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CHFP025

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COMPANIES FORM No. 155(6)a**Declaration in relation to
assistance for the acquisition
of shares**

155(6)a

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

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

To the Registrar of Companies
(Address overleaf - Note 5)

For official use

Company number

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1082975

Note

Please read the notes
on page 3 before
completing this form.

Name of company

* HM Plant Limited

* insert full name
of company

I/We ☒ See Appendix 1

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

† delete as
appropriate

~~[the sole director]~~ [all the directors]† of the above company do solemnly and sincerely declare that:

The business of the company is:

§ delete whichever
is inappropriate

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

~~(b) that of a person authorised under section 8 or 4 of the Insurance Companies Act 1982 to carry on
insurance business in the United Kingdom~~

(c) something other than the above§

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

~~[company]~~ [company's holding company Heavy Machinery Group Holdings Limited

(registered number 3873747)

Limited]†

The assistance is for the purpose of [that acquisition] [reducing or discharging a liability incurred for the
purpose of that acquisition].†

*and to reduce or discharge liabilities incurred in connection with the
acquisition of shares in Heavy Machinery Group Limited (Company Number 2808307)
on 22nd December 1999.*

The number and class of the shares acquired or to be acquired is: See Appendix 1A

Presentor's name address and
reference (if any):

Addleshaw Booth & Co
Sovereign House, PO Box 8,
Sovereign Street, Leeds,
LS1 1HQ

DX 12004 Leeds
DAH/SUNSET/PLANT/G155A1

For official Use
General Section

Post room



A50
COMPANIES HOUSE

0598
02/05/01

The assistance is to be given to: (note 2) See Appendix 2

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

The assistance will take the form of:

See Appendix 3

The person who [has acquired] [will acquire]^{and}† the shares is:

† delete as
appropriate

See Appendix 4

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

See Appendix 5

The amount of cash to be transferred to the person assisted is £ Nil

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

The date on which the assistance is to be given is within 8 weeks of the date hereof

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

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

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

- (a) [I/We have formed the opinion that the company will be able to pay its debts as they fall due during the year immediately following that date]* (note 3)
- (b) ~~[It is intended to commence the winding up of the company within 12 months of that date; and I/we have formed the opinion that the company will be able to pay its debts in full within 12 months of the commencement of the winding up.]~~* (note 3)

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

Declared at 3 GLENFINDLY STREET
EDINBURGH

Day Month Year
on 24 04 2001

before me

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

Declarants to sign below

[Signature]
[Signature]
[Signature]
[Signature]

NOTES

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

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

or, for companies registered in Scotland:-

The Registrar of Companies
37 Castle Terrace
Edinburgh
EH1 2EB

Form 155(6)a: HM Plant Limited

Appendix 1

David Andrew Hearne
Elm Gables Rectory Lane
Bentley
Farnham
Surrey
GU10 5JS

SA.
DA.
DNH.

David Nigel Hopkins
2 Leasowes Farm Cottage
Green Lane
Coventry
West Midlands
CV3 6EG

Steven Francis Howard
36 Buckingham Road
Wilmslow
Cheshire
SK9 5LB

SH

John James Jones
12 Farriers Green
Monkton Heathfield
Taunton
Somerset
TA2 8PR

JJ

Andrew Jonathan Raine
11 Sandy Lane
Charlton Kings
Cheltenham
Gloucestershire
GL53 9BS

AR.

Bryan James Warren
130 Wells Road
Glastonbury
Somerset
BA6 9AQ

BW

Appendix 1A

The number and class of shares to be acquired in Heavy Machinery Group Holdings Limited by Heavy Construction Machinery Limited is 1,000,000 ordinary shares of 10 pence each.

The number and class of shares acquired in Heavy Machinery Group Limited on 22nd December 1999 by Heavy Machinery Group Subsidiary Limited was 194,453 ordinary shares of 10 pence each, 194,453 A ordinary shares of 10 pence each and 97,226 A ordinary redeemable shares of 10 pence each.

Appendix 2

The assistance is to be given to Heavy Construction Machinery Limited (registered in England with number 4184686) whose registered office is at 38 Castlefields Industrial Estate, Bridgwater, Somerset TA6 4DH (the "**Parent**"), in connection with acquisition of shares by the Parent in Heavy Machinery Group Holdings Limited.

The assistance is to be given to Heavy Machinery Group Subsidiary Limited, in connection with reducing or discharging liabilities incurred in connection with the acquisition on 22nd December 1999 by Heavy Machinery Group Subsidiary Limited of the entire issued share capital of Heavy Machinery Group Limited.

