365); provided, however, that, if the Issuer determines, with

the agreement of the Bond Trustee, that the market practice in respect of internationally offered euro denominated securities is different from that specified above, the above shall be deemed to be amended so as to comply with such market practice and the Issuer shall promptly notify the Bondholders, each listing authority, stock exchange and/or quotation system (if any) by which the Bonds have then been admitted to listing, trading and/or quotation are then listed and the Paying Agents of such deemed amendment.

(e) *Interpretation*

In these Conditions:

“euro” means the single currency which was introduced at the start of the third stage of European Economic and Monetary Union pursuant to the Treaty;

“Participating Member State” means a Member State of the European Communities which adopts the euro as its lawful currency in accordance with the Treaty;

the “TARGET System” means the Trans-European Automated Real-time Gross Settlement Express Transfer system; and

the “Treaty” means the Treaty establishing the European Communities, as amended by the Treaty on European Union and the Treaty of Amsterdam.

16. Rounding

For the purposes of any calculations referred to in these Conditions (unless otherwise specified in these Conditions), (a) all percentages resulting from such calculations will be rounded, if necessary, to the nearest one hundred-thousandth of a percentage point (with 0.000005 per cent. being rounded up to 0.00001 per cent.), (b) all sterling amounts used in or resulting from such calculations will be rounded to the nearest penny (with one half penny being rounded up), and (c) all amounts denominated in any other currency used in or resulting from such calculations will be rounded to the nearest two decimal places in such currency, with 0.005 being rounded upwards.

17. Further Issues

The Issuer may from time to time, without the consent of the Bondholders or Couponholders and in accordance with the Bond Trust Deed but subject to the prior approval of MBIA (so long as it is the Credit Provider) and the provisions of the Collateral Deed, create and issue further bonds having the same terms and conditions as the Bonds in all respects so as to form a single series with the Bonds. The Issuer may from time to time, with the consent of the Bond Trustee and subject to the provisions of the Collateral Deed, create and issue other series of bonds having the benefit of the Bond Trust Deed.

18. Governing Law and Jurisdiction

(a) *Governing Law*

The Bond Trust Deed, the Bonds, the Coupons, the Talons, the Financial Guarantee and all matters arising from or connected with these are governed by, and shall be construed in accordance with, English law.

(b) *English courts*

The courts of England have exclusive jurisdiction to settle any dispute (a “Dispute”) arising from or connected with the Bonds, the Bond Trust Deed, the Coupons, the Talons and the Financial Guarantee.

(c) *Appropriate forum*

The Issuer agrees and MBIA has agreed in the Bond Trust Deed that the courts of England are the most appropriate and convenient courts to settle any Dispute and, accordingly, that it will not argue to the contrary.

(d) *Rights of the Bondholders to take proceedings outside England*

Condition 18(b) (*English courts*) is for the benefit of the Bond Trustee and the Bondholders only. As a result, nothing in this Condition 18 prevents the Bond Trustee or any Bondholder from taking proceedings relating to a Dispute (“Proceedings”) in any other courts with jurisdiction. To the extent allowed by law, the Bond Trustee and the Bondholders may take concurrent Proceedings in any number of jurisdictions.

SUMMARY OF PROVISIONS RELATING TO THE BONDS WHILE IN GLOBAL FORM

The Bonds will initially be represented by a Temporary Global Bond which will be deposited on or around the Issue Date with a common depositary for Euroclear and Clearstream, Luxembourg. The Temporary Global Bond will be exchangeable in whole or in part for interests in Permanent Global Bond not earlier than 40 days after the Issue Date upon certification as to non-U.S. beneficial ownership. Payments will only be made in respect of the Temporary Global Bond to the extent that the Issuer has failed to procure the exchange of the Temporary Global Bond for a Permanent Global Bond. In addition, interest payments in respect of the Bonds cannot be collected without such certification of non-U.S. beneficial ownership.

The Permanent Global Bond will become exchangeable in whole, but not in part, for Bonds in definitive form ("**Definitive Bonds**") in the denomination of £1,000, £10,000 and £100,000 each or if the Permanent Global Bond has been redenominated into euro, in denominations which are integral multiples of euro 0.01, at the request of the bearer of the Permanent Global Bond against presentation and (in the case of final exchange) surrender of the Permanent Global Bond to the Principal Paying Agent if either of the following events (each an "**Exchange Event**") occurs: (a) Euroclear and/or Clearstream, Luxembourg or any additional or substitute clearing system from time to time nominated by the Issuer or the Bond Trustee and approved by MBIA (so long as it is the Credit Provider) through which the Bonds are cleared is closed for business for a continuous period of 14 days (other than by reason of legal holidays) or announces an intention permanently to cease business or (b) the Bonds become due and payable pursuant to Condition 8 (*Acceleration*).

The Permanent Global Bond will also become exchangeable, in whole but not in part only and at the option of the Issuer, for Definitive Bonds if, by reason of any change in the laws of the United Kingdom, the Issuer is or will be required to make any withholding or deduction from any payment in respect of the Bonds which would not be required if the Bond were in definitive form.

Whenever the Permanent Global Bond is to be exchanged for Definitive Bonds, the Issuer shall procure the prompt delivery (free of charge to the bearer) of such Definitive Bonds, duly authenticated and with coupons and a talon attached, in an aggregate principal amount equal to the principal amount of the Permanent Global Bond to the bearer of the Permanent Global Bond against the presentation or surrender (as the case may be) of the Permanent Global Bond at the Specified Office of the Principal Paying Agent within 30 days of the request following the occurrence of the relevant Exchange Event.

In addition, the Temporary Global Bond and the Permanent Global Bond will contain provisions which modify the Terms and Conditions of the Bonds as they apply to the Temporary Global Bond and the Permanent Global Bond. The following is a summary of certain of those provisions:

Payments

All payments in respect of the Temporary Global Bond and the Permanent Global Bond will be made against presentation and (in the case of payment of principal in full with all interest accrued thereon) surrender of the Temporary Global Bond or (as the case may be) the Permanent Global Bond at the specified office of any Paying Agent and will be effective to satisfy and discharge the corresponding liabilities of the Issuer in respect of the Bonds.

Notices

Notwithstanding Condition 14 (*Notices*), while the Bonds are represented by a Permanent Global Bond (or by a Permanent Global Bond and/or a Temporary Global Bond) and such Permanent Global Bond is (or the Permanent Global Bond and/or Temporary Global Bond are) deposited with a common depositary for Euroclear and Clearstream, Luxembourg or any additional or substitute clearing system from time to time nominated by the Issuer or the Bond Trustee and approved by MBIA (if it is the Credit Provider), notices to Bondholders may be given by delivery to Euroclear and Clearstream, Luxembourg or any such additional or substitute clearing system and such notices shall be deemed to have been given to the Bondholders in accordance with Condition 14 (*Notices*) on the date of delivery to Euroclear and Clearstream, Luxembourg or any such additional or substitute clearing system.

Meetings

A holder of, or a proxy for the holder of, the Temporary Global Bond or the Permanent Global Bond will be treated as being two persons for the purposes of any quorum requirements of a meeting of Bondholders.

Cancellation

Cancellation of any Bond represented by the Temporary Global Bond or the Permanent Global Bond will be effected by reduction in the principal amount of the Temporary Global Bond or the Permanent Global Bond (as the case may be).

Bond Trustee's powers

In considering the interests of Bondholders while the Temporary Global Bond or Permanent Global Bond is held on behalf of Euroclear and/or Clearstream, Luxembourg or any additional or substitute clearing system from time to time nominated by the Issuer and the Bond Trustee and approved by MBIA (if it is the Credit Provider), the Bond Trustee may have regard to any information provided to it by such clearing system(s) as to the identity (either individually or by category) of its account holders with entitlement to the Temporary Global Bond or the Permanent Global Bond (as the case may be) and may consider such interests as if such account holders were the holders of the Bonds represented by the Temporary Global Bond or the Permanent Global Bond (as the case may be).

USE OF PROCEEDS

The net proceeds of the issue of the Bonds, expected to amount to approximately £408,986,764 (excluding the Variation Bonds and after deduction of the combined selling, management and underwriting commission and issue expenses), will be used by the Issuer to fund the design, construction, operating costs and other expenditure (including fees and incidental costs and expenses) in relation to the Project.

YIELD

On the basis of the issue price of the Bonds of 99.993 per cent. per £1,000 principal amount of the Bonds, the real yield of the Bonds is 5.565 per cent. on a semi-annual basis.

MBIA FINANCIAL GUARANTEE
No. UK 03128

THIS DEED is made on [to be dated 9 September 2003]

BY

- (1) **MBIA ASSURANCE S.A.** a *société anonyme* incorporated under the laws of the French Republic (registered with the Paris Register of Trade and Companies under No. B377883293 (98 B 05130)) and acting through its registered branch office in England and Wales (registration number BR003789) ("**MBIA**").

IN FAVOUR OF

- (2) **BNP PARIBAS TRUST CORPORATION UK LIMITED** or any additional or successor trustee appointed pursuant to the Bond Trust Deed (the "**Bond Trustee**").

NOW THIS DEED WITNESSETH AND IT IS HEREBY DECLARED AS FOLLOWS:

1. Definitions

For the purposes of this Deed, the following terms will have the following meanings:

"**Accelerated Payment**" means, following an Acceleration, any payment by MBIA of the Guaranteed Obligations in advance of the Scheduled Payment Date in full or in part.

"**Acceleration**" means in relation to the Bonds the declaration by written notice from the Bond Trustee to the Issuer that the Bonds are immediately due and payable pursuant to Condition 8 (*Acceleration*), and "**Accelerated**" will be construed accordingly.

"**Affiliate**" means any person who directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, the first person, where "**control**" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting stock, by contract or otherwise.

"**Bonds**" means the £446,588,000 5.564 per cent. Guaranteed Secured Bonds due 2041 (including up to £35,000,000 variation bonds).

"**Bond Trust Deed**" means the bond trust deed dated 9 September 2003 between the Issuer, MBIA and the Bond Trustee constituting the Bonds, as modified or supplemented from time to time.

"**Business Day**" means any day other than (i) a Saturday or a Sunday, (ii) a legal holiday in Paris or London, or (iii) a day on which banking institutions in Paris or London are authorised or obliged by law or executive order to be closed.

"**Conditions**" means the terms and conditions of the Bonds, as set out in the Bond Trust Deed.

"**Due for Payment**" means due and payable on a Scheduled Payment Date. For the avoidance of doubt "**Due for Payment**" does not include any date which may arise earlier than a Scheduled Payment Date by reasons of prepayment, Acceleration, mandatory or optional redemption or otherwise unless MBIA has given its consent to such earlier date.

"**Financial Guarantee**" means the financial guarantee constituted by this Deed.

"**Financial Guarantee Fee**" has the meaning given to it in the Guarantee and Indemnity Agreement.

"**Guaranteed Amounts**" means, with respect to any Scheduled Payment Date, the sum of (i) Interest due on the Guaranteed Obligations on such Scheduled Payment Date, (ii) Principal due on the Guaranteed Obligations on such Scheduled Payment Date, and (iii) MBIA Additional Amounts, if any, due in respect of the amount of Principal and/or Interest due on such Scheduled Payment Date in each case.

"**Guarantee and Indemnity Agreement**" means the agreement between the Issuer, Derby Healthcare (Holdings) Limited and MBIA pursuant to which, *inter alia*, MBIA has agreed to issue the Financial Guarantee

and the Issuer has agreed, *inter alia*, to indemnify MBIA for, and to MBIA being subrogated to the rights of the Holders in respect of, any payments made by MBIA under the Financial Guarantee.

"Guaranteed Obligations" means the payment obligations of the Issuer in respect of each amount of Principal and Interest owing by the Issuer and outstanding under the Bonds including the Variation Bonds but excluding (i) any Bonds which have been purchased by the Issuer (ii) any Variation Bonds held by the Issuer during any period in which the Issuer or any person acting on behalf of the Issuer, is the Holder of such Bonds, but not thereafter.

"Holder" means the bearer of one or more of the Bonds save that, for so long as the Bonds are in global form, each person who has for the time being a particular principal amount of such Bonds credited to its securities account in the records of Clearstream, Luxembourg or Euroclear shall be deemed to be the Holder in respect of the principal amount of such Bonds for all purposes hereof other than for the purpose of payments in respect thereof, the right to which shall be vested as against the Issuer solely in the bearer of such Bond in accordance with and subject to the terms of the Bond Trust Deed and such Bond in global form.

"Interest" means any amount in respect of regularly scheduled interest owing by the Issuer under the Bonds, excluding any amount relating to prepayment, early redemption, broken-funding indemnities, penalties, default interest, premium or similar.

"Issuer" means Derby Healthcare PLC (Registered Number 4668140).

"MBIA Additional Amounts" has the meaning given to it in Clause 6 of this Deed.

"Nonpayment" means, on any Scheduled Payment Date, the failure by the Issuer to pay all or any part of the Guaranteed Amounts which are due on such Scheduled Payment Date.

"Notice of Demand" means the notice of demand substantially in the form set out in the Schedule to this Deed.

"Order" means a final, non-appealable order from a court of competent jurisdiction.

"Paying Agency Agreement" has the meaning given to it in the Conditions.

"Preference" means an unfair preference pursuant to sections 239 to 244 of the Insolvency Act 1986.

"Principal" means each amount of regularly scheduled principal outstanding under the Bonds, as reduced by each amount of principal repaid or prepaid by the Issuer pursuant to the Conditions, excluding any amount relating to prepayment, early redemption, broken-funding indemnities, penalties, premium or similar.

"Principal Paying Agent" has the meaning given to it in the Conditions.

"Rating Agencies" means Moody's Investor Services Limited, Fitch Ratings Limited and Standard & Poor's, a division of the McGraw Hill Companies, Inc. and **"Rating Agency"** means any one of them.

"Receipt" means (i) actual delivery to MBIA at the address set out in the Notice of Demand (or such other office as MBIA has notified to the Bond Trustee by at least seven (7) Business Days' notice) prior to 12.00 noon, London time, on a Business Day or (ii) if such actual delivery takes place either on a day that is not a Business Day or after 12.00 noon, London time, **"Receipt"** will be deemed to have occurred on the next succeeding Business Day.

"Recovered Amounts" means any payment of Principal or Interest made by or on behalf of the Issuer to the Bond Trustee or a Holder which has been deemed a Preference by an Order and recovered from the Bond Trustee or, as the case may be, the Holder.

"Scheduled Payment Date" has the meaning given to it pursuant to Condition 3 (*Interest*) with respect to Interest and Condition 6 (*Payments and Exchange of Talons*) with respect to Principal.

"Security Trust and Intercreditor Deed" has the meaning given to it in the Conditions.

"Senior Finance Documents" has the meaning given to it in the Conditions.

"Taxes" means and includes all present and future income and other taxes, levies, assessments, imposts, deductions, charges, duties and withholdings imposed and any charges in the nature of taxation imposed by or on behalf of the United Kingdom or any political subdivision or taxing authority therein or thereof together with

interest thereon and penalties and fines with respect thereto, if any, and "Tax" and "Taxation" shall be construed accordingly.

2. Guarantee

2.1 In consideration of the promise of payment of the Financial Guarantee Fee by or on behalf of the Issuer and subject to the terms of this Deed, MBIA unconditionally and irrevocably guarantees to the Bond Trustee for the benefit of the Holders of the Guaranteed Obligations:

2.1.1 an amount equal to the Guaranteed Amounts which have become Due for Payment but are unpaid by reason of Nonpayment; and

2.1.2 an amount equal to the Guaranteed Amounts which are Recovered Amounts.

2.2 This Deed does not guarantee any prepayment or other acceleration payment which at any time may become due in respect of any Guaranteed Obligation, other than at the sole option of MBIA as specified in Clause 7, nor against any risk other than Nonpayment, including failure of the Bond Trustee or any Paying Agent to make any payment due to Holders of Guaranteed Amounts.

3. Payments

3.1 MBIA will make payments to the Bond Trustee from its own funds by 11.00 a.m. (London Time) on the later of:

3.1.1 the day which is four (4) Business Days following Receipt of a Notice of Demand in accordance with Clause 8, or

3.1.2 the day on which the Guaranteed Amounts are Due for Payment or, if that is not a Business Day, on the next succeeding Business Day; or

3.1.3 in respect of any Recovered Amounts, the day which is four (4) Business Days following receipt of a Notice of Demand in accordance with Clause 8.

3.2 Payments due under this Deed will be satisfied by payment to the person specified in the relevant Notice of Demand in pounds Sterling by credit to a pounds Sterling account at a bank in London, England, as specified in the Notice of Demand and payment to such person will discharge the obligations of MBIA under this Deed to the extent of such payment, whether or not funds are properly applied by such person.

3.3 Once payment of any Guaranteed Amounts has been made to the Bond Trustee or as the Bond Trustee has directed, MBIA will have no further obligation in respect of such Guaranteed Amounts.

3.4 If MBIA is required to pay any MBIA Additional Amounts, MBIA will at the same time as it makes the payment to the account described in Clause 3.2 above give the recipient of such payment sufficient details of such payment so as to enable the recipient to properly disburse or arrange for the disbursement of such payment to the party or parties.

3.5 Nothing in this Deed will oblige MBIA to make payments in respect of the Guaranteed Obligations:

3.5.1 other than on a Scheduled Payment Date; or

3.5.2 which would be greater than the Principal of such part of the Guaranteed Obligations (plus accrued but unpaid interest).

4. Subrogation

MBIA will be subrogated to the Holders' and the Bond Trustee's rights to payment of the Guaranteed Obligations to the extent of any payments made by or on behalf of MBIA under this Deed.

5. Waiver of Defences

5.1 The obligations of MBIA under this Deed will continue and will not be terminable other than in accordance with Clause 14 notwithstanding failure to receive payment of the Financial Guarantee Fee or any other fee due in respect of this Deed. The Financial Guarantee Fee is not refundable for any reason.

- 5.2 The obligations of MBIA under this Deed will not be affected by any lack of validity or enforceability or any amendment or modification or waiver with respect to the Guaranteed Obligations or the Bond Trust Deed or the granting of any time, indulgence or concession to the Issuer.

In addition, notwithstanding the Financial Guarantee constituted by this Deed is a guarantee not a contract of insurance, to the fullest extent permitted by applicable law, MBIA hereby waives for the benefit of the Bond Trustee and each Holder and agrees not to assert any and all rights (whether by counterclaim, set-off or otherwise) and defences (including, without limitation, any defence of fraud (including fraud on the part of any agent for the Bond Trustee but excluding fraud by the Bond Trustee itself) or any defence based on misrepresentation, breach of warranty, or non-disclosure of information by any person) whether acquired by subrogation, assignment or otherwise to the extent such rights and defences may be available to MBIA, to avoid payment of its obligations under this Deed. MBIA agrees that nothing in this Deed constitutes a warranty or a condition precedent to the Financial Guarantee.

6. Withholding and Deductions

- 6.1 Payments of Guaranteed Amounts by MBIA will be made without withholding or deduction for, or on account of, any present or future Taxes, unless the withholding or deduction of such Taxes is required by law or regulation or administrative practice of any jurisdiction. If any such withholding or deduction is required, MBIA will pay the Guaranteed Amounts net of such withholding or deduction and will account to the appropriate tax authority for the amount required to be withheld or deducted. Except as provided below, MBIA shall not be obliged to pay any amount to the Bond Trustee or any Holder in respect of the amount of such withholding or deduction.
- 6.2 Payments of Guaranteed Amounts (together with any Recovered Amounts) by MBIA will be made without withholding or deduction for, or on account of, any present or future Taxes imposed or levied in respect of the French Republic or any political subdivision or taxing authority therein or thereof ("**France**") unless the withholding or deduction of such Tax is required by law or regulation or administrative practice of France. If any such withholding or deduction is required, subject as provided below, MBIA will make the payment in respect of the relevant Guaranteed Amounts net of such withholding or deduction and will account to the appropriate tax authority for the amount required to be withheld or deducted. If any withholding or deduction is so required, MBIA will, to the extent permitted by law, pay such amounts ("**MBIA Additional Amounts**") for the account of each Holder in respect of which a withholding or deduction has been made to ensure that the net amounts receivable by such Holder after such withholding or deduction equal the Guaranteed Amounts which would have been received by such Holder in the absence of such withholding or deduction but provided that no such payment will be payable in respect of any Bond or coupon presented for payment:
- 6.2.1 by or on behalf of a Holder which is liable or subject to such tax, assessment or charge by reason of its having some connection with France other than the mere holding of such Bond or coupon;
- 6.2.2 where such withholding or deduction is imposed on a payment to an individual and is required to be made pursuant to any European Union Directive on the taxation of savings implementing the conclusions of the ECOFIN Council meeting of 21 January 2003 or any law implementing or complying with, or introduced in order to conform to, such Directive;
- 6.2.3 by or on behalf of a Holder who would have been able to avoid such withholding or deduction by presenting the relevant Bond or coupon to another Paying Agent in a member state of the European Union;
- 6.2.4 in France; or
- 6.2.5 more than 30 days after the relevant Payment Date except to the extent that the Holder would have been entitled to such additional amounts if it had presented such Bond or coupon on the last day of such period of 30 days.

For the avoidance of doubt, all payments of Guaranteed Amounts (together with all Recovered Amounts) by MBIA will be made subject to any other withholding or deduction required by law, regulation or administrative practice in any jurisdiction (other than in France) to which MBIA is subject or in or through which any payment is made by MBIA.

7. Acceleration

- 7.1 At any time following Acceleration, MBIA may decide, in its absolute discretion, to make a full or partial Accelerated Payment under this Deed.
- 7.2 Any Accelerated Payment will be communicated in writing by MBIA to the Bond Trustee without the need for Receipt of a Notice of Demand, and it will be made to the account specified by the Bond Trustee or the Principal Paying Agent.

8. Notice of Demand

- 8.1 Payments of Guaranteed Amounts will only be made after presentation of a validly completed Notice of Demand signed by the Bond Trustee.
- 8.2 Notices of Demand must be given by the Bond Trustee and delivered by registered mail or personally to the address set out in the Notice of Demand, or such other address as MBIA may notify in writing to the Bond Trustee.
- 8.3 If any Notice of Demand is not in the proper form or is not properly completed, executed or delivered, it will be deemed not to have been received by MBIA.
- 8.4 MBIA will promptly advise the Bond Trustee if a Notice of Demand has not been properly completed, executed or delivered and the Bond Trustee may submit an amended Notice of Demand to MBIA.

9. Appointment of Fiscal Agent

- 9.1 At any time during the term of this Deed MBIA may appoint a fiscal agent (the "**Fiscal Agent**") by written notice to the Bond Trustee at the notice address specified in the Bond Trust Deed specifying the name and notice address of the Fiscal Agent, which Fiscal Agent may be situated in New York and/or London. From and after the date of receipt of such notice by the Bond Trustee:
 - 9.1.1 copies of all notices including the Notice of Demand and other documents required to be delivered to MBIA pursuant to this Deed must be simultaneously delivered to the Fiscal Agent and to MBIA and will not be deemed to be received until they are received by both the Fiscal Agent and MBIA, and
 - 9.1.2 all payments required to be made by MBIA under this Deed will be made directly by MBIA or by the Fiscal Agent on behalf of MBIA, provided, however, that payment by MBIA to the Fiscal Agent will not discharge MBIA's obligations in respect of the Guaranteed Amounts. The Fiscal Agent is the agent of MBIA only and the Fiscal Agent will not be liable to the Bond Trustee or any Holder for any acts by MBIA or any failure by MBIA to deposit, or cause to be deposited, sufficient funds to make payments under this Deed.

10. Assignment and Transfer

The rights and obligations of MBIA under this Deed may be assigned or transferred to any Affiliate of MBIA provided that, *inter alia*:

- 10.1 no MBIA Event of Default (as defined in the Security Trust and Intercreditor Deed) has occurred and is continuing at the time of such assignment or transfer;
- 10.2 MBIA or such assignee or transferee delivers to the Bond Trustee written confirmation from a Rating Agency that, at the time of such assignment or transfer, the ability of such Affiliate to make payments under this Deed was rated at least equal to the ability of MBIA at that time to make payment under the Financial Guarantee and the rating of the Bonds was at least equal to the ability of MBIA at that time to make payments under the Financial Guarantee; and
- 10.3 MBIA or such assignee or transferee thereafter delivers to the Bond Trustee written notice of any such assignment or transfer and such assignee or transferee assumes the obligations of MBIA under the Financial Guarantee and accedes to the relevant Senior Finance Documents (and delivers legal opinions addressed to the Bond Trustee as to English law and the jurisdiction of incorporation of such assignee or transferee) whereupon, without further action, MBIA will be released from its obligations under this Deed.

11. Redenomination

The obligations of MBIA under this Deed will not be affected by any redenomination of the Guaranteed Obligations into euro pursuant to Condition 15 (*Redenomination*) of the Bonds save that, following such redenomination, payments of Guaranteed Amounts hereunder shall be made in euro.

12. Benefit of Deed

This Deed shall take effect as a deed poll for the benefit of the Bond Trustee from time to time.

13. Third Party Rights

Any right under the United Kingdom Contracts (Rights of Third Parties) Act 1999 which any person (other than MBIA as issuer of this Deed and the Bond Trustee as beneficiary of this Deed) may otherwise have to enforce any term or condition of this Deed is expressly excluded.

14. Entire Agreement

This Deed constitutes the entire agreement between MBIA and the Bond Trustee in relation to MBIA's obligation to make payments to the Bond Trustee in respect of Guaranteed Amounts and supersedes any previous agreement between MBIA and the Bond Trustee in relation to such payments.

15. Termination

Unless prior to such date the Issuer has become subject to any insolvency or analogous proceedings in respect of its insolvency, winding-up or administration under any applicable insolvency law, this Deed will terminate on the date falling two years and one day after the last Scheduled Payment Date and MBIA will cease to be liable for any claim made in respect hereof after such date.

16. Law and Jurisdiction

This Deed will be governed by and construed in accordance with English law and the English courts will have exclusive jurisdiction (including as to its existence and validity) to settle any dispute which may arise from or in connection with it.

IN WITNESS WHEREOF this Deed is executed as a deed on the date written above.

EXECUTED as a deed

Executed as a deed by a duly)
authorised signatory of)
MBIA ASSURANCE S.A.)

Schedule
Form of Notice of Demand

MBIA Assurance S.A.
London Branch
1 Great St Helen's
2nd Floor
London EC3A 6HX

Telephone: 00 44 20 7920 6363
Fax: 00 44 20 7588 3393

Attention: The Director

The undersigned, a duly authorised officer of BNP Paribas Trust Corporation UK Limited or any additional or successor trustee appointed pursuant to the terms of the Bond Trust Deed (the "**Bond Trustee**"), hereby certifies to MBIA Assurance S.A. ("**MBIA**"), with reference to Financial Guarantee No. UK 03128 (the "**Financial Guarantee**") issued by MBIA in respect of the payment obligations of the Issuer in respect of each amount of Principal and Interest owing by the Issuer and outstanding under the Bonds, including the Guaranteed Obligations and MBIA Additional Amounts:

1. The Bond Trustee is the trustee under the Bond Trust Deed for the Holders.
2. The Bond Trustee has been notified by the Principal Paying Agent that the deficiency in respect of Guaranteed Amounts which are Due for Payment on *[insert Payment Date]* will be £*[insert applicable amount]* (the "**Shortfall**").
3. The Bond Trustee is making a claim under the Financial Guarantee for the Shortfall to be applied to the payment of Guaranteed Amounts which are Due for Payment.
4. The Bond Trustee agrees that, following payment of funds by or on behalf of MBIA to the Bond Trustee (if applicable), it will procure that:
 - 4.1 it will hold such amounts on trust in favour of the Holders and procure that such amounts are applied directly to the payment of Guaranteed Amounts which are Due for Payment;
 - 4.2 such funds are not applied for any other purpose;
 - 4.3 such funds are not co-mingled with other funds held by the Bond Trustee; and
 - 4.4 a record of such payments with respect to each Guaranteed Obligation and the corresponding claim on the Financial Guarantee and the proceeds thereof is maintained by the Principal Paying Agent in accordance with the terms of the Paying Agency Agreement.
5. Payment will be made in pounds Sterling by credit to the designated pounds Sterling account of the *[insert payee]* at *[insert account details]* with *[insert bank details]*.

Unless the context otherwise requires, capitalised terms used in this Notice of Demand and not defined herein will have the meanings set out in the Financial Guarantee.

This Notice of Demand may be revoked by written notice by the Bond Trustee to MBIA at any time prior to 10.00 a.m. (London time) on the second Business Day prior to the date specified above on which Guaranteed Amounts are Due for Payment if and only to the extent that moneys are actually received in respect of the Guaranteed Obligations prior to such time from a source other than MBIA.

This Notice of Demand will be governed by and construed in accordance with English law.

IN WITNESS WHEREOF the Bond Trustee has executed and delivered this Notice of Demand on the [*insert date*] day of [*insert date*].

BNP Paribas Trust Corporation UK Limited

By: _____

Title: _____

MBIA ASSURANCE S.A.

General

MBIA Assurance S.A. ("**MBIA**") is a *société anonyme* that was created and incorporated under French law on 3 May 1990. MBIA's corporate charter expires on 3 May 2089. MBIA's principal activity is the guarantee of financial obligations. MBIA has been set up in the form of a joint stock corporation and is subject to the provisions of the French Code of Commerce ("**Code de Commerce**") as the law of 24 July 1966 has been replaced by the Code of Commerce.

Furthermore, MBIA is licensed in the French Republic, under the terms of Article L 321-1 of the French Insurance Code ("**Code des Assurances**"), to carry out operations of the type corresponding to Branch 15 Guarantee listed in Article R 321-1 of the Code des Assurances ("*Journal Officiel*" dated 28 March 1991). MBIA is under the supervision of the Commission de Contrôle des Assurances. Its registration number is the Commercial Register (Paris Register of Trade and Companies) No. B377883293 (98 B 05130). MBIA has its head office in Paris at 112, Avenue Kléber, 75116 Paris, France.

MBIA has used the provisions of the Third Non-life Insurance Directive No. 92/49/EEC to operate in the United Kingdom both on a services and a branch basis. It was established as an overseas company under number FC020116 and as a branch under number BR003789 in England and Wales under Schedule 21A to the Companies Act 1985 on 10th February 1997. MBIA's business in the United Kingdom is to a limited extent subject to supervision by the Financial Services Authority. Its branch office is located at 1 Great St Helen's, 2nd Floor, London, EC3A 6HX, United Kingdom.

Business and Financial Structure

MBIA is licensed to do business in, and is subject to regulation under the laws of the French Republic. MBIA is a 99.99% owned subsidiary of MBIA Insurance Corporation ("**MBIA Insurance Corp.**"). MBIA Insurance Corp. is the principal operating subsidiary of MBIA Inc., a New York Stock Exchange listed company. MBIA Inc. is not obliged to pay the debts of, or claims against, MBIA Insurance Corp. or MBIA.

MBIA is engaged primarily in carrying out insurance and reinsurance transactions of any kind authorised by the Commission de Contrôle des Assurances, excepting insurance transactions involving commitments, the performance of which depends on human life, but including particularly guarantee transactions, and notably, insuring the repayment of financial or other contractual obligations entered into by local governments, other public entities, companies, trusts and other commercial entities as well as any ancillary activities. MBIA may, to this purpose, make any investment and acquire any stake, in France and/or abroad, through the acquisition of a participating interest or securities, contributions in cash or in kind, subscription to any issue of shares or bonds, loans or credits; and may, to this end, borrow and make use of any means of financing it may choose and pledge such investments or interests as it sees fit. MBIA may carry out in France and/or abroad any industrial, commercial, financial or real estate operations that may be linked, directly or indirectly, to the above activities or are likely to facilitate the development thereof within the scope of the legislation specific to insurance companies.

Financial Strength Ratings

Moody's Investor Service, Inc. ("**Moody's**") rates the financial strength of MBIA Insurance Corp. and MBIA "**Aaa**".

Standard & Poor's, a division of The McGraw-Hill Companies, Inc. ("**S&P**") rates the financial strength of MBIA Insurance Corp. and MBIA "**AAA**".

Fitch, Inc. rates the financial strength of MBIA Insurance Corp. and MBIA "**AAA**".

Each rating of MBIA Insurance Corp. and MBIA should be evaluated independently. The ratings reflect the respective rating agency's current assessment of the financial strength of MBIA Insurance Corp. and MBIA and their ability to pay claims on their policies of insurance. Any further explanation as to the significance of the above ratings may be obtained only from the applicable rating agency.

The above ratings are not recommendations to buy, sell or hold the obligations, and such ratings may be subject to revision or withdrawal at any time by the rating agencies. Any downward revision or withdrawal of any of the above ratings may have an adverse effect on the market price of the obligations. MBIA Insurance Corp. and MBIA do not guarantee the market price of the obligations nor do they guarantee that the ratings on the obligations will not be revised or withdrawn.

Summary of Financial Information

For the periods ended 31 December 2000, 2001 and 2002, MBIA had net income (loss) of (155,712) Euros, (1,389,753) Euros and 7,066,119 Euros, respectively. During the year 2000, MBIA established a branch in the United Kingdom. As a start-up entity, the UK branch operated at a net loss for the periods ended 31 December 2000 and 2001. Its accounts are included in the financial statements of MBIA for the periods ended 31 December 2000, 2001 and 2002. For the years ended 31 December 2000, 2001 and 2002, MBIA had net assets 32,357,277 Euros, 31,002,236 Euros and 38,068,355 Euros, respectively.

Capitalisation and Indebtedness Table

As at 31 December 2002 and 31 December 2001, the capitalisation and indebtedness of MBIA was as follows:

MBIA Assurance S.A. – Capitalisation and Indebtedness Table⁽¹⁾
(thousands of euros)

	31 December 2002	31 December 2001
	(audited)	
Indebtedness		
– Funds Held ⁽²⁾	0	499
Shareholders' Equity		
– Common stock, par value 15 euros per share:		
1,750,000 authorised and issued shares (fully paid)	26,250	26,250
– Retained Earnings, Other Reserves, Net Loss	11,818	4,752
Total Shareholders Equity	38,068	31,002
Total Capitalisation and Indebtedness⁽³⁾	38,068	31,501

- (1) This Capitalisation and Indebtedness Table has been prepared in accordance with generally accepted accounting principles in France. Save as set out in the Table, MBIA Assurance S.A. did not at the relevant dates have any loan capital outstanding or created but unissued, term loans or any other borrowings in the nature of borrowing, including bank overdrafts and liabilities under acceptances or acceptance credits, mortgages, charges, finance lease commitments, hire purchase obligations or guarantees, or contingent liabilities.
- (2) Represents a security deposit held by MBIA Assurance S.A. in respect of an insured transaction relating to a past securitisation. There is a corresponding asset of equal value on the MBIA Assurance S.A. balance sheet. These funds constitute a short-term security deposit and were entirely released on 12 April 2002. There is no medium or long-term indebtedness.
- (3) There has been no material change in the authorised and issued share capital, and in the capitalisation and indebtedness or the contingent liabilities or guarantees of MBIA Assurance S.A. since 31 December 2002.

Risk Diversification

MBIA Insurance Corp. and MBIA seek to maintain a diversified insured portfolio designed to spread risk based on a variety of criteria, including revenue source, issue size, type of bond and geographic area. As at 31 December 2002, MBIA Insurance Corp. had 32,588 policies outstanding. These policies are diversified among 10,590 "credits", which MBIA Insurance Corp. defines as any group of issues supported by the same revenue source. MBIA seeks similar diversification. The breakdown of risks insured by MBIA (before reinsurance) and in force as at 31 December 2002 is presented in the following table. (source: MBIA's books and records)

Table of Risks
(thousands of euros)

	2002	2001	2000
Sovereign and Sub-Sovereign	1,505,487	1,202,950	1,320,690
Public Utilities	6,206,452	3,406,744	1,121,994
Structured Finance	2,216,384	903,246	1,178,424
Financial Institutions ⁽¹⁾	148,301	173,591	251,185
Investor Owned Utilities	254,283	268,731	255,546
Total	10,330,907	5,955,262	4,127,839

- (1) Consists in large part of risks involving smaller banks and insurance companies

Relationship between MBIA and MBIA Insurance Corp.

MBIA Insurance Corp. and MBIA have entered into (i) a reinsurance agreement dated 1 January 1993 (as amended and restated on 1 January 2002) providing for MBIA Insurance Corp.'s reinsurance of the risks of MBIA (the "**Reinsurance Agreement**") and (ii) an agreement dated 1 November 1991 (as amended and restated on 1 April 2002) whereby MBIA Insurance Corp. agrees to maintain the net worth of MBIA, to remain its sole shareholder⁽¹⁾ and not to pledge its shares of MBIA (as amended, the "**Net Worth Maintenance Agreement**"). Under the Reinsurance Agreement, MBIA Insurance Corp. agrees to reimburse MBIA, on an excess of loss basis, for losses incurred in each calendar year for net retained insurance liability. MBIA Insurance Corp. shall reimburse MBIA for the amount of MBIA's losses paid in each calendar year which amount is in the aggregate in excess of an amount equal to the greater of: (1) US\$500,000 or (2) 40% of MBIA's net earned premium income for that same calendar year. The liability of MBIA Insurance Corp. shall not exceed in any one calendar year, MBIA's net retention with respect to the principal outstanding plus interest insured under MBIA's largest policy in effect as of 11:59 p.m. on 31 December of the prior year.

Under the Net Worth Maintenance Agreement, MBIA Insurance Corp. agrees to cause MBIA to maintain a minimum capital and surplus position of 4,573,471 euros, or such greater amount as shall be required now or in the future by French law or French regulatory authorities; provided however, (i) any contributions to MBIA for such purpose shall not exceed 35% of MBIA Insurance Corp.'s policyholders' surplus on an accumulated basis as determined by the laws of the State of New York, and (ii) any contribution shall be made in compliance with Section 1505 of the New York State Insurance Law.

MBIA has no subsidiaries.

Bondholders should note that the Net Worth Maintenance Agreement between MBIA and MBIA Insurance Corp. and the Reinsurance Agreement (together, the "MBIA Assurance Agreements") are entered into for the benefit of MBIA and are not, and should not be regarded as guarantees by MBIA Insurance Corp. of the payment of any indebtedness, liability or obligations of the Issuer, the Bonds or any Bond Policies.

Information in this Offering Circular concerning MBIA Insurance Corp. is provided for background purposes only in view of the importance to MBIA of the MBIA Assurance Agreements. It does not imply that the MBIA Assurance Agreements are guarantees for the benefit of Bondholders. Payments of principal and of interest on the obligations will be guaranteed by MBIA pursuant to the Financial Guarantee and will not be additionally guaranteed by MBIA Insurance Corp.

The MBIA Assurance Agreements are agreements solely between MBIA and MBIA Insurance Corp. and do not confer rights on third parties; however, these arrangements, together with the ownership of MBIA by MBIA Insurance Corp. and the underwriting support supplied to MBIA by MBIA Insurance Corp., may make information about MBIA Insurance Corp. of interest to holders of policies and guarantees issued by MBIA. Additionally, the MBIA Assurance Agreements were relevant to the rating agencies in justification of the triple-A ratings granted to MBIA. Any modifications to the Net Worth Maintenance Agreement may not occur without confirmation from each of S&P and Moody's that such modifications will not result in the reduction or withdrawal of the claims-paying ratings then assigned to MBIA.

Pursuant to procedures initially developed by MBIA Insurance Corp., MBIA is selective in the risks it chooses to underwrite. Logistic and underwriting support are supplied to MBIA from MBIA Insurance Corp. A logistic review of a credit and the proposed structure is undertaken by an analyst. Both the credit and the structure are then presented to a separate underwriting committee composed of persons not involved in the analysis. Only following approval of both the credit and the structure may a policy or guarantee be issued by MBIA.

(1) MBIA Insurance Corp. owns all shares of MBIA Assurance SA with the exception of 10 shares, each of which is attributed to each director of MBIA Assurance SA during the term of his/her office for French corporate law purpose.

Management

As at the date of this Offering Circular, the members of the Board of Directors of MBIA, their ages and positions within MBIA and their other principal activities are as follows:

Name	Age	Title	Other Activities
John B. Caouette	58	Member of the Board of Directors	Vice Chairman of MBIA Insurance Corp.
Karen E. Decter	36	Member of the Board of Directors	Senior Analyst of MBIA Insurance Corp.
David H. Dubin	41	Member of the Board of Directors	Managing Director of MBIA Insurance Corp.
Gary C. Dunton	48	Member of the Board of Directors	President and Chief Operating Officer of MBIA Insurance Corp.
Kathleen M. Reagan	42	Member of the Board of Directors	Director of MBIA Insurance Corp.
Philip C. Sullivan	47	Member of the Board of Directors	Managing Director of MBIA Insurance Corp.
Juliet S. Telford	38	Member of the Board of Directors	Vice President of MBIA Insurance Corp.
Richard L. Weill	60	Member of the Board of Directors	Vice Chairman of MBIA Insurance Corp.
Ram D. Wertheim	49	Member of the Board of Directors	General Counsel and Assistant Secretary of MBIA Inc.
Deborah M. Zurkow	46	President of the Board of Directors and Managing Director	Managing Director of MBIA Insurance Corp.

The board members do not perform any activities which are significant in the context of the issue of the obligations save as indicated above.

The business address of Ms. Decter and Ms. Zurkow is 112, Avenue Kléber, 75116 Paris, France. The business address of Ms. Telford and Messrs. Caouette, Dubin and Sullivan is 1 Great St. Helen's, London EC3A 6HX, United Kingdom. The business address of Ms. Reagan and Messrs. Dunton, Weill and Wertheim is 113 King Street, Armonk, New York 10504, United States.

MBIA INSURANCE CORPORATION

General

MBIA Inc. ("**MBIA Inc.**") is engaged in providing financial guarantee insurance and investment management and financial services to public finance clients and financial institutions on a global basis. Financial guarantees for municipal bonds, asset-backed and mortgage-backed securities, investor-owned utility bonds, and collateralised obligations of sovereigns, corporations and financial institutions, both in the new issue and secondary markets, are provided through MBIA Inc.'s wholly-owned subsidiary, MBIA Insurance Corporation ("**MBIA Insurance Corp.**"). MBIA Insurance Corp. is the successor to the business of the Municipal Bond Insurance Association (the "**Association**") which began writing financial guarantees for municipal bonds in 1974. MBIA Insurance Corp. is the parent of MBIA Insurance Corp. of Illinois ("**MBIA Illinois**") and Capital Markets Assurance Corporation ("**CapMAC**"), both financial guarantee companies. In 1990, MBIA Inc. formed a French insurance company, MBIA Assurance S.A. ("**MBIA Assurance**"), to write financial guarantee insurance in the countries of the European community. MBIA Assurance, which is also a 99.99% subsidiary of MBIA Insurance Corp., writes policies insuring sovereign risk, public infrastructure financings, asset-backed transactions and certain collateralised obligations of corporations and financial institutions. MBIA has used the provisions of the Third Non-life Insurance Directive No. 92-49-EEC to operate in the United Kingdom both on a services and a branch basis. Generally, throughout the text, references to MBIA Insurance Corp. include the activities of its subsidiaries, MBIA Illinois, MBIA Assurance and CapMAC.

Business and Financial Structure

Financial guarantee insurance provides an unconditional and irrevocable guarantee of the payment of the principal and interest or other amounts owing, on insured obligations when due. MBIA Insurance Corp. primarily insures obligations which are sold in the new issue and secondary markets, or which are held in unit investment trusts ("**UIT**") and by mutual funds. It also provides surety bonds for debt service reserve funds. The principal economic value of financial guarantee insurance to the entity offering the obligations is the savings in interest costs resulting from the difference in the market yield between an insured obligation and the same obligation on an uninsured basis. In addition, for complex financings and for obligations of issuers that are not well-known by investors, insured obligations receive greater market acceptance than uninsured obligations. The municipal obligations that MBIA Insurance Corp. insures include tax-exempt and taxable indebtedness of states, counties, cities, utility districts and other political subdivisions, as well as airports, higher education and health care facilities and similar authorities. The asset-backed or structured finance obligations insured by MBIA Insurance Corp. typically consist of securities that are payable from or which are tied to the performance of a specified pool of assets that have a defined cash flow. These include residential and commercial mortgages, a variety of consumer loans, corporate loans and bonds and equipment and real property leases.

MBIA Inc. also provides investment management products and financial services through a group of subsidiary companies. These services include cash management, municipal investment agreements, discretionary asset management, purchase and administrative services, and municipal revenue enhancement services. MBIA Municipal Investors Service Corporation ("**MBIA-MISC**") provides cash management services and investment placement services to local governments and school districts, and provides those clients with investment fund administration services. MBIA Investment Management Corp. ("**IMC**") offers guaranteed investment agreements primarily for bond proceeds to states and municipalities. MBIA Capital Management Corp. ("**CMC**") performs investment management services for the Company, MBIA-MISC, IMC and selected external clients. In 1998, the company acquired 1838 Investment Advisors, Inc. ("**1838**"), an investment advisor to equity mutual funds and to third party clients. In 1999, MBIA Inc. formed a holding company, MBIA Asset Management Corporation, to consolidate the resources and capabilities of these four entities. MBIA Global Funding, LLC ("**GFL**"), which was formed in 2002, raises funds through the issuance of medium term notes, with the proceeds invested in high quality eligible investments.

Financial Strength Ratings

MBIA Insurance Corp. has a Triple-A financial strength rating from Standard and Poor's Rating Services ("**S&P**"), which it received in 1974; from Moody's Investors Service, Inc. ("**Moody's**"), which it received in 1984; from Fitch, Inc. ("**Fitch**"), which it received in 1995; and from Japan Rating and Investment Information, Inc. ("**JRII**"), which it received in 1998. Obligations which are guaranteed by MBIA Insurance Corp. are rated Triple-A primarily based on the financial strength of MBIA Insurance Corp. Both S&P and Moody's have also continued the Triple-A rating on MBIA Illinois and CapMAC guaranteed bond issues. The Triple-A ratings are important to the operation of MBIA Inc.'s business and any reduction in these ratings could have a material

adverse effect on MBIA Insurance Corp.'s ability to compete and could have a material adverse effect on the business, operations and financial results of MBIA Inc.

Capitalisation and Indebtedness Table

The following table sets forth the capitalisation and indebtedness of MBIA Insurance Corp. as at 31 December 2002 and 31 December 2001 (source: audited accounts of MBIA Insurance Corp. for financial years ended 31 December 2002 and 2001.):

	31 December 2002	31 December 2001
	(audited)	
	(US\$ in thousands)	
Long-term Debt	Nil	Nil
Investors' Equity:		
Common stock, par value \$150 per share; authorised, issued and outstanding – 100,000 shares	15,000	15,000
Additional paid-in capital ⁽¹⁾	1,610,574	1,567,478
Retained earnings	3,943,341	3,572,397
Accumulated other comprehensive income	339,710	71,014
Total Investors' Equity	5,908,625	5,225,889
Total Capitalisation and Indebtedness ⁽²⁾	5,908,625	5,225,889

(1) Represents the additional contribution from MBIA Inc. above the par value of the common stock.

(2) There has been no material change in the capitalisation and indebtedness of MBIA Insurance Corp. since 31 December 2002, and MBIA Insurance Corp. has no material contingent liabilities or guarantees.