Appendix 3

The assistance will take the form of HM Plant Limited ("**Plant**") executing the following documents:

- 1 A working capital letter (the "**Working Capital Letter**") to be issued by The Governor and Company of the Bank of Scotland as Working Capital Bank (as defined therein) (the "**Bank**") to the Parent and others (including Plant).
- 2 A common terms agreement to be entered into between the Parent and others (1) and the Bank as Senior Facility Agent, Senior Bank, Mezzanine Facility Agent, Mezzanine Bank, Junior Facility Agent, Junior Bank, Working Capital Bank, Issuing Bank and Security Trustee (2) (the "**Common Terms Agreement**").
- 3 An intercreditor agreement (the "**Intercreditor Agreement**") to be entered into between the Parent, the Bank as Security Trustee for itself and each of the Finance Parties (as defined therein), Plant and the other subsidiaries of the Parent.

- 4 A corporate guarantee (the "**Guarantee**") to be executed by the Parent, Plant and each other subsidiary of the Parent in favour of the Bank as Security Trustee for itself and each of the Finance Parties (as defined therein).
- 5 A debenture (the "**Debenture**") to be executed by Plant in favour of the Bank as Security Trustee for itself and each of the Finance Parties (as defined therein).
- 6 Legal mortgages (the "**Mortgages**") to be executed by Plant in favour of the Bank as Security Trustee for itself and each of the Finance Parties (as defined therein) in respect of 22 Kingsland Grange, Woolston, Warrington, land at Rosebay Road, Littleburn Industrial Estate, Meadowfield, Durham, land at Castlefields Industrial Estate, Wylds Road, Bridgwater, Somerset and land at East Way, Lee Mill, South Hams, Devon.
- 7 An intra group funding agreement (the "**Intra Group Funding Agreement**") to be entered into between the Parent, Plant and each of the other subsidiaries of the Parent.
- 8 A standard security (the "**Standard Security**") to be executed by Plant in favour of the Bank as Security Trustee for itself and each of the Finance Parties (as defined therein) in respect of land at Wardpark Road, Wardpark South Industrial Estate, Cumbernauld, which Plant owns jointly with Heavy Machinery Group Limited.

Appendix 4

The person who will acquire the shares in Heavy Machinery Group Holdings Limited is the Parent.

The person who acquired the shares in Heavy Machinery Group Limited on 22nd December 1999 was Heavy Machinery Group Subsidiary Limited.

Appendix 5

The principal terms upon which the financial assistance will be given by Plant are:

- 1 Pursuant to the Working Capital Letter, the Bank agrees to make available to the to the Borrowers (as defined therein) a working capital facility of up to £5,000,000 and other working capital facilities (the "**Working Capital Facility**"), which may be used to discharge certain costs and expenses incurred in the acquisition by the Parent of the entire issued share capital of Heavy Machinery Group Holdings Limited.
- 2 Pursuant to the Common Terms Agreement, Plant agrees certain terms applicable to, inter alia, the Working Capital Letter.
- 3 Pursuant to the Intercreditor Agreement, Plant agrees the priority and ranking of debt created by the Parent, Plant and the Parent's other subsidiaries from time to time in favour of the Bank as Security Trustee for itself and each of the Finance Parties (as defined therein) in respect of the Senior Facility, the Mezzanine Facility, the Junior Facility, the Guarantee Facility and the Working Capital Facility.
- 4 Pursuant to the Guarantee Plant irrevocably and unconditionally guarantees to the Bank as Security Trustee for itself and each of the Finance Parties (as defined therein) that if the Parent or any of its subsidiaries from time to time fails to pay or discharge any sum in respect of any of the Secured Liabilities (as

defined below) at the time when it becomes due for payment or discharge whether by acceleration or otherwise, it will pay or discharge such sum on demand.

In addition to and independent of their obligations above, Plant irrevocably and unconditionally undertakes to the Bank as Security Trustee for itself and each of the Finance Parties (as defined therein) that any of the Secured Liabilities which may not be recoverable from Plant as a result of any legal limitation, disability or incapacity on or of the Parent or any of its subsidiaries from time to time or for any other reason whether known to the Bank or any of the Finance Parties or not shall nevertheless be recoverable from Plant by way of indemnity as sole or principal debtors and shall be paid by Plant to the Bank on demand.

Plant shall pay interest on any amount which it is required to pay as detailed above at the rate specified in the Guarantee.