Risk Diversification

At 31 December 2002, the net par amount outstanding on MBIA Insurance Corp.'s insured obligations (including insured obligations of MBIA Illinois, MBIA and CapMAC, but excluding the guarantee of US\$8.0 billion of investment management transactions for IMC and GFL) was US\$497.3 billion. Net insurance in force was US\$ 781.6 billion.

Because generally MBIA Insurance Corp. guarantees to the holder of the underlying obligation the timely payment of amounts due on such obligation in accordance with its original payment schedule, in the case of a default on an insured obligation, payments under the insurance policy cannot be accelerated unless MBIA Insurance Corp. consents to the acceleration. Otherwise, MBIA Insurance Corp. is required to pay principal, interest or other amounts only as originally scheduled payments come due.

MBIA Insurance Corp. underwrites financial guarantee insurance on the assumption that the insurance will remain in force until maturity of the insured obligations. MBIA Insurance Corp. estimates that the average life (as opposed to the stated maturity) of its insurance policies in force at 31 December 2002 was 10.5 years. The average life was determined by applying a weighted average calculation, using the remaining years to maturity of each insured obligation, and weighting them on the basis of the remaining debt service insured. No assumptions were made for any future refundings of insured issues. Average annual debt service on the portfolio at 31 December 2002 was US\$ 61.8 billion.

Reinsurance

State insurance laws and regulations, as well as Moody's and S&P, impose minimum capital requirements on financial guarantee companies, limiting the aggregate amount of insurance which may be written and the maximum size of any single risk exposure which may be assumed. MBIA Insurance Corp. increases its capacity to write new business by using treaty and facultative reinsurance to reduce its gross liabilities on an aggregate and single risk basis.

As a primary insurer, MBIA Insurance Corp. is required to honour its obligations to its policyholders whether or not its reinsurers perform their obligations to MBIA Insurance Corp. The financial position of all reinsurers is monitored by MBIA Insurance Corp. on a regular basis.

Regulation

MBIA Insurance Corp. is licensed to do insurance business in, and is subject to insurance regulation and supervision by, the State of New York (its state of incorporation), the 49 other US states, the District of Columbia, the Territory of Guam, the Commonwealth of the Northern Mariana Islands, the Virgin Islands of the United States, the Commonwealth of Puerto Rico, the Kingdom of Spain, the Republic of France and the Republic of Singapore. MBIA Assurance is licensed to do insurance business in France and is subject to regulations under the corporation and insurance laws of the French Republic. MBIA has used the provisions of the Third Non-life Insurance Directive to operate in the United Kingdom both on a services and a branch basis and is to a limited extent subject to supervision by the Financial Services Authority. The extent of state insurance regulation and supervision varies by jurisdiction, but New York, Illinois and most other jurisdictions have laws and regulations prescribing minimum standards of solvency, including minimum capital requirements and business conduct which must be maintained by insurance companies. These laws prescribe permitted classes and concentrations of investments. In addition, some state laws and regulations require the approval or filing of policy forms and rates. MBIA Insurance Corp. is required to file detailed annual financial statements with the New York Insurance Department and similar supervisory agencies in each of the other jurisdictions in which it is licensed. The operations and accounts of MBIA Insurance Corp. are subject to examination by these regulatory agencies at regular intervals. MBIA Inc. is subject to the direct and indirect effects of governmental regulation, including changes in tax laws affecting the municipal and asset-backed debt markets. No assurance can be given that future legislative or regulatory changes might not adversely affect the results of operations and financial conditions of MBIA Inc.

MBIA Insurance Corp. is licensed to provide financial guarantee insurance under Article 69 of the New York Insurance Law. Article 69 defines financial guarantee insurance to include any guarantee under which loss is payable upon proof of occurrence of financial loss to an insured as a result of certain events. These events include the failure of any obligor on or any issuer of any debt instrument or other monetary obligation to pay principal, interest, premium, dividend or purchase price of or on such instrument or obligation, when due. Under Article 69, MBIA Insurance Corp. is licensed to transact financial guarantee insurance, surety insurance and credit insurance and such other kinds of business to the extent necessarily or properly incidental to the kinds of insurance which MBIA Insurance Corp. is authorised to transact. In addition, MBIA Insurance Corp. is empowered to assume or reinsure the kinds of insurance described above.

As a financial guarantee insurer, MBIA Insurance Corp. is required by the laws of New York, California, Connecticut, Florida, Illinois, Iowa, New Jersey and Wisconsin to maintain contingency reserves on its municipal bonds, asset-backed securities and other financial guarantee liabilities. Under New Jersey, Illinois and Wisconsin regulations, contributions by such an insurer to its contingency reserves are required to equal 50% of earned premiums on its municipal bond business. Under New York law, such an insurer is required to contribute to contingency reserves 50% of premiums as they are earned on policies written prior to 1 July 1989 (net of reinsurance) and, with respect to policies written on and after 1 July 1989, must make contributions over a period of 15 or 20 years (based on issue type), or until the contingency reserve for such insured issues equals the greater of 50% of premiums written for the relevant category of insurance or a percentage of the principal guaranteed, varying from 0.55% to 2.5%, depending upon the type of obligation guaranteed (net of reinsurance, refunding, refinancing and certain insured securities). California, Connecticut, Iowa and Florida law impose a generally similar requirement. In each of these states, MBIA Insurance Corp. may apply for release of portions of the contingency reserves in certain circumstances.

The laws and regulations of these states also limit both the aggregate and individual municipal bond risks that MBIA Insurance Corp. may insure on a net basis. California, Connecticut, Florida, Illinois and New York, among other things, limit insured average annual debt service on insured municipal bonds with respect to a single entity and backed by a single revenue source (net of qualifying collateral and reinsurance) to 10% of policyholders' surplus and contingency reserves. In New Jersey, Virginia and Wisconsin, the average annual debt service on any single issue of municipal bonds (net of reinsurance) is limited to 10% of policyholders' surplus. Other states that do not explicitly regulate financial guarantee or municipal bond insurance do impose single risk limits which are similar in effect to the foregoing. California, Connecticut, Florida, Illinois and New York also limit the net insured unpaid principal on a municipal bond issued by a single entity and backed by a single revenue source to 75% of policyholders' surplus and contingency reserves.

Under New York, California, Connecticut, Florida, Illinois, New Jersey and Wisconsin law, aggregate insured unpaid principal and interest under policies insuring municipal bonds (in the case of New York, California, Connecticut, Florida and Illinois, net of reinsurance) are limited to certain multiples of policyholders' surplus and contingency reserves. New York, California, Connecticut, Florida, Illinois and other states impose a 300:1 limit

for insured municipal bonds, although more restrictive limits on bonds of other types do exist. For example, New York, California, Connecticut and Florida impose a 100:1 limit for certain types of non-municipal bonds.

MBIA Inc., MBIA Insurance Corp., MBIA Illinois and CapMAC are subject to regulation under the insurance holding company statutes of New York, Illinois and other jurisdictions in which MBIA Insurance Corp., MBIA Illinois and CapMAC are licensed to write insurance. The requirements of holding company statutes vary from jurisdiction to jurisdiction but generally require insurance holding companies, such as MBIA Inc., and their insurance subsidiaries, to register and file certain reports describing, among other information, their capital structure, ownership and financial condition. The holding company statutes also generally require prior approval of changes in control, of certain dividends and other inter-corporate transfers of assets, and of transactions between insurance companies, their parents and affiliates. The holding company statutes impose standards on certain transactions with related companies, which include, among other requirements, that all transactions be fair and reasonable and that those exceeding specified limits receive prior regulatory approval.

Prior approval by the New York Insurance Department is required for any entity seeking to acquire "control" of MBIA Inc., MBIA Insurance Corp., or CapMAC. Prior approval by the Illinois Department of Insurance is required for any entity seeking to acquire "control" of MBIA Inc., MBIA Insurance Corp. or MBIA Illinois. In many states, including New York and Illinois, "control" is presumed to exist if 10% or more of the voting securities of the insurer are owned or controlled by an entity, although the supervisory agency may find that "control" in fact does or does not exist when an entity owns or controls either a lesser or greater amount of securities.

The laws of New York regulate the payment of dividends by MBIA Insurance Corp. and provide that a New York domestic stock property/casualty insurance company (such as MBIA Insurance Corp.) may not declare or distribute dividends except out of statutory earned surplus. New York law provides that the sum of (i) the amount of dividends declared or distributed during the preceding 12-month period and (ii) the dividend to be declared may not exceed the lesser of (a) 10% of policyholders' surplus, as shown by the most recent statutory financial statement on file with the New York Insurance Department, and (b) 100% of adjusted net investment income for such 12-month period (the net investment income for such 12-month period plus the excess, if any, of net investment income over dividends declared or distributed during the two-year period preceding such 12-month period), unless the New York Superintendent of Insurance approves a greater dividend distribution based upon a finding that the insurer will retain sufficient surplus to support its obligations and writings. The foregoing dividend limitations are determined in accordance with Statutory Accounting Practices ("SAP"), which generally produce statutory earnings in amounts less than earnings computed in accordance with Generally Accepted Accounting Principles ("GAAP"). Similarly, policyholders' surplus, computed on a SAP basis, will normally be less than net worth computed on a GAAP basis.

MBIA Insurance Corp., MBIA Illinois and CapMAC are exempt from assessments by the insurance guarantee funds in the majority of the states in which they do business. Guarantee fund laws in most states require insurers transacting business in the state to participate in guarantee associations, which pay claims of policyholders and third-party claimants against impaired or insolvent insurance companies doing business in the state. In most cases, insurers licensed to write only municipal bond insurance, financial guarantee insurance and other forms of surety insurance are exempt from assessment by these funds and their policyholders are prohibited from making claims on these funds.

Management

As at the date of this Offering Circular, the executive officers and their present ages and positions within MBIA Insurance Corp. are set forth below:

Name	Age	Position
Joseph W. Brown	54	Chairman and Chief Executive Officer
Gary C. Dunton	48	President and Chief Operating Officer
Richard L. Weill	60	Vice Chairman and Secretary
John B. Caouette	58	Vice Chairman
Neil G. Budnick	49	Vice Chairman and Chief Financial Officer
Ram D. Wertheim	49	General Counsel and Assistant Secretary

Recent Developments⁽¹⁾

For the three months ended 31 March 2003, MBIA Insurance Corp. had net income of US\$219.7 million as compared to US\$161.0 million for the three months ended 31 March 2002. At 31 March 2003, MBIA Insurance Corp.'s investor's equity was US\$6.1 billion.

MBIA Insurance Corp. guaranteed US\$20.2 billion of net par value during the first three months of 2003, an increase of 15% over the US\$17.5 billion of net par insured in the same 2002 period. During the first three months of 2003, MBIA Insurance Corp. insured US\$14.2 billion of net par value of municipal bonds, a 75% increase from US\$8.1 billion insured in the same 2002 period. In the domestic structured finance market, which includes mortgage-backed and asset-backed transactions, MBIA Insurance Corp. insured US\$2.9 billion of net par value, a decrease of 59% from the US\$7.0 billion insured in the same period last year. In addition, MBIA Insurance Corp. insured US\$3.1 billion of net securities internationally compared with US\$2.3 billion net in 2002.

Gross premiums written during the first three months of 2003 increased to US\$288.1 million from US\$186.8 million a year ago. Net premiums earned during the first three months of 2003 were US\$161.2 million, up from US\$139.0 million in the comparable 2002 period. Net investment income, excluding net realised capital gains, remained flat at \$106.1 million. Revenues of MBIA Insurance Corp. for the three months ended 31 March 2003 increased to US\$359.9 million compared with US\$263.4 million for the three months ended 31 March 2002. Total expenses for the three months ended 31 March 2003 were US\$53.0 million compared to US\$45.3 million for the three months ended 31 March 2002.

Computed on a statutory basis, as of 31 March 2003, MBIA Insurance Corp.'s unearned premium reserve was US\$2.8 billion, and its capital base, consisting of capital and surplus and contingency reserve, was US\$5.6 billion. Total claims-paying resources at 31 March 2003, rose to US\$11.4 billion, compared with US\$11.0 billion at 31 December 2002.

(1) The source of the financial information appearing in the section entitled "Recent Developments" is MBIA Insurance Corp.'s books and records.

DESCRIPTION OF THE SHAREHOLDERS OF HOLDCO

Innisfree Nominees Limited

A company registered in England with company number 3565361 whose registered office is at 21 Whitefriars Street, London EC4Y 8JJ and which was incorporated on 18 May 1998. Innisfree Nominees Limited holds 37,500 fully paid up ordinary shares of £1 each in the capital of HoldCo, 25,000 of which are held on trust for Innisfree PFI Fund II and 12,500 of which are held on trust for Innisfree PFI Fund III.

Innisfree Nominees Limited is a wholly owned subsidiary of Innisfree Group Limited, a company registered in England with company number 3078732 whose registered office is at 21 Whitefriars Street, London EC4Y 8JJ and which was incorporated on 12 July 1995. Innisfree Limited, a company registered in England with company number 3039792 whose registered office is at 21 Whitefriars Street, London EC4Y 8JJ and which was incorporated on 30 March 1995 is the manager of Innisfree PFI Fund II, an English limited partnership with £150,000,000 to invest in companies undertaking PFI and PPP projects in the UK. The funds have been provided by leading institutions who include the clients of Hermes Investment Management Limited and AMP Asset Management Plc, Henderson Fund Management Plc, by the Norwich Union Life and Pensions Limited, Prudential Assurance Company, John Hancock Life Insurance Company Limited and Mars Pension Fund. Innisfree Limited is also the manager of Innisfree PFI Fund III, an English limited partnership with £60,000,000 to invest in companies undertaking PFI and PPP projects in the United Kingdom. The funds have been provided by leading institutions which include the clients of Hermes Investment Management Limited and Prudential Assurance Company. Innisfree PFI Fund III is still fund-raising for new investors.

Innisfree PFI Fund II and Innisfree PFI Fund III make investments in companies undertaking projects which include transport, health, education, water, waste, power, government accommodation, prisons, communications, facilities management, defence and education. Innisfree PFI Fund II has 15 investments to date totalling £123,000,000 in projects, with a capital value of about £2,500,000,000. Included among these investments are the Nottingham Express Transit, the HSL Zuid Dutch High Speed Link, two hospital projects, five schools projects and one government accommodation project. This project is the first investment into the Innisfree PFI Fund III.

Skanska BOT Investment UK Limited

A company registered in England with company number 4624530 whose registered office is at 5 Hyde Park Gate, London SW7 5EW and which was incorporated on 23 December 2002.

Skanska BOT Investment UK Limited is a wholly-owned subsidiary of Skanska BOT AB, a company incorporated in Sweden, which in turn is a wholly-owned subsidiary of Skanska Kraft AB, a company incorporated in Sweden, which in turn is a wholly-owned subsidiary of Skanska AB, a company incorporated in Sweden.

The Skanska group began its operations in 1887 and Skanska AB has been listed on the Stockholm Stock Exchange since 1965. The Skanska group had net sales of SEK 145.5bn (EUR 15.9 bn) in 2002. Its head offices are located in Stockholm but the Skanska group currently has operations in 11 home markets around the world. Skanska has a long history in constructing turnkey hospital projects including, in the UK, the Queen Elizabeth II Hospital, Greenwich, Kings Hospital in London and Walsgrave Hospital in Coventry.

Skanska BOT AB is globally responsible for Skanska's investments in infrastructure projects. Within the UK PFI programme, Skanska BOT Investment UK Limited has been set up to hold future investments won by Skanska BOT UK Limited. Skanska BOT UK Limited is a company registered in England with company number 3024337, whose registered office is at 5 Hyde Park Gate, London SW7 5EW, which was incorporated on 21 February 1995 and which is currently a shareholder in Kings Hospital in London and Walsgrave Hospital in Coventry. Skanska BOT AB is a shareholder in the Bridgend Park prison. Outside the UK, Skanska BOT AB (and its subsidiaries) has a range of investments in infrastructure projects around the world including roads and power plants.

DERBY HEALTHCARE PLC

The Issuer was incorporated in England on 17 February 2003 under the Companies Act 1985 as a public limited company with the name of Derby Hospitals Company PLC and with registered number 4668140. The Issuer's certificate to commence business and borrow was issued under section 117 of the Companies Act 1985 on 20 February 2003. The Issuer changed its name from Derby Hospitals Company PLC to Derby Healthcare PLC on 11 June 2003. The registered office of the Issuer is at 3 White Oak Square, London Road, Swanley, Kent BR8 7AG, England. The Issuer has not, since its date of incorporation, carried on any business or activities other than those incidental to its registration, the financing of the Project, the Mobilisation Services (which services the Issuer has been providing pursuant to the Mobilisation Services Agreement since 28 March 2003) and other matters described or contemplated in this Offering Circular. The Issuer is a special purpose company established to:

- (a) issue the Bonds;
- (b) design, build, commission and maintain the Hospital, on the Site;
- (c) provide services in relation to the Hospital, Derbyshire Royal Infirmary and the existing hospital on the Site;
- (d) enter into the Documents to which it is expressed to be a party; and
- (e) undertake any ancillary matters relating thereto.

The Issuer is a wholly-owned subsidiary of HoldCo. HoldCo holds 49,999 fully paid up ordinary shares of £1 each in the capital of the Issuer. 1 ordinary £1 share in the capital of the Issuer is, in order to satisfy the legal requirements for a public limited company, held by NomineeCo (a wholly-owned subsidiary of HoldCo) on trust for HoldCo. The authorised share capital of the Issuer is £50,000 divided into 50,000 ordinary shares of £1 each, all of which have been issued and fully paid up.

Capitalisation

Save for the Bonds now being issued, the following table sets out the capitalisation of the Issuer as at 4 September 2003:

	£
Shareholders' equity	50,000
Total Capitalisation	50,000

Notes

- (1) As at 4 September 2003, other than normal trade bills, the Issuer had no outstanding indebtedness, contingent liabilities or guarantees.
- (2) The table does not include indebtedness in respect of the Bonds now being issued.

Directors

As at the date hereof, the Directors of the Issuer, their business address and other principal activities, are as follows:

Director Name	Title	Other Principal Activities
June Gemmell	Director	Director, The Coventry and Rugby Hospital Company PLC.
Alan Gillman	Director	Director, Skanska BOT UK Limited, The Coventry and Rugby Hospital Company PLC and Skanska BOT Investment UK Limited.
Gerard Green	Director	Director, HCP (Holdings) Limited, Health Care Projects Limited, Health Care Projects (South Buckinghamshire) Limited, HCP (Defence Projects) Limited, Meridian Hospital Company plc and Meridian Hospital Holding Company Limited.

Director Name	Title	Other Principal Activities
Tim Pearson	Director	Director, Innisfree Group Limited, Innisfree Partners Limited, Hanford Waste Services Limited, HCP Holdings Limited, Wolverhampton Waste Services Limited, Dudley Waste Services Limited, Octagon Holdings Limited, Gentian Holdings Limited, Prospect Healthcare (Hairmyres) Limited, Meridian Hospital Company PLC, Innisfree Partners II Limited, Endeavour SCH PLC, Innisfree Resources Limited, Arrow Light Rail Holdings Limited, Modern Courts (Humberside) Limited, Prospect Healthcare (Reading) Limited, Realm Services (DAC) Limited, PPP Forum Limited, Innisfree Nominees Limited, Gentian (Cambridge) Limited, The Coventry and Rugby Hospital Company PLC, Modern Courts (East Anglia) Limited and Innisfree Partners III Limited.

The business address of June Gemmell is 5 Hyde Park Gate, London SW7 5EW.

The business address of Alan Gillman is 5 Hyde Park Gate, London SW7 5EW.

The business address of Gerard Green is 3 White Oak Square, London Road, Swanley, Kent BR8 7AG.

The business address of Tim Pearson is 21 Whitefriars Street, London EC4Y 8JJ.

ACCOUNTANTS' REPORT ON THE ISSUER

The Directors
Derby Healthcare PLC
3 White Oak Square
London Road
Swanley
Kent BR8 7AG

4 September 2003

Dear Sirs

Derby Healthcare PLC

We report on the financial information set out below. This financial information has been prepared for inclusion in the offering circular dated 4 September 2003 (the "**Offering Circular**") of Derby Healthcare PLC (the "**Issuer**").

Basis of preparation

The financial information set out below is based on the financial statements of the Issuer from incorporation to 30 June 2003 prepared on the basis described in note 1, to which no adjustments were considered necessary.

Responsibility

The financial statements are the responsibility of the Issuer.

The Issuer is responsible for the contents of the Offering Circular in which this report is included.

It is our responsibility to compile the financial information set out in our report from the financial statements, to form an opinion on the financial information and to report our opinion to you.

Basis of opinion

We conducted our work in accordance with the Statements of Investment Circular Reporting Standards issued by the Auditing Practices Board. Our work included an assessment of evidence relevant to the amounts and disclosures in the financial information. It also included an assessment of significant estimates and judgments made by those responsible for the preparation of the financial statements underlying the financial information and whether the accounting policies are appropriate to the entity's circumstances, consistently applied and adequately disclosed.

We planned and performed our work so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the financial information is free from material misstatement, whether caused by fraud or other irregularity or error.

Opinion

In our opinion the financial information gives, for the purposes of the Offering Circular, a true and fair view of the state of affairs of the Issuer at 30 June 2003 and of its results and cash flows for the period then ended.

Profit and loss account

for the period from incorporation to 30 June 2003

	Note	2003 £
Turnover		3,670,903
Cost of sales	2-3	(3,670,903)
Gross profit		—
Operating profit		—
Profit on ordinary activities before taxation	2-3	—
Tax on profit on ordinary activities	4	—
Profit on ordinary activities after taxation		—
Profit for the financial period		—
Retained profit for the period		—

Balance sheet

at 30 June 2003

	Note	2003 £	2003 £
Current assets			
Debtors	5	3,310,291	
Cash at bank and in hand		269,898	
		3,580,189	
Creditors: amounts falling due within one year	6	(3,530,189)	
Net current assets			50,000
Total assets less current liabilities			50,000
Capital and reserves			
Called up share capital	7		50,000
Profit and loss account	8		—
Equity shareholders' funds			50,000

This financial information was approved by the board of directors on and was signed on its behalf by:

TR Pearson

Director

Cash flow statement

for the period from incorporation to 30 June 2003

	Note	2003 £
Reconciliation of operating profit to net cash flow from operating activities		
Operating profit		—
Increase in debtors		(3,310,291)
Increase in creditors		3,530,189
Net cash inflow from operating activities		219,898
Cash flow statement		
Cash flow from operating activities		219,898
Financing	9	50,000
Increase in cash in the period		269,898
Reconciliation of net cash flow to movement in net debt		
Increase in cash in the period		269,898
Net debt at the start of the period		—
Net debt at the end of the period		269,898

Reconciliation of movements in shareholders' funds

for the period from incorporation to 30 June 2003

	2003 £
Profit for the financial period	—
New share capital subscribed	50,000
Net addition to shareholders' funds	50,000
Opening shareholders' funds	—
Closing shareholders' funds	50,000

Notes

(forming part of the financial information)

1. Accounting policies

The following accounting policies have been applied consistently in dealing with items which are considered material in relation to the company's financial information except as noted below.

Basis of preparation

The financial information has been prepared in accordance with applicable accounting standards and under the historical cost accounting rules. The company was incorporated on 17 February 2003 as Derby Hospitals Company PLC and commenced trading on 1 April 2003 following the company's entering into a Mobilisation Services Agreement with the Southern Derbyshire Acute Hospitals NHS Trust on 28 March 2003. The company changed its name to Derby Healthcare PLC on 11 June 2003.

Turnover

Turnover represents the amounts (excluding value added tax) derived from the provision of goods and services to customers.

Cash

Cash, for the purpose of the cash flow statement, comprises cash in hand and deposits repayable on demand, less overdrafts payable on demand.

2. Remuneration of directors

The Directors did not receive any remuneration during the period from incorporation to 30 June 2003.

3. Staff number and costs

The company did not have any employees other than the Directors during the period.

4. Taxation

No corporation tax has accrued since incorporation as the company has not made any profits or losses.

5. Debtors: amounts falling due within one year

	2003
	£
Trade debtors	2,246,121
Other debtors (VAT receivable)	1,232
Accrued income	1,062,938
	<hr/>
	3,310,291
	<hr/>

6. Creditors: amounts falling due within one year

	2003
	£
Trade creditors	2,523,911
Accruals	1,006,278
	<hr/>
	3,530,189
	<hr/>

7. Called up share capital

	2003 £
<i>Authorised</i>	
Equity: Ordinary shares of £1 each	50,000
	<u>50,000</u>
<i>Allotted, called up and fully paid</i>	
Equity: Ordinary shares of £1 each	50,000
	<u>50,000</u>

All of the company's £50,000 issued share capital was subscribed on the date of incorporation.

8. Reserves

	Profit and loss account £
At date of incorporation	—
At end of period	<u>—</u>

9. Analysis of cash flows

	2003 £
<i>Financing</i>	
Issue of ordinary share capital	50,000

10. Analysis of net debt

	At date of incorporation £	Cash flow £	At end of period £
Cash in hand, at bank	—	269,898	269,898
Total	<u>—</u>	<u>269,898</u>	<u>269,898</u>

11. Related party disclosures

The company is controlled by Derby Healthcare (Holdings) Limited which owns £49,999 of the company's £50,000 issued share capital and whose registered address is 3 White Oak Square, London Road, Swanley, Kent BR8 7AG. The ultimate controlling parties are (i) Innisfree PFI Fund II and Innisfree PFI Fund III and (ii) Skanska BOT Investment UK Limited, (a subsidiary of the Skanska AB group) which own 75% and 25% respectively of the issued share capital of Derby Healthcare (Holdings) Limited. The remaining £1 share in the company is owned by the Derby Healthcare Nominee Limited.

On 1 April 2003 the company entered into a contract with Skanska Rashleigh Weatherfoil Limited (a fellow subsidiary of the Skanska AB group) for the provision of facilities management services at hospital sites owned by the Southern Derbyshire Acute Hospitals NHS Trust. The value of the work done in the period to 30 June 2003 under the contract was £575,103, and the creditor due at 30 June 2003 was £460,961.

Yours faithfully
KPMG Audit Plc

DERBY HEALTHCARE (HOLDINGS) LIMITED

HoldCo was incorporated in England and Wales on 11 February 2003 under the Companies Act 1985 as a limited company with the name of The Derby Hospitals Company (Holdings) Limited and with registered number 4663025. Holdco changed its name from The Derby Hospitals Company (Holdings) Limited to Derby Healthcare (Holdings) Limited on 11 June 2003. The registered office of HoldCo is at 3 White Oak Square, London Road, Swanley, Kent BR8 7AG, England. HoldCo has not, since its date of incorporation, carried on any business or activities other than those incidental to its registration, the financing of the Project and other matters described or contemplated in this Offering Circular. HoldCo is a special purpose company established to act as holding company to the Issuer.

As at the date hereof, HoldCo is owned by Innisfree Nominees Limited (on trust for Innisfree) as to 75 per cent. and Skanska as to 25 per cent. The authorised share capital of HoldCo is £50,000 divided into 50,000 ordinary shares of £1 each, all of which are issued and fully paid up.

Capitalisation

The following table sets out the unaudited capitalisation of HoldCo as at 4 September 2003.

	£
Shareholders' equity	50,000
Total Capitalisation	50,000

Directors

As at the date hereof, the Directors of HoldCo, their business address and other principal activities are as follows:

Director Name	Title	Other Principal Activities
June Gemmell	Director	Director, The Coventry and Rugby Hospital Company PLC.
Alan Gillman	Director	Director, Skanska BOT UK Limited, The Coventry and Rugby Hospital Company PLC and Skanska BOT Investment UK Limited.
Gerard Green	Director	Director, HCP (Holdings) Limited, Health Care Projects Limited, Health Care Projects (South Buckinghamshire) Limited, HCP (Defence Projects) Limited, Meridian Hospital Company plc and Meridian Hospital Holding Company Limited.
Tim Pearson	Director	Director, Innisfree Group Limited, Innisfree Partners Limited, Hanford Waste Services Limited, HCP Holdings Limited, Wolverhampton Waste Services Limited, Dudley Waste Services Limited, Octagon Holdings Limited, Gentian Holdings Limited, Prospect Healthcare (Hairmyres) Limited, Meridian Hospital Company PLC, Innisfree Partners II Limited, Endeavour SCH PLC, Innisfree Resources Limited, Arrow Light Rail Holdings Limited, Modern Courts (Humberside) Limited, Prospect Healthcare (Reading) Limited, Realm Services (DAC) Limited, PPP Forum Limited, Innisfree Nominees Limited, Gentian (Cambridge) Limited, The Coventry and Rugby Hospital Company PLC, Modern Courts (East Anglia) Limited and Innisfree Partners III Limited.

The business address of June Gemmell is 5 Hyde Park Gate, London SW7 5EW.

The business address of Alan Gillman is 5 Hyde Park Gate, London SW7 5EW.

The business address of Gerard Green is White Oak Square, London Road, Swanley, Kent BR8 7AG.

The business address of Tim Pearson is 21 Whitefriars Street, London EC4Y 8JJ.

DERBY HEALTHCARE NOMINEE LIMITED

NomineeCo was incorporated in England and Wales on 14 February 2003 under the Companies Act 1985 as a limited company with the name of The Derby Hospitals Nominee Company Limited and with registered number 4666925. NomineeCo changed its name from The Derby Hospitals Company Nominee Limited to Derby Healthcare Nominee Limited on 11 June 2003. The registered office of NomineeCo is at 3 White Oak Square, London Road, Swanley, Kent BR8 7AG, England. NomineeCo has not, since its date of incorporation, carried on any business or activities other than those incidental to its registration, the financing of the Project and other matters described or contemplated in this Offering Circular. NomineeCo is a special purpose company established to act, in the capacity of nominee holding 1 ordinary share of £1 in the Issuer on trust on behalf of HoldCo, as holding company to the Issuer.

As at the date hereof, NomineeCo is a wholly-owned subsidiary of HoldCo. The authorised share capital of NomineeCo is £100 divided into 100 ordinary shares of £1 each of which 1 ordinary £1 share is issued and fully paid up.

Capitalisation

The following table sets out the unaudited capitalisation of NomineeCo as at 4 September 2003.

	£
Shareholders' equity	1
Total Capitalisation	1

Directors

As at the date hereof, the Directors of, NomineeCo their business address and other principal activities are as follows:

Director Name	Title	Other Principal Activities
June Gemmell	Director	Director, The Coventry and Rugby Hospital Company PLC.
Alan Gillman	Director	Director, Skanska BOT UK Limited, The Coventry and Rugby Hospital Company PLC, Skanska BOT Investment UK Limited.
Gerard Green	Director	Director, HCP (Holdings) Limited, Health Care Projects Limited, Health Care Projects (South Buckinghamshire) Limited, HCP (Defence Projects) Limited, Meridian Hospital Company plc and Meridian Hospital Holding Company Limited.
Tim Pearson	Director	Director, Innisfree Group Limited, Innisfree Partners Limited, Hanford Waste Services Limited, HCP Holdings Limited, Wolverhampton Waste Services Limited, Dudley Waste Services Limited, Octagon Holdings Limited, Gentian Holdings Limited, Prospect Healthcare (Hairmyres) Limited, Meridian Hospital Company PLC, Innisfree Partners II Limited, Endeavour SCH PLC, Endeavour SCH Holdings Limited, Innisfree Resources Limited, Arrow Light Rail Holdings Limited, Modern Courts (Humberside) Limited, Prospect Healthcare (Reading) Limited, Realm Services (DAC) Limited, PPP Forum Limited, Innisfree Nominees Limited, Gentian (Cambridge) Limited, The Coventry and Rugby Hospital Company PLC, Modern Courts (East Anglia) Limited and Innisfree Partners III Limited.

The business address of June Gemmell is 5 Hyde Park Gate, London SW7 5EW.

The business address of Alan Gillman is 5 Hyde Park Gate, London SW7 5EW.

The business address of Gerard Green is 3 White Oak Square, London Road, Swanley, Kent BR8 7AG.

The business address of Tim Pearson is 21 Whitefriars Street, London EC4Y 8JJ.

SUMMARY OF THE PROJECT DOCUMENTS

In this summary, except to the extent that the context requires otherwise, capitalised terms shall have the meaning given to them in the Project Agreement.

1. GENERAL

The Project Agreement contains:

- (a) specific provisions that are applicable only to the Works including design, construction and commissioning of the Hospital, together with supporting infrastructure and amenities;
- (b) specific provisions relating to the supply and installation of sterile services equipment;
- (c) specific provisions relating to the provision of Sterile Services and information management and technology;
- (d) specific provisions that are applicable only to the Soft FM Services and Hard FM Services;
- (e) specific provisions and ancillary documents which are applicable only to the ongoing arrangements in relation to the retail facility within the Hospital; and
- (f) general provisions that are applicable to, *inter alia*, the Works and Services provided in connection with the Project Agreement (the “**Project Operations**”).

The Project Agreement contains the Issuer’s obligations to provide the Hard FM Services, the Soft FM Services and supply and provide the Sterile Services and incorporates the service specification arrangements for these services. It also includes details of the payment mechanism. The Project Agreement also sets out the Issuer’s obligations in relation to the retail facility.

In respect of the Mobilisation Services, the Issuer is reimbursed for performance of its obligations under the Mobilisation Services Agreement in accordance with a cost-plus formula. There is a separate performance and compliance regime applicable to the Mobilisation Services.

The Issuer has entered into other contracts, principally as follows:

- (a) the Design and Build Sub-Contract with the Design and Build Sub-Contractor by which the Issuer procures performance of the design, construction works and pre-completion building commissioning of the Works under the Project Agreement;
- (b) the Hard FM Contract, the Soft FM Contract and the Sterile Services Contract by which the Issuer procures performance of its Hard FM Services, Soft FM Services and Sterile Services under the Project Agreement;
- (c) the Design and Build Sub-Contractor Guarantee from Skanska AB, guaranteeing the Design and Build Sub-Contractor’s obligations to the Issuer under the Design and Build Sub-Contract;
- (d) the Services Guarantees from Skanska Construction Group Limited and Compass Contract Services (UK) Limited respectively, guaranteeing the obligations of the Hard FM Provider and Soft FM Provider under the Hard FM Contract and Soft FM Contract respectively;
- (e) the Agreement for Lease, licence to sublet and licence to carry out alterations with Gentian pursuant to which the Issuer constructs and Gentian fits-out the retail units;
- (f) the Performance Bonds;
- (g) Direct Agreements with the Security Trustee, from respectively the Design and Build Sub-Contractor, the Hard FM Provider, the Soft FM Provider and the Sterile Services Provider and each of their respective guarantors excluding the Sterile Services Provider, providing, *inter alia*, certain rights of step-in and step-out in relation to the Sub-Contracts in a default situation which might otherwise cause their termination or termination of the Project Agreement;
- (h) the Mobilisation Services Agreement with the Trust containing specific provisions applicable only to the provision of certain interim (mobilisation) services (the “**Mobilisation Services**”), constituting of certain reception, catering, domestic services, linen and laundry, portering, estate management, receipt and

distribution, facilities management and administration, sterile services, switchboard and waste management services to the existing Site Hospital, the existing Derbyshire Royal Infirmary hospital, and various other sites in the Derby city area and Mobilisation Services sub-contracts with service providers in connection with such services;

- (i) the Retained Staff Agreement regulates the management and procedures used in relation to the day to day management of Retained Employees;
- (j) the Deed of Safeguard; and
- (k) the CEMA containing a secondment mechanism whereby certain categories of the Trust's staff engaged in specific services will be seconded to the Soft FM Provider and subject to the supervision and management of the Soft FM Provider.

2. THE PROJECT AGREEMENT

(a) Duration

The Project Agreement will expire at the end of the Concession (the "**Expiry Date**").

(b) Design, Construction and Installation

The Issuer is required to procure the Works. The Works are to be procured in accordance with the agreed specifications scheduled to the Project Agreement and are subject to the general requirements applicable to Project Operations.

The Works are to be in accordance with further detailed requirements set out in the Trust's Construction Requirements and the Issuer's Proposals, scheduled to the Project Agreement at schedule 8 parts 3 and 4.

(c) Completion and Delay

The "**Programme**" defined in the Project Agreement includes six sections (each a "**Section**") consisting of the construction of the Works. Completion is certified by a suitably qualified and experienced consultant (the "**Independent Certifier**"). Completion is attained when the Independent Certifier certifies that the Works comply with the completion criteria for the relevant Section of the Works. Payment commencement occurs as follows:

- Completion of Section 1(a) bullet payments of £1,600,000 in total, payable on a monthly basis over 14 months;
- Completion of Section 1(b) bullet payments of £900,000 in total, payable on a monthly basis over three months;
- Completion of Section 1(c) first payment commencement date for Unitary Charge payable monthly two weeks in advance.

Further step-ups occur in the Unitary Charge as the rest of the Sections (2(a), 2(b) and 2(c)) are completed.

"**Section 1(a)**" means a building known as the "Children's Hospital" and Section 1(a) is scheduled to be completed on 13 January 2005.

"**Section 1(b)**" means a building known as the "SDCU Building" and Section 1(b) is scheduled to be completed on 5 March 2006.

"**Section 1(c)**" means the first phase of the main acute building of the Hospital and Section 1(c) is scheduled to be completed on 5 May 2006.

"**Section 2(a)**" means a unit known as "Obstetrics and Gynaecology" and Section 2(a) is scheduled to be completed on 29 August 2007.

"**Section 2(b)**" means a building known as the "Rehabilitation Block" and Section 2(b) is scheduled to be completed on 10 June 2008.

"**Section 2(c)**" means the final phase of the main acute building of the Hospital and Section 2(c) is scheduled to be completed on 23 December 2008.

Commissioning occurs pre-completion of each Section (wrapped by the Design and Build Sub-Contractor i.e., if the pre-completion commissioning is not completed the Section will not be certified to be completed). The Trust

also has pre-completion commissioning, the risk of Trust-caused delay is retained by the Trust unless the Design and Build Sub-Contractor has exercised its discretion to refuse the Trust entry and has not given the required period of prior notice. Payment of Unitary Charge occurs automatically upon completion certification of the relevant Sections (see above) even though post-completion there are also commissioning activities (e.g., building decant (Issuer), patient moves (Trust)), bedding in periods protect the Issuer from Unitary Charge deductions in this period for each relevant Section – deductions are abated by 100 per cent. until 20 business days after the end of the Issuer's commissioning activities.

The Issuer is obliged to achieve completion of Sections by their respective programmed dates for completion, subject to extensions of time being granted for Delay Events. Completion of certain Sections triggers payment of the Unitary Charge appropriate to such Section. Delay Events (as defined in the section entitled "*Summary of the Projects Documents – The Project Agreement – Relief and Compensation*" below) extend dates for completion of the relevant Section of the Works and postpone the longstop termination date. Some Delay Events trigger compensation payments by the Trust to the Issuer ("**Compensation Events**") (although not all Compensation Events arise as a result of a delay). There are no damages payable to the Trust for late completion of a Section. Late completion of a Section for which part of the Unitary Charge is payable will automatically result in delay to such part of the Unitary Charge being received by the Issuer.

Where the delay is caused by a Compensation Event, compensation is payable by the Trust to the Issuer. Such compensation is calculated to include specified losses and expenses to be incurred by the Issuer including any fixed operating costs of the Issuer and losses and expenses recoverable by the Sub-Contractors. Where the delay is caused by an event not being a Compensation Event, liquidated damages will be payable by the Design and Build Sub-Contractor to the Issuer and the amount of such liquidated damages is calculated to replace lost revenue at a level sufficient to cover debt service and other specific fixed operating costs of the Issuer. Where the delay is caused by specified breaches or acts of prevention by the Issuer of the Design and Build Sub-Contract, liquidated damages will not be payable by the Design and Build Sub-Contractor.

If the Issuer fails to complete Section 1(c) by 24 months after the scheduled completion date of Section 1(c) or if the Issuer fails to complete Section 2(c) by 24 months after the scheduled completion date of Section 2(c) (the "**Long Stop Date**"), the Trust is entitled to terminate the Project Agreement for an Issuer event of default.

(d) *Employees*

(i) *Transferring Employees*

Save for the Retained Employees (see the section entitled "*Retention of Employment*" below), the Trust's employees (the "**Transferring Employees**") engaged in the mobilisation services to be taken over by the Issuer were transferred to the Services Provider on 1 April 2003 (the "**First Relevant Transfer Date**") in accordance with the Transfer of Undertakings (Protection of Employment) Regulations 1981 ("**TUPE**"). The Trust is responsible for any liabilities in connection with the contracts of employment of the Transferring Employees for the period before they transferred (by way of an indemnity), thereafter such responsibility will be that of the Services Provider. The Trust and the Issuer have agreed that this initial transfer of services and any subsequent change in the identity of a provider of Services, although this acknowledgement does not extend to changes as a result of market testing, will be treated as a relevant transfer within TUPE.

Consistent with HM Treasury and Cabinet Office requirements, the Transferring Employees who are, or are eligible to be, members of the NHS Superannuation Scheme (the "**NHS Pension Scheme**") have been offered membership of an occupational pension scheme which has been certified by the Government Actuary's Department ("**GAD**") as providing broadly comparable benefits to those provided by the NHS Pension Scheme. The Services Provider has in place an occupational pension which has been duly certified by GAD. In the event that any of the Transferring Employees elect to transfer their past service entitlements to the Service Provider's GAD certified occupational pension scheme, the Service Provider will receive a bulk transfer payment calculated by GAD.

In the event of termination of the Project Agreement in circumstances defined in the Project Agreement as a "**Trust Event of Default**" or a "**Force Majeure**", the Trust shall be responsible for the costs of making redundancy payments to employees engaged in the provision of the Services which may become payable as a result of such termination.

(ii) *Retention of Employment*

The Retention of Employment Model ("**RoE**") has been devised to address the concerns of NHS staff (and their trade union representatives) who feel they are disadvantaged by being required to leave the employment of the

NHS in connection with a PFI project. There has been particular concern about them leaving the security of the NHS Superannuation Scheme. This concern is addressed in relation to six trades within the Soft FM Services services (the “**Retained Services**”) by giving employees engaged in non-managerial roles in those services the option that they will not transfer to a Service Provider, but remain employed in the NHS. However, such continued employment is conditional upon their also agreeing that they will be seconded to work in the provision of the Retained Services subject to the supervision and management of the Service Provider. Employees (“**Retained Employees**”) working in Retained Services who choose to remain employed by the relevant NHS Trust, will therefore “**opt out**” of the transfer to the Service Provider under Regulation 5(4A) of TUPE. Retained Employees sign a letter acknowledging their objection to the transfer, and enter into a new employment contract under which they agree to their secondment to the Service Provider (a “**Retained Staff Employment Agreement**”). Under it, they agree that they will remain employed by the Trust, but subject to secondment to a Service Provider who will, on a day to day basis, supervise and manage them. The Retained Staff Employment Agreement will specify that the remuneration of the Retained Employees (and Retained Staff) will be set in accordance with the appropriate national collective bargaining agreements that apply to NHS employees in soft services (the “**Whitley Agreements**”). This is a significant change to the existing health sector PFI structure. The intention is that the change to the structure does not interfere with current risk transfer profile. However, the revised (and to date unique) structure gives rise to additional risks for the Trust, the Issuer and Service Providers – See the section entitled “**Risk Factors**” above.

The First Relevant Transfer Date in respect of the Mobilisation Services took place on 1 April 2003. We understand that all of the Employees working in Retained Services of non-management grade chose to opt out of a transfer to the Service Provider.

Supporting the CEMA is the Retained Staff Agreement. This is an agreement between the Trust and the Issuer, and regulates the management and procedures to be used in relation to the day to day management of the Retained Employees and new recruits or replacements (“**Retained Staff**”) who are employed by the Trust which then utilises their services by means of the CEMA.

(iii) *Operation of RoE*

The effect of TUPE

In health sector PFI, TUPE operates to transfer the employment of NHS trust staff to a Service Provider in respect of the Services undertaken by the project company.

There is an adjustment mechanism whereby the Trust shall be responsible for increases in the envisaged costs of the Trust employing the Retained Employees (which principally comprise a salary and related benefits costs) between the date of the Project Agreement and the First Relevant Transfer Date.

Employees working in hard services, soft services other than the Retained Services and management employees in soft services will not be retained by the NHS Trust. Transferring Employees are dealt with in the same way as they were prior to the introduction of RoE.

Identification of Retained Employees and Transferring Employees

The Soft FM Provider who will provide the Retained Services identifies who it will employ as supervisory/managerial (i.e. transferring) employees, and has agreed this with the Trust. Such employees would not be given the option of being Retained Employees and therefore would be expected to transfer under TUPE to the Soft FM Provider.

Relationship between the Trust and the Service Provider

Service Providers will inevitably have a lesser degree of control over the Retained Employees as compared to Transferring Employees. It is acknowledged that, in order to provide the Services efficiently, Service Providers must exercise management control, and be able to change working practices and employee numbers. These powers are given to the Soft FM Provider under the Retained Staff Agreement, subject to the Soft FM Provider operating within the policies and procedures of the Trust.

Recruitment

Should the Service Provider require additional or replacement staff for Retained Services apart from the ability to use agency workers on a temporary basis (see the section entitled “**Temporary Arrangements**”), it is required to recruit employees to be Retained Staff seconded to it by the Trust with Retained Employees. Service Providers

must adhere to the policies of the Trust in relation to the hiring of staff. The Trust will recruit under NHS terms and conditions subject to a term whereby the employee shall be seconded to the Soft FM Provider.

Any Transferring Employees of non-managerial grade in Retained Services will, over time, be replaced by employees hired on NHS terms and conditions of employment and, hence, over the course of the project all non-managerial staff working in Retained Services are likely to become Retained Staff.

Discipline – Existing disciplinary procedures of the Trust are to apply, but will be operated by the Soft FM Provider. The Appeal Panel for disciplinary matters will comprise the Chief Executive and the personnel manager of the Trust and a representative of the Soft FM Provider.

Performance Appraisals and Monitoring – Existing policies of the Trust are to be adhered to by the Soft FM Provider. A copy of performance appraisals are sent to the Trust for monitoring.

Work Practices and Policies of the Trust – The Soft FM Provider will be obliged to manage the Retained Employees in accordance with existing policies of the Trust relating to employment. Therefore, if the Soft FM Provider seeks to change the composition of the Retained Employees after the First Relevant Transfer Date it must do so in compliance with the Trust's policies and will bear the risk of implementing any such changes. The Soft FM Provider will be required to implement new NHS employment initiatives and new policies of the Trust.

Training/Promotion – Promotion to a supervisory/management grade is subject to Retained Employees or Retained Staff (as appropriate) resigning from the Trust to join the Soft FM Provider. The Soft FM Provider is also responsible for training.

Record-keeping – The Soft FM Provider is to maintain records of Retained Staff Members. The Trust is to have access to all records.

Temporary Arrangements – The Soft FM Provider will have flexibility to employ staff on short term contracts of up to one year in order to cover Retained Staff Members' absences by reason of sickness, statutory rights (e.g. maternity/paternity), or the inability to recruit a sufficient number of staff on terms used by the Trust. Additionally, the Service Provider can use temporary staff for periods of longer than one year to deal with the transition from Mobilisation Services to Services. Temporary staff will be employed directly by the Soft FM Provider.

Payroll – During the period of provision of Services and Mobilisation Services the Service Provider will operate the payroll.

Composition of Trust's workforce at First Relevant Transfer Date/Price Adjustments

The Trust will identify potential Retained Employees and Transferring Employees as at the date of the Project Agreement and the employment costs of Soft FM Services are calculated on the assumption that this is accurate. As noted above, an increase must be made to Soft FM Service payments in order to compensate for certain increases in employee costs at the appropriate First Services Transfer Date. If an employee in the Retained Services elects not to opt-out and becomes a Transferring Employee rather than a Retained Employee an adjustment to the service payment is made to reflect increased employer's pension costs of contributing to a GAD scheme.

Indexation – Adjustments for future salary increases of Retained Employees

Retained Staff Members, as they are on NHS terms, will have their pay (and other terms) adjusted in accordance with changes provided for by the Whitley Agreements. Prior to RoE, RPI indexation was thought to be appropriate when applied from an employment perspective because over the course of the Project it was anticipated that there may be proportionately fewer staff who remained on NHS terms and conditions of employment, and therefore employment costs were under the Soft FM Provider's control. Under RoE, the Soft FM Provider has more limited control over cost increases in respect of the employees providing the Retained Services. Hence a modified mechanism has been developed, based on the Soft FM Provider's anticipated workforce for the Retained Services, so that the percentage increases which result from changes provided for by the Whitley Agreements when applied to the Soft FM Provider's actual workforce for the Retained Services is calculated and then applied to the Soft FM Provider's anticipated workforce costs which are met by the Trust.

(iv) *The Application of TUPE after Service Transfer*

Market Testing after Service Transfer Date

On market testing an incoming Service Provider will be obliged to offer employment to those employees of the Service Provider then currently engaged in the provision of the Services on the terms they would have received had they transferred by TUPE. However, if TUPE does not apply as at the first market test in respect of the managerial and supervisory employees in the Retained Services they can claim redundancy, and the costs of that which would be borne by the outgoing Service Provider shall be met by the Trust or the incoming Service Provider.

Termination for Service Provider default/Exercise of Step-In Rights

Redundancy liabilities which the Trust may have in respect of Retained Employees in the event of service provider default is now addressed via an indemnity to the Trust from the Service Provider in the Service Provider Direct Agreement. As noted above, the Service Provider retains the risk of liability for redundancy of management and transferring employees.

Potential disapplication of RoE

A Court or Tribunal may in due course opine on the effectiveness at law of RoE whether based upon allegations that Retained Staff Members have in fact transferred to the Service Provider at Service Transfer Date, or that the Service Provider is the legal employer of Retained Staff or there was no power/vires to implement RoE. The Project Agreement seeks to provide for adjustments to be made to the Service Payments in the first two scenarios (primarily pension costs). The Project Agreement also identifies a process to be applied to deal with the consequences of such allegations between the Trust, the Issuer and the Services Provider.

Vicarious acts of Retained Staff Members

The Issuer or the Service Provider are expected to maintain the necessary employees' liability insurance policies. Employer's liability insurance will be taken out by the Service Provider with the Trust named as co-insured.

Employee relations

The RoE creates a potential for industrial action being undertaken by employees in connection with negotiating terms and conditions of employment over which Service Provider has no control. Industrial action not due to acts of the Issuer or the Service Provider results in protection from payment stream abatements for the Issuer. General strike action will be a "relief event" (see *Summary of the Project Documents – Relief and Compensation* below) and otherwise this risk is passed down to the Service Provider by means of the Sub-Contract with the Issuer.

Equal Pay

RoE enhances the risk of equal pay claims. This enhanced risk arises primarily from the existence of different categories of employees engaged in the provision of the Services, potentially the Retained Services, who will be employed on different terms and conditions. Retained Staff, will be employed on NHS terms (by virtue of the Retained Staff Employment Agreements) with the existing equal pay risk inherent in those terms. The Transferring Employees will transfer to the Service Provider on their existing NHS terms and conditions which over time may be modified by the Service Provider for a reason which is not connected with the relevant transfer under TUPE.

The relevant risk is in three areas:

- claims arising out of NHS terms (a risk currently) applicable to Transferring Employees and Retained Employees;
- claims by Retained Staff on NHS terms who may seek to compare themselves to Transferring Employees or subsequent replacements; and
- claims by Transferring Employees, who may want to compare themselves to Retained Employees.

Claims by Retained Employees will be met by the Trust, except in relation to salary increases over and above Whitley increases which are on the Service Providers' risk (passed through in sub-contracts). Claims by the Transferring Employees in respect of their employment with the Trust until the First Relevant Transfer Date will be met by the Trust. Claims in respect of the period after the First Relevant Transfer Date will be the responsibility of the Service Provider via the sub-contracts.

(e) **Market Testing**

See the section entitled "*Summary of the Project*" above.

(f) **Payment Mechanism**

The Unitary Charge is paid by the Trust monthly, two weeks in advance. Monthly invoice reports are then submitted in arrears setting out the deductions for poor performance and availability for the month just ended.

A varying portion of the Unitary Charge will be indexed annually to RPI and a portion escalates at a fixed rate of 2.50 per cent. per annum. The portion of the Unitary Charge which relates to the seconded staff increases as provided above in section "(e) Employees".

The Project Agreement defines "**Available**" by reference to defined criteria including:

- a condition of accessibility;
- a condition of safety;
- a condition relating to the proposed use of the area in question; and
- conditions relating to temperature, air quality, lighting and relevant equipment.

For the purposes of calculating availability deductions, the Hospital has been divided into its functional units, each of which is allocated a particular weighting factor relating to its relative importance. Weighting factors vary relative to decreasing criticality. No availability deductions may be made for the Sterile Services or IM&T.

The Unitary Charge is subject to a performance monitoring regime under which pursuant to a point scoring mechanism reductions in payment may be incurred depending upon the quality and the extent of the services being provided. Warning notices may also be served upon points having reached certain levels in which case the Trust may exercise rights to require remediation or to step-in and effect their own remediation. Further point incurrence may lead to termination of either the relevant service provider or the Issuer (see below).

Service failure points and availability failure points may be avoided where either the failure is corrected within the appropriate rectification time, a temporary fix is made, or (if the failure amounts to Unavailability) by the provision of Temporary Alternative Accommodation. Repeated failures result in a ratcheted point accrual.

Where poor performance or unavailability is caused by certain matters the Issuer gets full relief from deductions (see the section entitled "*Summary of the Project Documents – The Project Agreement – Relief and Compensation*" below).

(g) **Building Defects**

Following completion of Sections the Issuer is obliged to maintain the buildings in accordance with the Hard FM Contract service level specifications and method statements (or, where relevant, Mobilisation Services statements) whilst taking all reasonable steps to ensure that it does not interfere with the Trust's (or Trust Party's) operations.

(h) **Relief and Compensation**

The Issuer is not required to perform its obligations under the Project Agreement to the extent that performance is prevented by the occurrence of certain events: which cause delay to the Works ("**Delay Events**"); Force Majeure Events; of risks against which the Issuer cannot obtain insurance in the worldwide market or the terms of which insurance are such that the risk is not generally being insured against ("**Uninsurable Risks**"); certain excusing events ("**Excusing Causes**") or certain other events which cause a failure to perform its obligations under the Project Agreement ("**Relief Events**").

The Issuer is entitled to receive relief from payment deduction/service failure point and availability failure point accrual from the Trust on the occurrence of Excusing Causes under various formulae. Delay Events only apply during the construction phase. Monetary compensation is payable on termination further to the occurrence of an Uninsurable Risk or Force Majeure as well as for termination for an Issuer or Trust event of default (see paragraph (p) below). The compensation for Uninsurable Risk/Force Majeure is intended to be sufficient to allow the Issuer to satisfy its scheduled obligations under the Bonds. Relief Events are generally insured risks for

which, if there is accompanying material damage, business interruption proceeds shall be available to cover the Issuer's loss of revenue.

The Issuer is entitled to compensation for those Delay Events which are also Compensation Events or other specified events occur (other than in relation to variations or changes of law which are separately provided for) to the extent that the Issuer incurs direct loss/expense.

(i) **Force Majeure**

Upon the occurrence of an event of Force Majeure, each party is relieved from liability to the extent that it is unable to perform its obligations, although it must use reasonable endeavours to mitigate the consequences of the event and continue to perform.

Prior to completion of the Works, the occurrence of an event of Force Majeure entitles the Issuer to an extension of the scheduled completion dates for the relevant Section or Sections affected.

If, following an event of Force Majeure, the parties are unable to agree on any modifications to the Project Agreement within six months from the date on which notice of an event of Force Majeure was served, either party may terminate the Project Agreement.

(j) **Uninsurable Risks**

Upon a risk becoming an Uninsurable Risk, the Trust can at its option decide to permit the Project Agreement to continue, in which case the Trust acts as insurer of last resort, or terminates paying the Issuer compensation on a Force Majeure basis. Upon the Uninsurable Risk occurring either the Trust shall pay a sum equal to the insurance proceeds which would have been payable (including business interruption proceeds but only to the extent that these amount to "Unavoidable Costs" as defined in the Project Agreement) or terminate the Project Agreement and pay to the Issuer compensation calculated on a Force Majeure basis.

(k) **Contamination**

The Issuer (save in relation to adverse site conditions in the existing hospital footprint until the foundations have been commenced) bears the risk of soil conditions at the execution date of the Project Agreement in respect of the Site. This risk has been passed through to the Design and Build Sub-Contractor under the Design and Build Sub-Contract.

(l) **Variations**

Typical procedures pursuant to the Department of Health standard form NHS PFI project agreement will apply for the instruction, valuation and payment of variations during the Works Period ("**Works Period Variations**") and changes to any Service ("**Service Variations**", together with the Works Period Variations, the "**Variations**").

There are specific controls on the extent of Variations permitted, particularly during the Works Period.

They include rights of objection by the Issuer to Variations, which would result in *inter alia*:

- the capital value of the variation exceeding £18.5 million (aggregate value Variations);
- an extension of more than 12 months (aggregate extension) to completion of the relevant phase;
- an inability for the Issuer to finance the Variation; and
- a material adverse effect on the performance of the Project Operations or a change in the essential nature of the Hospital.

The Trust will pay for Variations it requires within these parameters either by adjustment to the Unitary Charge or lump sum reimbursement.

It is proposed that financing for the Variations will be raised principally through the £35 million Variation Bonds.

(m) **Change of Law**

The Trust undertakes to compensate the Issuer in respect of certain changes in law enacted after the execution of the Project Agreement which were not reasonably foreseeable prior to execution of the Project Agreement.

The Trust undertakes to compensate the Issuer for expenditure in respect of changes of law which were not reasonably foreseeable prior to execution of the Project Agreement which:

- (i) discriminate against PFI Hospitals, or against PFI projects, PFI companies, the facilities constructed pursuant to the Project as against other hospitals; or
- (ii) are NHS or healthcare premises specific; or
- (iii) (subject to sharing provisions based on cumulative costs of such changes and subject to an overall cap on the Issuer's liability) are other than those described in (i) and (ii) and cause the Issuer to incur capital cost after completion of any Section of the construction works.

The effect of changes of law which are not of the type described in (i) to (iii) above are borne by the Issuer (and passed down to the Design and Build Sub-Contractor) up to completion of each Section. Thereafter, in relation to each Section, they are passed to the Services Providers. To the extent that (i) or (ii) have an impact on the Issuer's obligations in relation to the retail services, the types of change of law described in (i) and (ii) are subject to the risk sharing regime, but otherwise passed down to the Issuer in their entirety, which risk is passed on under the relevant Sub-Contract to the relevant party.

Changes in NHS requirements with which the Issuer is obliged to comply by the terms of the Project Agreement are compensated on a basis similar to (i) and (ii) above.

The Trust undertakes to compensate the Issuer in respect of changes in the VAT status of the Services which adversely effect the recoverability of VAT by the Issuer.

In all cases, compensation is calculated as if the relevant change amounted to a variation ordered by the Trust subject to the application of risk sharing provisions. Extensions to the respective completion dates for any Section awarded in respect of any discriminatory change in law or change in law specific to NHS projects or healthcare projects.

(n) *Limited Liability and Exclusive Remedies*

Indemnities exclude indirect losses of any party. The Trust's tortious liabilities for negligent acts/omissions (or those of any Trust Party) are excluded on the basis the Issuer will take out insurance or otherwise cover the risk as it sees fit.

The Trust's remedies for non-compliant provision of Services are confined to the operation of the deduction mechanisms within the payment mechanism.

(o) *Trust Obligations*

The Trust undertakes various obligations in addition to its payment obligations, including a requirement to provide access to the Site for the purpose of performing the construction works and other Project Operations.

(p) *Termination*

The Project Agreement incorporates early termination rights for the Issuer and the Trust. The Project Agreement further prescribes formulae for the calculation of compensation under the Project Agreement on early termination for any reason with the basis of calculation of compensation varying, based on the reason for termination and other circumstances. The amount of compensation payable by the Trust if termination is by reason of the occurrence of a Trust event of default or as a consequence of a Force Majeure Event, an Uninsurable Risk or corrupt gifts has been structured so as to be sufficient to enable the Issuer to meet its obligations under the Bonds, however, payment by the Trust of such compensations may not be sufficiently timely to enable the Issuer to meet its obligations under the Bonds. Compensation payable following default by the Issuer is based on the market value of the unexpired term of the Project Agreement and therefore may not meet the outstanding balance of the Bonds together with accrued interest; consequently the Issuer may not be able to meet its obligations under the Bonds in full or on time as they fall due.

If the Issuer sells Variation Bonds to meet cost overruns in an aggregate amount of more than £17,500,000 and if the Trust has not given its written consent to the issue of the amount of Variation Bonds above such threshold, then the Trust will not be liable to pay termination compensation on the amount of Variation Bonds above such threshold, although MBIA's Financial Guarantee will cover such Variation Bonds. If the Issuer sells Variation Bonds of more than £17,500,000 for reasons other than to meet cost overruns without the Trust's written consent,

the Trust will not be liable to pay termination compensation on the amount of such Variation Bonds, although MBIA's Financial Guarantee will cover such Variation Bonds. The Trust will be liable to pay termination compensation on the amount of any Variation Bonds which are sold as a result of a variation requested by the Trust, or where the Trust has given its written consent to the sale of such Variation Bonds. If there is any shortfall in termination compensation as a result of any Variation Bonds being sold without the Trust's consent, there will be correspondingly less termination compensation available to all Bondholders.

(q) *Disputes Resolution*

The Project Agreement contains dispute resolution procedures which are generally applicable whenever there is a disagreement between the parties. The procedure requires the resolution of such disputes by a referral to a liaison committee with members from both parties, and henceforth to mediation if the dispute remains unresolved. Either party may refer a dispute to adjudication at any time. If not finally resolved the dispute can be referred for arbitration pursuant to the Arbitration Act 1966.

3. THE SUB-CONTRACTS

(a) *Design and Build Sub-Contract*

General

The Design and Build Sub-Contract reflects the design and build provisions of the Project Agreement with the intention that the Issuer's obligations in relation to the Works are passed down to the Design and Build Sub-Contractor.

The Design and Build Sub-Contractor is an unincorporated joint venture consisting of Skanska Construction UK Limited and Skanska Rashleigh Weatherfoil Limited. Such parties enter the Design and Build Sub-Contract on a joint and several basis, save that the insolvency default events respond to Skanska Construction UK Limited alone.

The Design and Build Sub-Contractor is liable to the Issuer, subject to agreed caps, for liquidated damages for delay in attaining completion of any Section. The liquidated damages cap supports payment of liquidated damages for delay up to the long-stop date under the Design and Build Sub-Contract. Completion of each Section is determined and certified by the Independent Certifier upon the successful completion in accordance with defined completion criteria pursuant to the Project Agreement.

The Design and Build Sub-Contractor's liability is limited to 50% of the contract sum payable under the Design and Build Sub-Contract except for specified uncapped liabilities.

Delay and Compensation

The Design and Build Sub-Contract permits the Design and Build Sub-Contractor to obtain extensions of time and compensation for breach and other acts of prevention by the Issuer, and in respect of variations requested by the Issuer. Delay Events under the Project Agreement are effectively passed down to the Design and Build Sub-Contractor under the Design and Build Sub-Contract, but only where a Delay Event is also a Compensation Event.

Payment

The Design and Build Sub-Contractor will be paid monthly in arrears according to a payment schedule monitored by the Issuer and the Lenders' Technical Adviser. The amount paid in respect of the Design and Build Sub-Contract is determined in accordance with a valuation of work completed.

Building Defects

The Design and Build Sub-Contractor is responsible for the cost of rectifying design and construction defects for 12 years following the respective dates of completion and deductions arising due to such defects under the Project Agreement.

Termination

Events of default entitling the Issuer to terminate the Design and Build Sub-Contract include insolvency of Skanska Construction UK Limited (and Skanska AB unless an appropriate replacement or appropriate alternative security is arranged), material breach and causing termination of the Project Agreement.

Events of default entitling the Design and Build Sub-Contractor to terminate the Design and Build Sub-Contract include non-payment of sums due from the Issuer to the Design and Build Sub-Contractor in excess of an agreed threshold and insolvency of the Issuer.

On termination during the construction phase, the Design and Build Sub-Contractor is required to keep available all plant and other equipment on site for the purposes of completing the Works (which the Issuer has not requested the Design and Build Sub-Contractor to remove) to the Issuer free of all encumbrances, liens of any form or any form of charge and to assign or novate to the Issuer such benefits and/or obligations arising under any third party agreement as the Issuer may require for completion of the Works.

Guarantees

Skanska AB will guarantee the performance of the obligations of the Design and Build Sub-Contractor under the Design and Build Sub-Contract.

The Design and Build Sub-Contractor's obligations under the Design and Build Sub-Contract are also supported by the Performance Bonds.

(b) Hard FM Contract

Hard FM Services

The Hard FM Contract passes down to Skanska Rashleigh Weatherfoil Limited those of the Issuer's obligations which relate to the Hard FM Services.

The Hard FM Services will consist of a programme of reactive and preventative maintenance, a fully managed voice and data network infrastructure service (the "IM&T Service") and certain aspects of the waste management service during the operating period. Preventative and reactive repairs are to be carried out at all times in accordance with the applicable standards. The Hard FM Provider's liability is subject to an agreed annual cap with an additional cap applying in the event of termination for Hard FM Provider default. In addition, the Hard FM Provider's liability for reactive maintenance is subject to an agreed cap per incident.

The Hard FM Services are governed by the performance measurement/availability regime. The IM&T Service is a separately terminable service and no availability risk will be transferred to the Issuer in relation to the IM&T Service. The Hard FM Provider's annual liability is capped at the level of the annual service payment.

The duration of the Hard FM Contract is 30 years, subject to benchmarking. If benchmarking does not lead to an agreed price between the Issuer and Hard FM Provider, the Issuer may re-tender for the remainder of the duration of the Hard FM Contract. The waste management service managed by the Hard FM Provider will be benchmarked every three years, the first such benchmarking to take place in 2006. The IM&T Service provided by the Hard FM Provider will be market tested at intervals, the first to occur on the earlier of on the Actual Completion Date and one year after the programmed Completion Date and thereafter at five yearly intervals.

Lifecycle

The Issuer maintains a lifecycle fund from which payment is made to the Hard FM Provider against costs of completed works.

Payment

Payment entitlement follows that of the Issuer on the basis that the Issuer first has to receive the monthly payments from the Trust under the Project Agreement. The Hard FM Provider's right to payment and any other payment is predicated upon the Issuer receiving similar payment or benefit under the Project Agreement.

Likewise, deductions made by the Trust from any payments to the Issuer which are in fact attributable (or to the extent that they are attributable) to the Hard FM Provider are deductible from the equivalent payment to the Hard FM Provider.

The performance regime and availability criteria will determine the level of deductions which may be made from payments for the provision of Hard FM Services.

Termination

Events of default entitling the Issuer to terminate the Hard FM Contract will include insolvency of the Hard FM Provider or its guarantor (unless an appropriate replacement is arranged), material breach by the Hard FM

Provider, a trigger linked to the service failure points and availability failure points regime and causing termination of the Project Agreement.

Events of default entitling the Hard FM Provider to terminate the Hard FM Contract include non-payment of any material sum due from the Issuer to the Hard FM Provider and Insolvency of the Issuer.

Guarantee

Skanska Construction Group Limited will guarantee the performance of the obligations of the Hard FM Provider under the Hard FM Contract.

(c) *Soft FM Contract*

Soft FM Services

The Soft FM Contract reflects the Issuer's obligations to the Trust in relation to the Soft FM Services.

The Soft FM Provider is Medirest, a division of Compass Services (UK) Limited. The Soft FM Services are catering, portering (including waste portering), switchboard and telecommunications, domestic services, linen and laundry, reception services and receipt and distribution services.

The Soft FM Provider's liability is subject to an agreed annual overall cap with an additional cap applying in the event of termination for Soft FM Provider default.

The Soft FM Services are governed by the performance measurement/availability regime.

Payment

Payment entitlement will follow that of the Issuer on the basis that the Issuer first has to receive the monthly payments from the Trust under the Project Agreement. The Soft FM Provider's right to payment and any other benefit is predicated upon the Issuer receiving similar payment or benefit under the Project Agreement.

Likewise, deductions made by the Trust from any payments to the Issuer which are in fact attributable (or to the extent that they are attributable) to the Soft FM Provider are deductible from the equivalent payment to the Soft FM Provider.

The performance regime and availability criteria will determine the level of deductions which may be made from payments for the provision of Soft FM Services.

Termination

Events of default entitling the Issuer to terminate the Soft FM Contract will include insolvency of the Soft FM Provider or its guarantor, material breach by the Soft FM Provider, a trigger linked to the service failure points or availability failure points regime and causing or being capable of causing termination of the Project Agreement.

Events of default entitling the Soft FM Provider to terminate the Soft FM Contract include failure to pay any material sum due from the Issuer to the Soft FM Provider over a threshold and after notice, material breach by the Issuer and insolvency of the Issuer.

Payment on termination will be set out in similar terms to those of the Project Agreement.

Market Testing Periods

The Soft FM Services will be market tested at intervals, the first to occur on the earlier of one year after the Actual Completion Date and two years after the programmed Completion Date, the second to occur seven years after the first market test, and thereafter at five-yearly intervals.

Guarantee

Compass Contract Services (UK) Limited will guarantee the performance of the obligations of the Soft FM Provider under the Soft FM Contract.

(d) *Sterile Services Contract*

The Sterile Services Contract reflects the Issuer's obligations to the Trust in relation to the Sterile Services. The Sterile Services Provider is Synergy Healthcare plc.

The Sterile Services Provider's liability is subject to an agreed annual overall cap with an additional cap applying in the event of termination for Sterile Services Provider default.

Payment

Payment entitlement will follow that of the Issuer on the basis that the Issuer first has to receive the monthly payments from the Trust under the Project Agreement. The Sterile Services Provider's right to payment and any other benefit is predicated upon the Issuer receiving similar payment or benefit under the Project Agreement.

Likewise, deductions made by the Trust from any payments to the Issuer which are in fact attributable (or to the extent that they are attributable) to the Sterile Services Provider are deductible from the equivalent payment to the Sterile Services Provider.

The performance regime will determine the level of deductions which may be made from payments for the provision of Sterile Services.

The Sterile Services provision is ringfenced in risk terms such that the maximum aggregate performance deduction in respect of each period of twelve months from the date of the Sterile Services Contract is £150,000 and the Project Agreement cannot be terminated as a result of performance failure under the Sterile Services Contract.

Termination

Events of default entitling the Issuer to terminate the Sterile Services Contract will include insolvency of the Sterile Services Provider and material breach by the Sterile Services Provider.

Events of default entitling the Sterile Services Provider to terminate the Sterile Services Contract include failure to pay any material sum due from the Issuer to the Sterile Services Provider over a threshold and after notice and material breach by the Issuer.

Payment on termination is set out in similar terms as those of the Project Agreement.

Benchmarking Periods

The Sterile Services will be subject to a value for money exercise for Soft Pack Items at yearly intervals and for other Sterile Services to a benchmarking exercise from 1 April 2011 and at each fifth anniversary thereafter preceding market testing if the results of benchmarking fail to show that prices for Sterile Services are fair prices.

(e) Sub-Contractor Co-Operation Agreement

The Sub-Contractor Co-Operation Agreement is summarised in the section entitled "*Summary of the Project*" above.

4. PROPERTY ARRANGEMENTS

(a) Planning Permission

Outline planning consent was applied for under DER/12/99/01498PRI on 17 December 1999 for the redevelopment of the Site for the erection of patient care facilities together with a new access road, car parking and related works and was granted on 31 January 2002. Further planning permission for reserved matters was achieved on 20 December 2002. Both the outline permission and reserved matters were issued subject to conditions and some of these remain to be discharged. However the outline planning consent also includes a planning agreement under section 106 of the Town and Country Planning Act 1990 that includes additional land to the north of the property where the Trust will build a park and ride facility. It also includes payment of monies. The Trust and the Issuer have agreed in a planning matrix (to be attached to the Project Agreement) and in correspondence who is to be liable for each of the conditions. There is a further permission for the erection of the Mapleton building, granted on 22 April 2003 and a highways agreement under section 278 of the Highways Act 1980 (a "**Section 278 Agreement**"). These are being dealt with in the same way. There are also some minor consents and a further Section 278 Agreement that have been applied for but not yet granted, but these do not materially affect the Project.

(b) Licences

The Trust will grant to the Issuer (and Sub-Contractors) upon completion of the Certificate of Commencement as set out in the Project Agreement a licence to perform the construction works followed by a licence to provide all postcompletion services from the actual Sectional completion date in each case. On termination of the Project Agreement, all licence rights will automatically be terminated.

(c) **Retail Premises**

The Issuer will be contracting with a third party (currently Gentian) in relation to the retail premises which are to be constructed. The documents being negotiated are:

Headlease – a headlease of the retail premises will be granted by the Trust to the Issuer following completion of the construction of the retail premises.

Agreement for lease – the Issuer will enter into an agreement for lease with Gentian on completion of the Project Agreement. The agreement for lease provides that Gentian will pay the Issuer the sum of £1,030,000, on the grant of the underlease, as well as a service charge payable annually.

Underlease – the Issuer will grant an underlease to Gentian following completion of the headlease, subject to certain works having been completed. The underlease will follow the form of the headlease.

Retail Direct Agreement – to be entered into between the Trust and Gentian and provide that, if under certain circumstances the Project Agreement is terminated and the Issuer is no longer running the Project, the Trust will grant a new lease to Gentian. Compensation payments will also be made to Gentian under this document under certain circumstances – for example, if the Project Agreement is terminated by the Trust.

Direct Financier Agreement – this document will be entered into between the Trust, the Issuer and Gentian's funder to provide Gentian's funder with step-in rights in the event of an Issuer's default.

Licences to sublet and to carry out alterations – the form of licences under which (i) the Trust gives its consent to the Issuer to sublet the premises to Gentian and (ii) the Trust permits Gentian to carry out its fit out of the retail premises and sub-let them will be agreed at the outset.

(d) **Facilities Maintenance Annex**

The Issuer will be granted a lease of part of the Site by the Trust to use as its administrative offices.

(e) **Kitchen lease**

The Issuer will be granted a lease or leases of the kitchen area or areas at the Hospital Site, to be essentially in the same form as the lease of the FM Annex.

5. SUB-CONTRACTOR DIRECT AGREEMENTS

The Issuer and the Security Trustee have entered into Direct Agreements with each of the Sub-Contractors and the guarantors of each of the Sub-Contractors (other than the Sterile Services Provider) respectively, pursuant to which the Sub-Contractors agree that, where they have a right to terminate their respective Sub-Contracts, they will not for a limited period terminate their respective Sub-Contracts, subject to the Security Trustee (on the instructions of the Credit Provider) agreeing to procure payments to the Sub-Contractors of sums due to the Sub-Contractors under their respective contracts.

6. INSURANCE ARRANGEMENTS

(a) **Summary of Insurance**

The Issuer is obliged, subject to uninsurability in the market, to maintain certain insurances during the construction and operational phases as outlined below. It is agreed that policies will name the respective interested parties as insured parties. The principal areas of physical assets, contents, buildings, plant, equipment, materials to be used in the contract works, business interruption and legal liability throughout the duration of the Project Agreement have been addressed. Values at risk, and limits of indemnity are covered to the levels required in the Project Documents and Documents. The deductibles have been set at levels which the Issuer's insurance adviser has advised to be reasonable. Where damage occurs as a result of Sub-Contractor default or in an area of which the Sub-Contractor has possession the Sub-Contracts require the relevant Sub-Contractor to be responsible for the policy deductible.

(b) **Risk Areas Covered**

Contractors All Risks Insurance

Contractors "All Risks" insurance is arranged during the Works Period for all permanent and temporary works, demolition works, materials, goods, plant, tools and equipment and other property for use in conjunction with the Project.

Assets – Material Damage

All Risks protection will be effected by the Issuer during the operational phase although protection in relation to certain assets may commence at an earlier date (the date the Issuer is responsible for those assets). The Issuer and its approved service providers are included as insured parties for assets, subject to certain exceptions, owned by the insured parties or for which they are responsible.

Delay or Interruption

Cover is arranged during the Works Period for advanced loss of profits (covering (*inter alia*), debt servicing and fixed overheads) as a consequence of insured damage which delays the scheduled building programme. Business interruption protection for loss of revenue streams after completion of construction of the Works is arranged on similar lines.

Third Party Liabilities

Cover for the Issuer's legal liability for third party death, injury or disease and for property damage will be effected to a limit of indemnity of £100,000,000 (one hundred million) for any one occurrence, but in the aggregate in respect of sudden and accidental pollution.

Others

Other insurances required by statute, including employers' liability and motor vehicle insurances will be effected by the Issuer.

7. TRUST INSURANCE PROCEEDS ACCOUNT

The Issuer, the Trust, the Security Trustee and the Account Bank have entered into an insurance proceeds account agreement (the "**TIP Agreement**") pursuant to which an account with the Account Bank will be opened and maintained in the joint names of the Trust and the Issuer with the Account Bank (the "**Trust Insurance Proceeds Account**"). The proceeds of any claim on any of the Issuer's policies for material damage will be paid into the Trust Insurance Proceeds Account, to be used by the Trust and the Issuer for reinstatement of the damaged property in accordance with the TIP Agreement, so long as no Event of Default is subsisting and subject to other restrictions.

8. CORRUPT GIFTS

The Project Agreement and the Mobilisation Services Agreement provides the Trust with a right to terminate where the Issuer or any of its employees or those of its Sub-Contractors have made a corrupt gift to the Trust if the Issuer has not taken appropriate action, for example, by dismissing the relevant Sub-Contractor, director or employee. If the corrupt gift is made by the Issuer or an employee acting with the authority or knowledge of one or more of the Issuer's directors, the Trust has an immediate right to terminate the Project Agreement and the Mobilisation Services Agreement and the Mobilisation Services Agreement. The amount of compensation payable by the Trust on such a termination has been structured to enable the Issuer to meet its obligations under the Bonds.

9. WARRANTIES AND DISCLAIMERS

Besides certain information to be provided to the Issuer and limited warranties in relation to title to the Site, no warranties are given by the Trust in the Project Agreement and the Mobilisation Services Agreement.

10. ASSIGNMENT BY THE ISSUER AND CHANGE OF CONTROL

The Issuer may not assign its interest in, *inter alia*, the Project Agreement, the Mobilisation Services Agreement, a contract (to be dated on or about the date of the Project Agreement) between, *inter alia*, the Issuer, the Trust and the Independent Certifier, appointed thereunder, the Design and Build Sub-Contract or the Services Contracts, without the Trust's prior consent, except in relation to the granting of security, in a form approved by the Trust prior to its grant (such approval not to be unreasonably withheld or delayed), for any loan made to the Issuer under the initial funding agreements provided that any assignee shall enter into the Trust Direct Agreement in relation to the exercise of its rights, if the Trust so requires.

Prior to the expiry of a period of 12 months from the Actual Completion Date, a shareholder may not transfer any of its shares without the Trust's prior written approval except where the transfer is made by Innisfree Nominees Ltd if a transfer in specie to limited partners further to winding up.

After the expiry of a period of 12 months from the Actual Completion Date, shares may, without the Trust's consent, be issued or transferred to any party other than a Restricted Person (as defined below). The issue or transfer of shares to a Restricted Person would require the Trust's prior written approval. A Restricted Person is a party which is either:

- a person providing or proposing to provide healthcare services of a similar nature to those provided or contemplated by the Trust at the time in question;
- any person who has a material interest in the production of tobacco products and/or alcoholic beverages; or
- any person who has a material interest in the production of armaments.

11. DEED OF SAFEGUARD

A deed of safeguard (the "**Deed of Safeguard**") which the Issuer has entered into on or before the Issue Date, is between the Secretary of State for Health, the Trust, the Security Trustee and the Issuer. It provides *inter alia* that where there has been a change in law or administrative act which removes or has a material adverse effect on the Trust's legal capacity (or obligation) to perform its material obligations or which disapplies certain protective legislation, the Secretary of State for Health will fully perform the payment obligations of the Trust (including payment of compensation) under the Project Agreement, the Direct Agreements and certain other documents following the occurrence of a specified event of Trust default or Trust insolvency. The Secretary of State for Health's liability continues until either the adverse consequences of the change in law are removed or the Issuer agrees arrangements for a novation of the Trust's obligations to an "Approved Body" (meaning the Secretary of State for Health or another NHS body which continues to benefit from the protective legislation).

THE HEALTH SECTOR

1. *Introduction*

The proposed structure of the National Health Service ("NHS") came into being upon the enactment of the National Health Service Act 1946 (the "1946 Act") with the service actually commencing on 5 July 1948. This was largely based on a White Paper of February 1943, which accepted the proposals of the Beveridge Report published in 1942. One of the aims of the Beveridge Report was to establish comprehensive health and rehabilitation services available to the public regardless of personal means. This principle was embodied in section 1 of the 1946 Act. The NHS has been funded in the main from general taxation with a very small proportion of its revenue being derived from fees for services provided.

A number of amending Acts since the 1946 Act culminated in the National Health Service Act 1977 (the "1977 Act"), which sought to consolidate the previous amendments. However, these amendments were largely unconcerned with the organisational structure of the NHS and focused more upon the technical provision of services. Nevertheless, the 1977 Act established the Health Authorities under section 8 of the 1977 Act which have since become the Strategic Health Authorities (see paragraph 4 below).

2. *Background: The Organisation of the NHS prior to 2002*

The NHS has undergone a considerable number of reorganisations since the 1946 Act. Some of the most far-reaching changes to date were those brought about by the National Health Service and Community Care Act 1990 (the "1990 Act") augmented by the Health Authorities Act 1995 (the "1995 Act"). The Griffith Report and the subsequent publication of a White Paper in 1989 entitled "Working with Patients", envisaged an "Internal Market" within the NHS, whereby the purchase and provision of healthcare services were to be separated. The 1990 Act came into force on 29 June 1990 and implemented a number of organisational changes. Section 3 of the 1990 Act states that Health Authorities are empowered to enter into NHS Contracts. Section 4 defines such contracts as arrangements whereby Health Authorities purchase healthcare services from other bodies (listed in section 4(2) as amended) in order to offer such services to residents within their jurisdictions. Such services are offered via healthcare providers thereby fulfilling the Health Authority's primary function.

In addition, sections 18(5) and 18(6) of the 1990 Act (which have largely been repealed by the Health Authorities Act 1995 (the "1995 Act")) allowed a Health Authority to allocate an "indicative amount" of funds to a general practice ("GP") of the requisite size and financial status. This created what was termed as fund holding practices. This status resulted in the allocation of some of the Regional Health Authorities' funds direct to such GP practices, which were then allowed to purchase certain services directly for the patients on the practice list. In theory it was possible for Health Authorities and GP practices to purchase from any NHS Trust, and indeed to some extent from other providers of healthcare such as private or charitable hospitals. As a result of these changes, competition was created with the NHS. This system came under great criticism and was later abolished. The 1995 Act abolished Regional Health Authorities and replaced them with eight regional offices (Regional Offices) of the NHS Executive of the Department of Health. It also abolished Family Health Service Authorities, which supervised primary care services and transferred their functions to Health Authorities.

3. *NHS Trusts*

The 1990 Act created NHS Trusts under section 5. NHS Trusts are found in most large towns and cities, and provide the hospital, mental health and community care services purchased on behalf of patients by Primary Care Trusts. Some NHS Trusts also act as centres of expertise for specialised care, or are linked to universities and help to train health care professionals.

NHS Trusts are established by the Secretary of State for Health and are accountable to him through the NHS Executive. Each NHS Trust is required by virtue of section 5(5)(b) and Schedule 2 Part II of 1990 Act to:

- (i) prepare and send to the Secretary of State for Health each accounting year an annual report in such form as may be determined by the Secretary of State for Health. At such time or times as may be prescribed, hold a public meeting at which its audited accounts and annual report and any report on the accounts shall be presented;
- (ii) prepare and send to the Secretary of State for Health such reports, returns and other information, including information as to its forward planning, as, and in such form as, the Secretary of State for Health may require;
- (iii) break even on an income and expenditure basis taking one year with another;

- (iv) achieve a return on assets; and
- (v) inform the NHS of any circumstances or events which might undermine their long-term viability.

A NHS Trust has general powers under Schedule 2 Part II of the 1990 Act to:

- (i) acquire and dispose of land and other property;
- (ii) enter into such contracts as seems to the NHS Trust to be appropriate;
- (iii) accept gifts of money, land or other property; and
- (iv) employ staff (both health care professionals and other staff) on such terms as the NHS Trust thinks fit.

A NHS Trust has specific powers under Schedule 2 Part II of the 1990 Act to:

- (i) act as a provider of health services, enter into NHS contracts;
- (ii) undertake and commission research and make available staff and provide facilities for research by other persons; and
- (iii) provide training for persons employed or likely to be employed by the NHS Trust or otherwise in the provision of services under the 1977 Act; and make facilities and staff available in connection with training by a university or any other body providing training in connection with the NHS.

4. *The Health Act 1999*

The Health Act 1999, which was enacted on 30 June 1999, provided for greater co-operation between the NHS and local authorities in the manner prescribed by section 31. This mainly involved both the NHS and local authorities evaluating their relative contributions towards financial and logistical support for health services. The 1999 Act abolished fund holding schemes and de-emphasised the competitive nature of the Internal Market by providing that all NHS bodies have a duty to co-operate with one another.

The 1999 Act, by virtue of section 2(1), empowered the Secretary of State for Health to create Primary Care Trusts ("PCTs") at his discretion, to provide general medical services. This discretion has subsequently become a duty (see paragraph 5 below). The 1999 Act also consolidated systems for self-regulation of healthcare and associated individuals, such as nurses, pharmacists, dentists and opticians. The 1999 Act empowers the Secretary of State for Health to modify the regulations of any healthcare profession in order to improve the service which the profession provides.

The 1999 Act also introduced new legal duties of quality of care and partnership to make sure the component parts of the NHS work together to drive up healthcare standards for patients. Further features of the 1999 Act included:

- new powers to break down barriers, not just between health and social services, but between the NHS under section 26 of the 1999 Act and wider local government, through greater flexibility over the transfer of funds and over operational arrangements such as pooled budgets, where this will best improve health under section 31 of the 1999 Act;
- the creation of the Commission of Health Improvement under sections 19 and 20 of the 1999 Act and Schedule 2; and
- new measures to ensure compliance with aspects of a new agreement with the pharmaceutical industry over prices for drugs charged to the NHS which would be the result of full discussion with the industry. (This is known as the "Statutory Scheme" under sections 35 and 36 of the 1999 Act).

5. *The Organisation of the NHS from 2002*

Further reform of the NHS is provided for in the National Health Service Reform and Health Care Professions Act 2002 (the "2002 Act"). Section 1 of the 2002 Act effected the renaming of Health Authorities as "Strategic Health Authorities" from 1 October 2002 pursuant to section 3 of the National Health Service Reform and Health Care Professions Act 2002 (Supplementary, Consequential etc. Provisions) Regulation 2002 (SI 2002/2469) (the "2002 Regulations"). Sections 4 to 14 and Schedules 1 to 11 of the 2002 Regulations amend references to Health Authority for England in both primary and secondary legislation to either Strategic

Health Authority or Primary Care Trust. However, references to Health Authority remain for Wales. Funding from the Secretary of State for Health will go directly to both the Strategic Health Authorities and the PCTs, by virtue of sections 7 and 8 of the 2002 Act.

The responsibilities of the Strategic Health Authorities include:

- delivering strategies for local health services and ensuring high quality performance;
- managing the NHS locally, providing a link between the Department of Health and the NHS;
- ensuring that national priorities are integrated into local plans; and
- initiating improvements to strengthen the existing systems of professional self-regulation to ensure that they are more open, responsive and publicly accountable, the Council for Regulation of Healthcare professionals under section 25 of the 2002 Act.

The 2002 Act also imposes a duty upon the Secretary of State for Health to establish PCTs covering the whole of England under section 2(1) and 2(1A) and Schedule 2 of the 2002 Act. Responsibilities of the PCTs (as amended by section 2(2) of the 2002 Act) include:

- planning for and securing health services, and improving the health of the local population;
- ensuring the provision of primary health services, such as GPs, dentists and pharmacies; and
- using direct funding to plan and commission health services for local communities.

The Department of Health is also proposing to establish an independent, single new Commission for Healthcare Audit and Inspection ("CHAI"), which will bring together the health value for money work of the Audit Commission, the work of the Commission for Health Improvement and the private healthcare role of the National Care Standards Commission. This is referred to in the Department of Health Publication "Delivering the NHS Plan". The new single Commission will have responsibility for inspecting both the public and private health care sectors. New legislation will be needed to establish CHAI. The intention is that it will have a key role in explaining to the public how NHS resources have been deployed, and the impact they have had in improving services, raising standards and improving the health of the nation. Legislation to establish CHAI was introduced to Parliament on 12 March 2003. It is not expected that CHAI will be fully operational before April 2004.

6. NHS Trusts and the Private Finance Initiative

Under section 1 of the National Health Service (Private Finance) Act 1997, an NHS Trust has the power to enter into externally financed development agreements. However, such agreements can only be entered into by virtue of section 1(3), if in the Secretary of State for Health's opinion the purpose or main purpose of the agreement is the provision of facilities in connection with the discharge of the Trust's functions. "Facilities" is defined under section 1(5) to include works, plants, buildings, equipment, property and services.

SOUTHERN DERBYSHIRE ACUTE HOSPITALS NATIONAL HEALTH SERVICE TRUST

Southern Derbyshire Acute Hospitals National Health Service Trust (the "Trust") is one of the NHS Trusts operating within the Trent Strategic Health Authority.

The Trust incorporates the Derbyshire Royal Infirmary, Derby City General Hospital, Derby Chest Clinic and, more recently, the Grove Hospital.

The Trust is a Department of Health rated three-star Acute Trust providing a wide range of services including general medical, surgical, maternity, rehabilitation care and accident and emergency services.

The Trust was formally created by an Establishment Order made by the Secretary of State for Health in England by virtue of an Order (SI 1998/848) made by the Secretary of State for Health on 18 March 1998, under powers given to him by section 5(1) of the National Health Service and Community Care Act 1990 (the "NHSCC Act") (as such NHSCC Act has been amended by sections 13(1)(a) and 13(10) of the Health Act 1999).

The Trust is an independent entity, governed by statute above. The principal office of the Trust is at Derby City General Hospital (Trust HQ), Uttoxeter Road, Derby, DE22 3NE.

The Trust has its own board of directors consisting of a Chairman (appointed by the Secretary of State for Health), a Chief Executive, five non-executive directors and four executive directors as follows:

Name	Principal Activity
Peter Brewin	Chairman
Julie Acred	Chief Executive
Robert Jones	Non Executive Director
Roger Hollick	Non Executive Director
Brenda Remington	Vice-Chair and Non Executive Director
Professor Stephen Bailey	Non Executive Director
Jane Everitt	Non Executive Director
Chris Calkin	Director of Finance & Information
Tony Riley	Director of Human Resources
Muriel Dewar	Director of Nursing
Dr Kathy McLean	Medical Director

The business address of each of the officers is at Derby City General Hospital (Trust HQ), Uttoxeter Road, Derby, DE22 3NE.

The Chief Executive is designated as the accountable officer and is accountable to Parliament, through the Permanent Under Secretary of the Department of Health, for the efficient and proper use of the resources under the Trust's control. The Trust employed an average of 4,963 whole time equivalent staff in 2002/03.

The core functions of the Trust are to provide for the acute health (elective and non-elective) needs of the people of Southern Derbyshire and provide high quality services. The Trust also has a wide range of powers, including: employing staff, buying and selling property, entering into NHS and other contracts, undertaking, commissioning or making available facilities for research, providing, or making facilities and staff available for staff training and carrying out functions jointly with other bodies. From October 2003 the new medical school, located on the Derby City General Hospital site, will accept the first intake of medical students.

UNITED KINGDOM TAXATION

The following is a summary of the United Kingdom withholding taxation treatment at the date hereof in relation to payments of principal and interest in respect of the Bonds. The comments do not deal with other United Kingdom tax aspects of acquiring, holding or disposing of Bonds. The comments relate only to the position of persons who are absolute beneficial owners of the Bonds. Prospective Bondholders or Couponholders should be aware that the particular terms of issue of any further bonds may affect the tax treatment of that and other series of bonds. The following is a general guide and should be treated with appropriate caution. Bondholders or Couponholders who are in any doubt as to their tax position should consult their professional advisers.

Bondholders or Couponholders who may be liable to taxation in jurisdictions other than the United Kingdom in respect of their acquisition, holding or disposal of the Bonds are particularly advised to consult their professional advisers as to whether they are so liable (and if so under the laws of which jurisdictions), since the following comments relate only to certain United Kingdom taxation aspects of payments in respect of the Bonds. In particular, Bondholders and Couponholders should be aware that they may be liable to taxation under the laws of other jurisdictions in relation to payments in respect of the Bonds even if such payments may be made without withholding or deduction for or on account of taxation under the laws of the United Kingdom.

1. UK Withholding Tax on UK Source Interest

- (a) The Bonds which carry a right to interest will constitute "quoted Eurobonds" provided they are and continue to be listed on a recognised stock exchange within the meaning of section 841 of the Income and Corporation Taxes Act 1988. On the basis of the United Kingdom Inland Revenue's published interpretation of the relevant legislation, this requirement will be satisfied if they are listed by the UK Listing Authority and are admitted to trading on the London Stock Exchange. Whilst the Bonds are and continue to be quoted Eurobonds, payments of interest on the Bonds may be made without withholding or deduction for or on account of United Kingdom income tax.
- (b) In all cases falling outside the exemption described above, interest on the Bonds may fall to be paid under deduction of United Kingdom income tax at the lower rate (currently 20 per cent.), subject to such relief as may be available under the provisions of any applicable double taxation treaty.

2. Payments by MBIA under the Financial Guarantee

Bondholders should note that the United Kingdom tax treatment of any payments of scheduled principal or interest in respect of the Bonds ("**Guaranteed Sums**") made by MBIA under the Financial Guarantee in respect of interest due on the Bonds is technically unclear. In particular, it is uncertain whether Guaranteed Sums in respect of Bond interest would be regarded as interest, "annual payments" or some other form of United Kingdom source income for the purposes of United Kingdom taxation.

Where the Guaranteed Sums paid in respect of Bond interest are treated as:

- (a) United Kingdom source interest, paragraph 1(a) above may apply to them;
- (b) United Kingdom source "annual payments", paragraph 1(b) above may apply to them as if the reference to:
 - (i) "interest" were references to "annual payments";
 - (ii) the lower rate (currently 20 per cent.) were a reference to the basic rate (currently 22 per cent.); and
 - (iii) the exemption from withholding tax which applies where the Bonds are listed on a recognised stock exchange does not apply;
- (c) some other form of United Kingdom source income, then paragraph 1 above should not apply to them.

In all cases, taxation of Guaranteed Sums may be subject to such relief as may be available under the provisions of any applicable double taxation treaty.

3. Provision of Information

Bondholders or Couponholders should note that where any interest on the Bonds is paid to them (or to any person acting on their behalf) by the Issuer or any person in the United Kingdom acting on behalf of the Issuer (a "**paying agent**"), or is received by any person in the United Kingdom acting on behalf of the relevant Bondholder or Couponholder, as the case may be (other than solely by clearing or arranging the clearing of a

cheque) (a “collecting agent”), then the Issuer, the paying agent or the collecting agent (as the case may be) may, in certain cases, be required to supply to the United Kingdom Inland Revenue details of the payment and certain details relating to the Bondholder or Couponholder, as the case may be (including the Bondholder’s or Couponholder’s name and address). These provisions will apply whether or not the interest has been paid subject to withholding or deduction for or on account of United Kingdom income tax and whether or not the Bondholder or Couponholder, as the case may be, is resident in the United Kingdom for United Kingdom taxation purposes. Where the Bondholder or Couponholder is not so resident, the details provided to the United Kingdom Inland Revenue may, in certain cases, be passed by the United Kingdom Inland Revenue to the tax authorities of the jurisdiction in which the Bondholder or Couponholder is resident for taxation purposes.

For the above purposes, “interest” should be taken, for practical purposes, as including payments made by MBIA in respect of interest on Bonds.

The provisions referred to above may also apply, in certain circumstances, to payments made on redemption of any Bonds where the amount payable on redemption is greater than the issue price of the Bonds.

4. European Union Savings Directive

On 3 June 2003 the EU Council of Economic and Finance Ministers adopted a new directive regarding the taxation of savings income. The directive is scheduled to be applied by Member States from 1 January 2005, provided that certain non-EU countries adopt similar measures from the same date. Under the directive each Member State will be required to provide to the tax authorities of another Member State details of payments of interest or other similar income paid by a person within its jurisdiction to an individual resident in that other Member State; however, Austria, Belgium and Luxembourg may instead apply a withholding system for a transitional period in relation to such payments, deducting tax at rates rising over time to 35 per cent. The transitional period is to commence on the date from which the directive is to be applied by Member States and to terminate at the end of the first fiscal year following agreement by certain non-EU countries to the exchange of information relating to such payments.

5. Other Rules relating to United Kingdom Withholding Tax

- (a) Where Bonds are issued at an issue price of less than 100 per cent. of their principal amount, any discount element on any such Bonds will not be subject to any United Kingdom withholding tax pursuant to the provisions mentioned in paragraph 1. above, but may be subject to reporting requirements, as outlined above.
- (b) Where Bonds are to be, or may fall to be, redeemed at a premium, as opposed to being issued at a discount, then any such element of premium may constitute a payment of interest. Payments of interest are subject to United Kingdom withholding tax and reporting requirements, as outlined above.
- (c) Where interest has been paid under deduction of United Kingdom income tax, Bondholders or Couponholders who are not resident in the United Kingdom may be able to recover all or part of the tax deducted if there is an appropriate provision in any applicable double taxation treaty.
- (d) The references to “interest” in this section entitled “*United Kingdom Taxation*” mean “interest” as understood in United Kingdom tax law. The statements above do not take any account of any different definitions of “interest” or “principal” which may prevail under any other law or which may be created by the terms and conditions of the Bonds or any related documentation.
- (e) The above description of the United Kingdom withholding tax position assumes that there will be no substitution of the Issuer as principal obligor under the Bonds and does not consider the tax consequences of any such substitution.

CHANGES IN THE UNITED KINGDOM INSOLVENCY REGIME

The Insolvency Act 2000 (the "IA 2000") contains certain provisions (which came into effect on 1 January 2003) which allow "small companies" as part of the company voluntary arrangement procedure, to seek court protection from their creditors for a period of 28 days, with the option for creditors to extend this protection for a further two months (although the Secretary of State for Trade and Industry may, by Regulation, extend the duration of each period).

The IA 2000 defines "small company" by reference to certain tests contained in section 247(3) of the Companies Act 1985, relating to a company's balance sheet total, turnover and average number of employees. The position as to whether or not a company is a "small company" may change from financial period to financial period, depending on its financial position and average number of employees during that particular period. The Secretary of State for Trade and Industry may also modify the qualifications for eligibility of a company for a moratorium and may currently also modify the present definition of a "small company". Accordingly, either of the Issuer or HoldCo may come within the ambit of the "small companies" provisions, such that they may (subject to the exemptions referred to below) be eligible to seek court protection from their creditors, in advance of a company voluntary arrangement.

However, pursuant to regulations made by the Secretary of State for Trade and Industry, which came into effect at the same time as the small companies provisions of the IA 2000, companies which are party to a capital market arrangement, under which a debt of at least £10,000,000 is incurred and which involves the issue of a capital market investment, are (amongst other categories of exempted company) excluded from being eligible for the moratorium. The definitions of "capital market arrangement" and "capital market investment" are broad and are such that, in general terms, any company which is a party to an arrangement which involves at least £10,000,000 of debt, the granting of security to a trustee, and the issue of a rated, listed or traded debt instrument, is ineligible to seek the benefit of the small companies protection in any event. As with the small companies "eligibility qualifications", the qualification criteria for exemption as a capital market arrangement may be modified by the Secretary of State from time to time.

Accordingly, the small companies provisions may only serve to limit the Security Trustee's ability to enforce the security granted by the Issuer under the Issuer Debenture and HoldCo under the HoldCo Debenture to the extent that, first, the Issuer and/or HoldCo fall within the small companies eligibility criteria at the relevant time; secondly, if the directors of those companies seek a moratorium in advance of a company voluntary arrangement; and, thirdly, if the Issuer and/or HoldCo are considered not to fall within the capital market exclusion (as expressed or modified at the relevant time if not then withdrawn): in those circumstances, the enforcement of any security by the Security Trustee may, for a period, be prohibited by the imposition of the small companies moratorium.

The Enterprise Act received Royal Assent on 7 November 2002, and its provisions relating to corporate insolvency reform will come into effect on 15 September 2003. The Enterprise Act is designed to reform the existing English insolvency regime and a part of the proposed reforms includes the abolition of the availability of administrative receivership to secured creditors in favour of more collective forms of insolvency proceedings (in particular, administration). This reflects the Government's stated aim that, rather than having primary regard to the interests of secured creditors, any insolvency official appointed to a company should have regard to the interests of all creditors.

Once the provisions of the Enterprise Act have come into force, the prohibition against appointing administrative receivers will apply only to floating charges created on or after 15 September 2003.

In any event, the Enterprise Act contains certain exceptions to the prohibition against appointing an administrative receiver, including:

- (a) an exception in respect of certain transactions in the capital markets;
- (b) an exception in respect of public-private partnership projects; and
- (c) an exception in respect of certain financed projects.

The capital markets exception in the Enterprise Act is stated to apply to a capital market arrangement where a party incurs or is expected to incur a debt of at least £50,000,000 under that arrangement, and the arrangement involves the issue of a capital market investment. The definitions of "capital market arrangement" and "capital

market investment” are, for these purposes, equivalent to those referred to above with regard to eligibility to seek a small companies moratorium.

The public-private partnership project exception in the Enterprise Act is stated to apply to a “public private partnership project” which includes “step-in-rights”. A “public-private partnership project” is a project (a) the resources of which are provided partly by one or more public bodies and partly by one or more private persons or (b) which is designed wholly or mainly for the purpose of assisting a public body to discharge a function. “Step-in-rights” is a conditional entitlement for a person who provides finance in connection with the project (a) to assume sole or principal responsibility for carrying out all or part of the project, or (b) to make arrangements for carrying out all or part of the project.

The project finance exception in the Enterprise Act is stated to apply to a project which includes “step-in-rights” where a party incurs or is expected to incur a debt of at least £50,000,000 for the purposes of carrying out that project. The definition of “step-in-rights” is the same as for public-private partnership project exception described above.

The Enterprise Act also abolishes the preferential status of Crown debts (but not employee and certain other existing preferential claims), in all insolvencies. It inserts a new section 176A into the Insolvency Act 1986 which provides that, in the event of an insolvency proceeding, a certain proportion of realisations in respect of assets subject to a floating charge shall be set aside (or “ringfenced”) for the benefit of ordinary unsecured creditors. The prescribed proportion shall be calculated as follows:

- (a) where the company’s net property does not exceed £10,000 in value, 50 per cent. of that property;
- (b) where the company’s net property exceeds £10,000 in value, the sum of:
 - (i) 50 per cent. of the first £10,000 in value; and
 - (ii) 20 per cent. of that part of the company’s net property which exceeds £10,000 in value

provided that the value of the prescribed part of the company’s net property to be made available for the satisfaction of unsecured debts shall not exceed £600,000. However, subsection (9) of the new section 176A indicates that this setting aside (or ringfencing) of floating charge realisations shall not apply in relation to a floating charge which was created prior to 15 September 2003.

Provided that the Issuer Debenture and the HoldCo Debenture are executed before 15 September 2003, the provisions (a) prohibiting the appointment of administrative receivers and (b) promoting an enhanced recovery for unsecured creditors will not apply to the floating charges granted under them.

SUBSCRIPTION AND SALE

1. Subscription

The Managers have, in a subscription agreement dated 4 September 2003 (the "**Subscription Agreement**") between the Issuer, HoldCo, MBIA and the Managers upon the terms and subject to the conditions contained therein, jointly and severally agreed to subscribe and pay for the Bonds at their issue price of 99.993 per cent. of their principal amount and less a combined selling, management and underwriting commission. In addition, such amount as may be agreed in writing between the Issuer and MBIA in respect of the Financial Guarantee Fee and other expenses payable to MBIA shall be deducted by BNP Paribas from the issue price and paid to MBIA, on behalf of the Issuer. The Issuer has also agreed to reimburse BNP Paribas for expenses incurred by BNP Paribas in connection with the management of the issue of the Bonds. The Managers are entitled in certain circumstances to be released and discharged from their obligations under the Subscription Agreement prior to the closing of the issue of the Bonds.

2. Selling Restrictions – United States

The Bonds have not been and will not be registered under the Securities Act and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons except in certain transactions exempt from the registration requirements of the Securities Act. Terms used in this paragraph have the meanings given to them by Regulation S of the Securities Act.

The Bonds are subject to U.S. tax law requirements and may not be offered, sold or delivered within the United States or its possessions or to a United States person, except in certain transactions permitted by U.S. tax regulations. Terms used in this paragraph have the meanings given to them by the United States Internal Revenue Code and regulations thereunder.

Each Manager has agreed that, except as permitted by the Subscription Agreement, it will not offer, sell or deliver the Bonds, (a) as part of their distribution at any time or (b) otherwise, until 40 days after the later of the commencement of the offering and the issue date of the Bonds, within the United States or to, or for the account or benefit of, a U.S. person, and that it will have sent to each dealer to which it sells Bonds during the distribution compliance period a confirmation or other notice setting forth the restrictions on offers and sales of the Bonds within the United States or to, or for the account or benefit of, U.S. persons.

In addition, until 40 days after commencement of the offering, an offer or sale of Bonds within the United States by a dealer (whether or not participating in the offering) may violate the registration requirements of the Securities Act.

3. Selling Restrictions – United Kingdom

Each Manager has further represented, warranted and undertaken that:

- (a) *No offer to public*: it has not offered or sold and will not offer or sell any Bonds to persons in the United Kingdom prior to admission of the Bonds to listing in accordance with Part VI of the FSMA except to persons whose ordinary activities involve them in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of their businesses or otherwise in circumstances which have not resulted and will not result in an offer to the public in the United Kingdom within the meaning of the Public Offers of Securities Regulations 1995 (as amended) or the FSMA;
- (b) *Financial Promotion*: it has only communicated or caused to be communicated, and will only communicate or cause to be communicated, any invitation or inducement to engage in investment activity (within the meaning of section 21 of the FSMA) received by it in connection with the issue or sale of any Bonds in circumstances in which section 21(1) of the FSMA does not apply to the Issuer, HoldCo or MBIA; and
- (c) *General Compliance*: it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the Bonds in, from or otherwise involving the United Kingdom.

4. Selling Restrictions – General

Save for obtaining the approval of the Offering Circular by the UK Listing Authority in accordance with Part VI of the FSMA, no action has been or will be taken in any jurisdiction by the Issuer or any Manager that would, or is intended to, permit a public offering of the Bonds, or possession or distribution of this Offering Circular or any other offering material, in any country or jurisdiction where action for that purpose is required. The Managers have undertaken that they will comply with all applicable laws and regulations in each country or jurisdiction in

which they purchase, offer, sell or deliver Bonds or have in their possession or distribute such offering material, in all cases at their own expense. Persons into whose hands this Offering Circular comes are required by the Issuer and the Managers to comply with all applicable laws and regulations in each country or jurisdiction in which they purchase, offer, sell or deliver Bonds or have in their possession, distribute or publish this Offering Circular or any other offering material relating to the Bonds, in all cases at their own expense.

Attention is also drawn to the information set out in “***Important Notice***” on page 2.

GENERAL INFORMATION

1. The creation and issue of the Bonds has been authorised by a resolution of the Board of Directors of the Issuer dated 16 July 2003 and a further resolution dated 1 September 2003.
2. The issue of the Financial Guarantee has been duly authorised by MBIA.
3. Except as described in this Offering Circular (including the Issuer's entry into the Mobilisation Services Agreement and the provision of Mobilisation Services thereunder), there has been no significant change in the financial or trading position of, and no material adverse change in the financial position or prospects of the Issuer or HoldCo since their respective dates of incorporation.
4. Save as disclosed in this Offering Circular, there has been no significant change in the financial or trading position of MBIA since 31 December 2002, and there has been no material adverse change in the financial position or prospects of MBIA since 31 December 2002, the date to which MBIA's most recent audited accounts have been prepared.
5. There are no, and have not been any, legal or arbitration proceedings involving the Issuer or HoldCo, including any which are pending or threatened, nor is the Issuer or HoldCo aware of any such proceedings, which may have, or have had during the 12 months prior to the date of this Offering Circular a significant effect on the financial position of the Issuer or HoldCo.
6. MBIA is not, and has not been, involved in any legal or arbitration proceedings, including any which are pending or threatened, nor is MBIA aware of any such proceedings, which may have, or have had during the 12 months prior to date of this Offering Circular a significant effect on the financial position of MBIA.
7. The auditors of the Issuer and HoldCo are KPMG Audit Plc. No audited accounts have been prepared in relation to the Issuer or HoldCo. KPMG Audit Plc has given and has not withdrawn its consent to the inclusion of its accountants' reports in this Offering Circular in the form and context in which it is included and has authorised the contents of that part of this Offering Circular for the purposes of Regulation 6(1)(e) of The Financial Services and Markets Act 2000 (Official Listing of Securities Regulations 2001).
8. The auditors of MBIA are Coopers & Lybrand Audit, a member of PricewaterhouseCoopers, statutory auditors, of 32 rue Guersant, 75833 Paris, Cedex 17, France. Unqualified audited accounts have been prepared in relation to MBIA for the three financial years immediately preceding the date of this Offering Circular. PricewaterhouseCoopers has given, and has not withdrawn, its consent to the inclusion of their report in this Offering Circular in the form and context in which it is included and has authorised the contents of that part of the Offering Circular for the purposes of Regulation 6(1)(e) of The Financial Services and Markets Act 2000 (Official Listing of Securities Regulations 2001).
9. Copies of the following documents may be inspected during normal business hours at the offices of Ashurst Morris Crisp, Broadwalk House, 5 Appold Street London EC2A 2HA during the period of 14 days from the date of this Offering Circular:
 - (a) memorandum and articles of association of the Issuer;
 - (b) memorandum and articles of association of HoldCo;
 - (c) constitutive documents of MBIA (in French, accompanied by an English language translation thereof);
 - (d) the Subscription Agreement;
 - (e) the Project Documents and, until 9 September 2003, drafts of the Senior Finance Documents and thereafter the Senior Finance Documents;
 - (f) audited accounts of MBIA (in French, accompanied by an English language translation thereof) for the financial years 31 December 2001 and 31 December 2002;
 - (g) accountants' report of KPMG Audit Plc in relation to the Issuer dated 4 September 2003;
 - (h) accountants' report of Coopers & Lybrand Audit, a member of PricewaterhouseCoopers, in relation to MBIA dated 13 June 2003; and
 - (i) print out dated 3 September 2003 of the financial model relating to the Project.

10. The Bonds and any Coupons and Talons appertaining thereto will bear a legend to the following effect: "Any United States person who holds this obligation will be subject to limitations under the United States income tax laws, including the limitations provided in section 165(j) and 1287(a) of the Internal Revenue Code." The sections referred to in such legend provide that a United States person who holds a Bond, Coupon or Talon will generally not be allowed to deduct any loss realised on the sale, exchange or redemption of such Bond, Coupon or Talon and any gain (which might otherwise be characterised as capital gain) recognised on such sale, exchange or redemption will be treated as ordinary income.
11. The Bonds have been accepted for clearance through Euroclear and Clearstream, Luxembourg. The ISIN and Common Code for the Bonds are XS0176192689 and 017619268, respectively.
12. The listing of the Bonds on the London Stock Exchange will be expressed in sterling as a percentage of their principal amount (exclusive of accrued interest). Transactions will normally be effected for settlement in sterling for delivery on the third business day in London after the date of the transaction. It is expected that the Bonds will be admitted to the Official List of the UK Listing Authority on 9 September 2003, subject only to the issue of the Temporary Global Bond and to the execution by MBIA of the Financial Guarantee. However, prior to official listing, dealings in the Bonds will be permitted by the London Stock Exchange in accordance with its rules.

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APPENDIX

FINANCIAL STATEMENTS OF MBIA ASSURANCE S.A. FOR THE YEAR ENDED 31 DECEMBER 2002

MBIA ASSURANCE S.A

**STATUTORY AUDITORS' REPORT ON THE FINANCIAL STATEMENTS
for the year ended 31 December 2002**

STATUTORY AUDITORS' REPORT ON THE FINANCIAL STATEMENTS
for the year ended 31 December 2002
(translated from French to English)

To the shareholders
MBIA Assurance S.A.
112, avenue Kléber
75116 Paris

Dear Sirs,

In compliance with the assignment entrusted to us at the Annual Shareholder's Meeting, we hereby report to you, for the year ended December 31, 2002 on:

- the audit of the accompanying financial statements of MBIA Assurance, expressed in euros,
- the specific verifications and information required by the law.

These financial statements have been approved by the Board of Directors. Our responsibility is to express an opinion on these financial statements based on our audit.

1. Opinion on the financial statements

We conducted our audit in accordance with the professional standards applied in France. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statements presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements give a true and fair view of the company's financial position and its assets and liabilities as of December 31, 2002, and of the results of its operations for the year then ended in accordance with French accounting principles and regulations.

Without qualifying the above opinion, we draw the shareholder's attention to note II c) which describes the change made in the determination of the reserves for unearned installment premiums and the corresponding impact to the financial statements for the year ended December 31, 2002.

2. Specific verifications and information

We have also performed the specific verifications required by the law, in accordance with the professional standards applied in France.

We have no comments as to the fair presentation and the conformity with the financial statements of the information given in the management report of the Board of directors and in the documents addressed to the shareholders with respect to the financial position and the financial statements.

Paris, June 13, 2003

Statutory Auditors

Coopers & Lybrand Audit
Member of PricewaterhouseCoopers

Catherine Thuret

MBIA ASSURANCE S.A.

FINANCIAL STATEMENTS: BALANCE SHEET / ASSETS (in Euros)

	At Dec. 31, 2002	At Dec. 31, 2001
ASSETS		
Subscribed capital uncalled	0	0
Intangible assets	0	0
Investments		
Land and buildings	0	0
Investments in related parties	0	0
Other investments	130,277,108	73,540,362
Cash deposits with guarantors	0	0
	130,277,108	73,540,362
Investment related to unit-linked contracts	0	0
Reinsurers' share in technical reserves		
Unearned premiums and premium deficiency reserves		
Related parties	469,586	608,959
Third party reinsurers	49,529,055	30,985,587
Claims reserve	0	0
Provision for profit sharing	0	0
Equalization reserve	0	0
Other technical provisions	0	0
Technical reserve for unit-linked contracts	0	0
	49,998,641	31,594,546
Debtors		
Amounts receivable from parent company	4,300,515	5,032,519
Insurance debtors		
Other	355,723	65,601
Reinsurance debtors		
Other	301,684	180,824
Other Debtors		
Prepaid and recoverable taxes	2,697,119	0
Sundry debtors		
Related parties	977,350	790,228
Other	448	479
Titrimmo guarantee deposit	0	498,707
	8,632,839	6,568,358
Other assets		
Tangible assets	380,739	281,210
Other deposits and guarantees	82,936	67,769
Cash and cash equivalents	2,541,152	779,736
	3,004,827	1,128,715
Prepayments and accrued income		
Other	377,741	226,785
Deferred acquisition costs	4,272,931	1,311,965
Accrued interest and rental income	516,637	654,841
	5,167,309	2,193,591
Unrealised exchange differences	2,467,938	2,104,611
TOTAL ASSETS	199,548,662	117,130,183

MBIA ASSURANCE S.A.

FINANCIAL STATEMENTS: BALANCE SHEET / LIABILITIES (in Euros)

	At Dec. 31, 2002	At Dec. 31, 2001
LIABILITIES		
Shareholders' equity		
Share capital	26,250,000	26,250,000
Other reserves	457,731	457,731
Retained earnings/(deficit)	4,294,505	5,684,258
Net income/(loss) for the year	7,066,119	(1,389,753)
	<u>38,068,355</u>	<u>31,002,236</u>
Subordinated liabilities	0	0
Gross technical reserves		
Unearned premiums and premium deficiency reserves	127,963,776	64,237,422
Claims reserve	0	0
Other technical reserves	0	0
	<u>127,963,776</u>	<u>64,237,422</u>
Technical reserve for unit-linked contracts	0	0
Provisions for liabilities and charges		
Provision for exchange losses	3,038,661	2,117,575
Provision for charges	0	0
	<u>3,038,661</u>	<u>2,117,575</u>
Cash deposits received from reinsurers	2,195,266	2,195,266
Other liabilities		
Amounts due to parent company	14,894,133	8,957,206
Insurance creditors		
Related parties	0	0
Third party reinsurers	244	0
Reinsurance creditors		
Related parties	3,073,176	2,150,333
Third party reinsurers	1,656,592	81,784
Bond issue	0	0
Amounts due to credit institutions (loans)	6,100	11,690
Other liabilities		
Other cash deposits received		
Related parties	0	0
Other	1,168,647	1,150,350
Accrued personnel costs	472,746	194,711
Accrued taxes and social security charges	1,230,650	1,677,548
Sundry creditors		
Related parties	0	0
Other	486,574	602,627
Titrimmo guarantee deposit	0	498,707
	<u>22,988,862</u>	<u>15,324,956</u>
Accruals and deferred income		
Other accruals	5,293,742	2,252,728
	<u>5,293,742</u>	<u>2,252,728</u>
Unrealised exchange differences	0	0
TOTAL LIABILITIES	<u><u>199,548,662</u></u>	<u><u>117,130,183</u></u>

MBIA ASSURANCE S.A.

FINANCIAL STATEMENTS: PROFIT AND LOSS ACCOUNT (in Euros)

	2002 Gross	Ceded business	2002 Net	2001 Net
NON LIFE INSURANCE TECHNICAL ACCOUNT				
Earned premiums				
Premiums	69,035,496	(21,342,278)	47,693,218	10,057,786
Change in unearned premiums reserve ..	(68,037,984)	20,375,658	(47,662,326)	(4,382,901)
Allocated investment income	275,800		275,800	1,420,561
Other technical income	11,445,725		11,445,725	99,545
Claim charges	0		0	0
Charges from other technical reserves ..	0		0	0
Acquisition and administration costs				
Acquisition costs	(1,860,315)		(1,860,315)	(2,914,670)
Administration costs	(6,267,436)		(6,267,436)	(4,966,585)
Reinsurance commissions received ..		3,464,082	3,464,082	682,130
Other Technical charges	0		0	0
	4,591,286	2,497,462	7,088,748	(4,134)
Non-life underwriting result			7,088,748	(4,134)
NON-LIFE INSURANCE NON-TECHNICAL ACCOUNT				
Investment income				
Investment revenues			2,659,816	2,004,540
Other investment income			2,145,033	3,757,391
Gains on sale of investments			275,774	981,192
Allocated investment income			0	0
Investment expense				
Interest and portfolio expenses			(44,396)	(39,684)
Other investment expenses			(278,023)	(164,328)
Losses on sale of investments			(4,347,738)	(3,795,836)
Investment income transferred to the technical accounts			(275,800)	(1,420,561)
Other non-technical income			296	61,635
Other non-technical expense			(149)	0
Non-recurring income/expense				
Non-recurring income			0	656
Non-recurring expense			(288)	0
Employee profit sharing			0	0
Income tax			(157,154)	(2,770,624)
Non-technical result on non-life insurance			(22,629)	(1,385,619)
INCOME FOR THE YEAR			7,066,119	(1,389,753)

NOTES TO THE FINANCIAL STATEMENTS

I – BUSINESS OF THE COMPANY

MBIA Assurance S.A. “MBIA Assurance” or “the Company” is a *Société Anonyme* with a share capital of 26,250,000 euros. MBIA Assurance is a 99.99% owned subsidiary of MBIA Insurance Corporation.

MBIA Assurance carries out operations of the type corresponding to Branch 15 Guarantee listed in Article R 321-1 of the French Insurance Code.

MBIA Assurance’s principal activity is the guarantee of financial obligations, and notably with respect to securitisations, structured finance, and project finance transactions.

Financial guarantee insurance policies issued by MBIA Assurance provide an unconditional and irrevocable guarantee of the payment of the principal and interest, or other amounts owed, on insured obligations when due.

II – ACCOUNTING POLICIES AND METHODS

The annual financial statements are prepared and presented in accordance with the provisions of the French Insurance Code (decree dated June 8, 1994 and the regulation dated June 20, 1994) so as to incorporate the EEC directive n°91-674 dated December 19, 1991 regarding the financial statements of insurance companies. Since there is no specific provision related to these texts, the applied principles are those defined by the “Plan comptable général”, the French accounting convention. The accounting year has a 12-month duration.

The Company does not produce consolidated accounts since it has no subsidiaries. However, during the year 2000, the Company established a branch in the United Kingdom whose accounts are included in the Company’s financial statements. The accounting principles and methods used at year-end and summarized below remain unchanged from the previous year-end accounts.

(a) Investments

Bonds and other fixed-income securities are stated at cost, excluding interest accrued at the date of acquisition. Premiums and discounts on bonds and other fixed-income securities (difference between the purchase price and the redemption price) are written off to the profit and loss account over the residual lives of the securities in accordance with article R 332-19 of the French Insurance Code. The differences between the redemption prices to be received and the depreciation of these differences are recorded under “accrued income” or “deferred income”.

At year-end, the realisable value corresponds to the quoted value on the last trading day of the year or to the market value for the securities that are not listed. In application of Article R 332-19, no provision is made for unrealised losses corresponding to the difference between the amortised cost of securities and their fair market value. However, a provision for counterparty risks is recorded if the Company has reason to believe that the issuer will be unable to fulfil its obligations in terms of the payment of principal or interest.

Equities and other variable income securities are stated at cost, excluding accrued interest at the acquisition date. Values are determined using the First In-First Out method “FIFO”.

A provision is recorded separately for each line of securities when a decrease in book value is considered permanent in accordance with the Avis N°2002-F of the French Accounting Standard Council dated December 18, 2002 which redefines the evaluation methodology of the provision for this depreciation. Securities which are deemed to have suffered a permanent diminution in value are analysed according to their redemption value, taking into consideration the company’s capacity to hold on to the securities for the anticipated term. A provision is made against these securities, which is equal to the difference between the purchase price of the security and its redemption value. As of December 31, 2002 the Company did not have to record any such provision.

In addition, when the realisable value (excluding fixed-rate securities) is globally less than the book value, adjusted by the above-mentioned provision, a liquidity risk reserve is set up for the shortfall. The liquidity risk reserve is shown on the balance sheet in the “technical reserves” section of the liabilities. As of December 31, 2002, the Company did not have to record such liquidity risk reserve.

Investment income and expenses:

Investment income includes accrued interest and rental income for the year, reversal of provisions, income from redemption price differences, investment revenues as well as investment gains (gains on the sale of investments, reversal of the capitalisation reserve) and, if appropriate, net realised exchange gains as well as reversals of provisions for exchange losses.

Investment expenses include portfolio expenses, interest expenses, increases in provisions against investment, amortization of redemption price differences as well as investment losses (losses on sale of investments, increases in the capitalization reserve) and, if appropriate, realised exchange losses as well as increases in the exchange losses provision.

Gains and losses on the sale of investments are calculated using the First In-First Out method.

The sale of certain redeemable transferable securities (bonds, negotiable debt securities) leads to contributions or withdrawals on the capitalisation reserve depending on the results of the sale. This regulatory reserve is recorded on a specific line under shareholders' equity.

Investment income and expenses are recorded into the non-technical account. A percentage of net investment income is transferred from the non-technical account to the technical account on the basis of the following formula: Net technical provision (+ capitalisation reserve) divided by the sum of shareholders' equity, excluding the capitalisation reserve, and net technical provision (+ capitalisation reserve).

(b) Premiums

Premiums represent written premiums (excluding taxes and net of cancellations) and variations of the provision for premiums to be written. MBIA Assurance does not register future premiums that are linked to a contract setting up the payment of the premiums by instalments and which would necessitate an equal and opposite provision for deferred premiums if they were registered.

(c) Technical reserves

Unearned premium reserve ("UPR"):

The reserve for unearned premiums is calculated on a contract by contract basis, taking into account the risk cycle, in order to comply better with Article R 333-1 of the French Insurance Code and Article 57-2 of the European Directive n°91/674/CEE of December 19, 1991 applicable to statutory and consolidated accounts. This states that: "In classes of insurance where the assumption of a temporal correlation between risk experience and premium is not appropriate, calculation methods shall be applied that take into account the differing pattern of risk over time".

Since December 31, 2000, at the request of the *Commission de Contrôle des Assurances*, UPR, previously calculated on a pro rata basis through December 31, 1999, is now calculated based upon the risk cycle. When a guarantee is issued upon a loan, the UPR takes into account the repayment schedule of the loan.

In 2002, we reviewed the way we record our instalment premiums to comply better with the recommendations of the *Commission de Contrôle des Assurances*. Taking into account the risk cycle in a more precise manner, the way we calculate the provision for unearned premiums was revised at December 31, 2002. Had the provisions for net unearned premiums been calculated using the previous method they would have been lower by € 675,070.

Claim paying reserves:

Since its formation, MBIA Assurance has never recorded any claims.

(d) Expense allocation

Effective from January 1, 1995, a distinction is made between acquisition and administration costs. These costs mainly correspond to personnel expenses which are allocated based on the position occupied by each employee.

Deferred acquisition costs ("DAC") linked to UPR are recorded in the balance sheet under the caption DAC, in accordance with article R 332-33 of the French Insurance Code. The amount is calculated separately for each unearned premium and is limited to the amount posted for unearned premium reserves for each of the policies in accordance with the Commission's recommendation. DAC is amortised on a straight-line basis over the period between the balance sheet date and the end of the contract, limited to five years.

The portion of commissions received from reinsurers that is not related to the accounting year is also recorded in the balance sheet. The amount deferred is calculated and then taken to the profit and loss account in the same manner as that employed for the calculation of DAC for the same contracts.

(e) Reinsurance cessions

Reinsurance cessions are calculated in accordance with treaties signed between MBIA Assurance and various reinsurers. Pledged investments received from reinsurers are booked off-balance sheet and evaluated at year-end at market value. Cash deposits received from reinsurers are booked under liabilities in the balance sheet.

(f) Debtors

Debtors are posted at face value and include:

- Technical debtors
- Amounts receivable from parent company
- Recoverable taxes and amounts receivable from staff
- Sundry debtors
- Accrued income

Provisions for bad debt are made to the extent that a collection risk is identified.

(g) Exchange gains and losses

Foreign currency transactions are converted into euros at year-end exchange rates.

The elements in the balance sheet that relate to the UK branch and which are in foreign currencies are converted into British pounds at year-end exchange rates. This exchange gain or loss that is calculated and posted in British pounds is then recorded in the euro accounts at year-end exchange rates.

Unrealised exchange gains and losses for all currencies combined are netted and included in the balance sheet in either assets or liabilities. A related provision is recorded in the case of a net unrealised exchange loss. This provision is calculated for the French operations and the UK operations separately.

(h) Tangible fixed assets used in the business

Tangible fixed assets are stated at cost. Maintenance charges are charged to the profit and loss account when incurred, except where they serve to increase productivity or extend the useful life of the asset concerned.

Depreciation is calculated using the straight-line method over the estimated useful life of the assets, in accordance with French tax rules. The main estimated useful lives are as follows:

Leasehold improvements, fixtures and fittings	8 years
Vehicles	5 years
Office and computer equipment	4 years
Furniture	5 to 8 years

(i) Taxes

Taxes are recorded in the profit and loss account and correspond to the tax payable for the period. Tax is related to both transactions concluded by the French office of MBIA Assurance and by its UK branch.

III – NOTES TO THE BALANCE SHEET

(a) Investment portfolio

Investments recorded in the balance sheet at December 31, 2002 in accordance with Articles R 332-19 and R 332-20 of the French Insurance Code are as follows:

Description of securities	Units	At cost	Unit market price	Market value	Unrealised gains/ (losses)
Long-term investments					
OAT	3,887,448	4,177,735	1.1430	4,443,765	266,030
BTAN	8,500,000	8,466,850	1.0085	8,572,250	105,400
Govt. bonds in USD		12,357,171	1.1954	12,551,732	194,561
Govt. bonds in GBP		21,067,579	3.9123	21,126,469	58,890
Total within the OECD ..		46,069,335		46,694,216	624,881
Total outside the OECD ..		0		0	0
Total long-term investment ..		46,069,335		46,694,216	624,881
Short-term investments					
Credis EUR	874	300,456	384	335,599	35,143
Credis USD	483	1,127,193	2,501	1,208,145	80,952
Credis CAD	317	284,403	1,117	354,019	69,616
FCP Berri Monetaire	110	2,784,925	25,548	2,810,283	25,358
FCP Primerus Monetaire	869	2,000,733	2,562	2,226,030	225,297
FCP Fructifonds	393	10,815,918	29,609	11,636,345	820,427
Fixed deposit HKD		281,239		281,239	
Fixed deposit GBP		47,381,041		47,381,041	
Fixed deposit USD		2,525,132		2,525,132	
Fixed deposit EUR		5,662,093		5,662,093	
Sicav GBP	1,993	11,044,640	5,701	11,362,459	317,819
Total within the OECD ..		84,207,773		85,782,385	1,574,612
Total outside the OECD ..		0		0	0
Total short-term investment ..		84,207,773		85,782,385	1,574,612
Total investment within the OECD		130,277,108		132,476,601	2,199,493
Total investment outside the OECD		0		0	0
TOTAL investments in euros ..		130,277,108		132,476,601	2,199,493

All the above investments have been valued in accordance with Articles R 332-19 and R 332-20 of the French Insurance Code. The realisable value of the securities corresponds to their market value at December 31, 2002.

(b) Debtors and creditors

At December 31, 2002, the maturity of all amounts due from debtors and to creditors was less than one year, except for the deposit received from CapMAC, for the amount of € 1,168,647.

(c) Related party debtors and creditors (in euros)

Debtors	Reinsurers' share of technical reserves	Insurance receivables	Inter-company account
MBIA Insurance Corporation and branches	469,586	0	4,300,515
Creditors	Reinsurance debts	Guarantee deposit	Inter-company account
MBIA Insurance Corporation ..	2,404,676	2,195,266	14,894,133
MBIA Inc.	668,500		
Total	3,073,176	2,195,266	14,894,133

(d) Share capital and changes in shareholders' equity

At December 31, 2002, the Company's issued share capital was made up of 1,750,000 ordinary shares with a par value of 15 euros each. MBIA Insurance Corporation held 99.99% of the capital at that date.

Changes in shareholders' equity during 2002 were as follows:

(in thousands of euros)	1 January 2002	Allocation of 2001 earnings	Reduction of capital	Other changes	31 December 2002
Share capital	26,250				26,250
Legal reserve	4				4
Capitalisation reserve ..	25				25
Unavailable reserves ..	429				429
(Deficit)/retained earnings	5,674	(1,390)			4,284
Branch exchange rate	10				10
Result 2001	(1,390)	1,390			0
Result 2002	0			7,066	7,066
Total	31,002	0	0	7,066	38,068

(e) Currency balances

31 December 2002	Assets Value (in base currency)	Converted in euros	Liabilities Value (in base currency)	Converted in euros
USD	21,773,741	20,823,750	26,863,029	25,616,129
GBP	77,664,482	119,097,026	70,947,428	109,065,993
CAD	836,707	505,563	682,277	412,252
NZD	111,063	55,601	—	—
HKD	2,813,433	344,020	367,740	44,966
JPY	89,849,878	722,324	313,331,824	2,518,947
Total		141,548,284		137,658,287

At December 31, 2002, the unrealised exchange differences amounted to € 2,467,938 and were recorded as assets.

(f) Accrued and deferred income (in euros)

	2002	2001
Other accruals		
– Amortisation of capital gains	1,857	120,790
– Prepayments	375,884	105,995
Deferred acquisition costs	4,272,931	1,311,965
Accrued interest and rental income	516,637	654,841
Total Assets	5,167,309	2,193,591
	2002	2001
Other accruals		
– Amortisation capital gains	409,429	303,914
– Deferred commissions	4,884,313	1,948,814
Total Liabilities	5,293,742	2,252,728

(g) Fixed assets and depreciation

	Balance at 01/01/02	Additions	Disposals	Balance at 12/31/02
Fixed assets (in euros)				
Installations, office layout	342,575	182,057	—	524,632
Office supplies	46,351	8,410	456	54,305
Computer supplies	83,619	21,406	8,520	96,505
Computer system	47,417	—	47,417	—
Office furniture	144,319	160,149	3,367	301,101
Total fixed assets	664,281	372,022	59,760	976,543
	Balance at	Depreciation	Disposals	Balance at
Depreciation (in euros)	01/01/02	charge		12/31/02
Installations, office layout	211,467	197,336	7,793	401,010
Office supplies	16,051	15,917	4,501	27,467
Computer supplies	47,301	21,840	6,663	62,478
Computer system	47,417	—	47,417	—
Office furniture	60,835	48,920	4,906	104,849
Total depreciation	383,071	284,013	71,280	595,804

IV – NOTES TO THE PROFIT AND LOSS ACCOUNTS

(a) Investment income and expenses

Investment income and expenses mainly include investment revenues (interest, rental income, cash dividends), income and charges linked to the realization of investments as well as results from exchange rate operations.

Investment income (in thousands of euros)

	2002	2001
Revenues from investments in subsidiaries and affiliates	—	—
Revenues from property holdings	—	—
Other investment revenues	2,660	2,005
Total	2,660	2,005

Breakdown of other investment income (in thousands of euros)

	2002	2001
Exchange gain on investments	(22)	1,110
Amortisation of capital gains	50	178
Reversal of provision for exchange loss on investments	2,117	2,469
Total	2,145	3,757

Breakdown of investment expenses (in thousands of euros)

	2002	2001
Interest and bank fees	44	40
Amortisation of capital losses	278	164
Charge to provision for exchange loss on investments	3,039	2,118
Exchange losses on investments	1,168	1,589
Loss on sale of investments	141	64
Capitalisation reserve	0	25
Total	4,670	4,000

(b) Additional notes to the profit and loss accounts

Personnel costs

Personnel costs for the period 2000 through 2002 are as follows:

<i>(in euros)</i>	2002	2001	2000
Wages and salaries	1,221,414	357,991	350,069
Social security taxes	291,805	161,549	126,964
Other	673,207	482,391	231,169
Total	2,186,426	1,001,931	708,202
<i>of which related to UK branch</i>	<i>668,882</i>	<i>515,632</i>	<i>179,913</i>

Breakdown of gross premiums written

Gross premiums written in the period 2000 through 2002 are as follows:

<i>(By product type in euros)</i>								2002	2001	2000
Local government	..	..	..	..	..	..	..	12,896,287	(22,425)	236,273
Structured finance	..	..	..	..	..	..	..	1,243,887	1,269,941	2,236,684
Concessions and corporates	..	..	..	..	..	..	..	54,895,322	19,832,859	17,346,323
Total	..	..	..	..	..	..	..	69,035,496	21,080,375	19,819,280
<i>(By geographic region in euros)</i>								2002	2001	2000
Europe	..	..	..	..	..	..	..	68,685,371	20,997,027	19,725,553
<i>of which France</i>	..	..	..	..	..	..	..	<i>193,931</i>	<i>298,647</i>	<i>620,954</i>
The Americas	..	..	..	..	..	..	..	305,318	0	0
Asia	..	..	..	..	..	..	..	44,807	83,348	93,727
Total	..	..	..	..	..	..	..	69,035,496	21,080,375	19,819,280

Other technical income corresponds to studies, services and surveillance work provided by MBIA Assurance during the year.

V – OTHER INFORMATION

(a) Consolidating entity

MBIA Assurance is a 99.99% owned subsidiary of MBIA Insurance Corporation whose head office is located at 113 King Street, Armonk, New York, 10504, USA.

Relationship between MBIA Assurance and MBIA Insurance Corporation

The relationship between MBIA Assurance and MBIA Insurance Corporation is based upon the maintenance of the net worth of the French subsidiary (under the conditions of the “Net Worth Maintenance Agreement” described below) and on the reinsurance of MBIA Assurance risk by MBIA Insurance Corporation.

This relationship is the basis upon which the rating agencies have granted a Triple-A rating to MBIA Assurance.

Agreements between MBIA Assurance and MBIA Insurance Corporation

Net Worth Maintenance Agreement

MBIA Assurance signed a “Net Worth Maintenance Agreement” with MBIA Insurance Corporation on January 1, 1991 which was amended and restated on April 1, 2002.

Under the “Net Worth Maintenance Agreement”, MBIA Insurance Corporation agrees to remain the sole shareholder of MBIA Assurance and not to pledge its shares. It also agrees to maintain for its French subsidiary a minimum capital and surplus position of 4,573,470.52 euros, or such greater amount as shall be required now or in the future by French law or French regulatory authorities provided that:

- (i) any contributions to MBIA Assurance for such purpose shall not exceed 35% of MBIA Insurance Corporation’s policyholders’ surplus on an accumulated basis as determined by the laws of the State of New York; the total amount of surplus was US\$ 2,857,439 at December 31, 2001 and US\$ 3,158,009 at December 31, 2002;
- (ii) any contribution shall be made in compliance with Section 1505 of the New York State Insurance law; provided that MBIA Insurance Corporation hereby confirms that it may make single contributions to MBIA Assurance that do not exceed a total of US\$200 million without taking any additional actions under Section 1505 of the New York State Insurance Law with respect to any such single contribution.

Any modifications to the “Net Worth Maintenance Agreement” may not occur without confirmation from each Standard & Poor’s Rating Services and Moody’s Investors Service, that such modifications will not result in the reduction or the withdrawal of the claims-paying ratings then assigned to MBIA Insurance Corporation.

Reinsurance Agreement

MBIA Assurance has signed a “Reinsurance Agreement” with MBIA Insurance Corporation on January 1, 1993 which was amended and restated on January 1, 2002.

Under the “Reinsurance Agreement”, MBIA Insurance Corporation shall reimburse MBIA Assurance for the amount of MBIA Assurance’s losses paid in each calendar year which amount is in the aggregate in excess of an amount equal to the greater of:

- (i) US\$ 500,000 or
- (ii) 40% of MBIA Assurance’s net earned premium income for that same calendar year.

However, the liability of MBIA Insurance Corporation shall not exceed, in any one calendar year, MBIA Assurance’s net retention with respect to the principal outstanding plus interest insured under its largest policy in effect as of December 31 of the prior year.

(b) Average number of employees

The average number of employees for the years 2002 and 2001 was four and two people, respectively, for MBIA Assurance, and thirteen and nine, respectively, for the UK branch.

In addition, MBIA Insurance Corporation provided employees who have been seconded to the UK branch of MBIA Assurance.

(c) Off-balance sheet commitments

Commitments received

At December 31, 2002, the shares and cash pledged by AMBAC Assurance Corporation in relation to reinsurance transactions amounted to € 10,814,524 and is broken down as follows:

- Fixed-term deposit of GBP 2,755,015 (€ 4,235,226 including € 21,021.89 in interest)
- Cash deposit of GBP 103,700 (€ 159,416)
- Cash deposit of € 294,912
- French government bonds of € 6,124,969 including € 135,888 of interest

At December 31, 2002, the securities and cash amounts received as pledge from Riverstone (formerly known as CTR), in regard to reinsurance operations, amounted to € 18,202 and were composed of 22 shares of FCP CTR Réserve, with a unit value of € 821.23 each, and held by DWS.

At December 31, 2002, the Company had no other off-balance sheet commitments and had not carried out any off-balance sheet financial instrument transactions.

Commitment paid

On July 17, 2002, MBIA Assurance provided a guarantee to one of its employees, for their lessor, in regard to the payment of their rent (which might be revised) and any other fees up to € 65,280. This will stay in effect until the end of the lease, i.e. for nine years until July 31, 2011.

(d) Guarantees issued

The following chart represents the amounts guaranteed by MBIA Assurance at December 31, 2002. Amounts are stated in par and gross of reinsurance.

<i>(in thousands of euros)</i>							2002	2001	2000
Sovereign and Sub-sovereign	..	..	..	..	..	..	1,505,487	1,202,950	1,320,690
Public Utilities	..	..	..	..	..	..	6,460,735	3,675,475	1,377,540
Structured Finance	..	..	..	..	..	..	2,216,384	903,246	1,178,424
Financial Institutions ¹	..	..	..	..	..	..	148,301	173,591	251,185
Total	..	..	..	..	..	..	10,330,907	5,955,262	4,127,839

¹ mainly banks and insurance companies.

(e) Payments to Management

The total amount paid to the members of the Board of Directors was € 2,088,881 including salaries and benefits in kind.

VI – POST BALANCE SHEET EVENTS

No such events have taken place.

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