- 5 Pursuant to the Debenture, as security for the Debenture Secured Liabilities Plant with full title guarantee charges in favour of the Bank as Security Trustee for itself and on behalf of each of the Finance Parties for the payment or discharge of the Secured Liabilities:-
- (a) by way of legal mortgage all the freehold and leasehold property (including the property described in the Schedule to the Debenture) now vested in it whether or not the title to the property is registered at H.M. Land Registry, together with all present and future buildings, fixtures (including trade and tenant's fixtures subject to the tenants right of removal), plant and machinery which are at any time on the property;
 - (b) by way of fixed charge:-
 - (i) all future freehold and leasehold property belonging to Plant, together with all buildings, fixtures (including trade and tenant's fixtures), plant and machinery which are at any time on the property;

- (ii) all present and future interests of Plant in or over land or the proceeds of sale of it and all present and future licences of Plant to enter upon or use land and the benefit of all other agreements relating to land to which it is or may become party or otherwise entitled and all fixtures (including trade and tenant's fixtures subject to the tenant's right of removal), plant and machinery which are at any time on the property charged under the Debenture;
- (iii) all Plant's goodwill and uncalled capital for the time being;
- (iv) all present and future stocks, shares and other securities owned (at law or in equity) by Plant and all rights and interests accruing or offered at any time in relation to them, all rights and interests in, and claims under, all policies of insurance and assurance held, or to be held by, or inuring to the benefit of, Plant and the benefit of all rights and claims to which Plant is now, or may be, entitled under any contracts;
- (v) all patents, patent applications, trade marks, trade mark applications, trading names, brand names, service marks, copyrights, rights in the nature of copyright, moral rights, inventions, design rights, registered designs, all trade secrets and know-how, computer rights, programmes, systems, tapes, disks, software, all applications for registration of any of them and other intellectual property rights held, or to be held, by Plant, or in which it may have an interest and the benefit of all present and future agreements relating to the use of or licensing or exploitation of any such rights (owned by Plant or others) and all present and future fees, royalties or similar income derived from or incidental to any of the foregoing in any part of the world;
- (vi) all present and future book and other debts and monetary claims of Plant, whether payable now or in the future and the benefit of

all present and future rights and claims of Plant against third parties relating to them and capable of being satisfied by the payment of money (save as charged under paragraph (ii) of this sub-clause 5(b);

(vii) all present and future plant and machinery not otherwise charged under this clause 5(b) and all other present and future chattels of Plant (excluding any of the same for the time being forming part of Plant's stock in trade or work in progress); and

(viii) all present and future bank accounts, cash at bank and credit balances of Plant with any bank or other person whatsoever and all rights relating or attaching to them (including the right to interest); and

(c) by way of floating charge all the Assets not effectively otherwise charged by this clause including (without limitation) any immovable property of Plant in Scotland and any Assets in Scotland falling within any of the types mentioned in sub-clause 5(b), but so that Plant is prohibited from creating any fixed security or mortgage, or any other floating charge over the Assets having priority over, or ranking *pari passu* with, the floating charge created by this sub-clause (otherwise than in favour of the Security Trustee) and Plant will have no power, except with the prior written consent of the Security Trustee, to part with, or dispose of, any part of those Assets, except by way of sale in the ordinary course of its business.

(d) The Security Trustee may, at any time by notice to Plant immediately convert the floating charge created under sub-clause 5(c) into a fixed charge over any Assets specified in that notice and the floating charge will, without notice from the Security Trustee, automatically be converted with immediate effect into a fixed charge:-

- (e) in respect of any Assets which become subject to (i) a fixed charge in favour of any other person or (ii) a disposition otherwise than by way of sale in the ordinary course of Plant's business immediately upon such charge or, as the case may be, disposition;
 - (f) in respect of all the Assets charged under sub-clause 5(c) if and when Plant ceases to carry on business or to be a going concern; and
 - (g) in respect of all Assets on the making of an order for the compulsory winding-up of Plant, or on the convening of a meeting for the passing of a resolution for the voluntary winding-up of Plant, or on the presentation of a petition for the making of an administration order in relation to Plant, or on the presentation of an application for a warrant of execution, writ of fieri facias, garnishee order or charging order.
- 6 Pursuant to the Mortgages, Plant creates security in the form of fixed charges over 22 Kingsland Grange, Woolston, Warrington, land at Rosebay Road, Littleburn Industrial Estate, Meadowfield, Durham, land at Castlefields Industrial Estate, Wylds Road, Bridgwater, Somerset and land at East Way, Lee Mill, South Hams, Devon for all monies and liabilities presently or in future due owing or incurred by Plant to the Finance Parties under all or any of the Financing Documents both as defined in the Common Terms Agreement.
- 7 Pursuant to the Intra Group Funding Agreement, Plant agrees to make loans to the Parent from time to time upon and subject to the terms of that agreement to enable the Parent to discharge its obligations and liabilities to the Finance Parties under all or any of the Financing Documents (both as defined in the Common Terms Agreement) in respect of the Senior Facility, Mezzanine Facility and Junior Facility.
- 8 Pursuant to the Standard Security, Plant creates security over all its interest in land at Wardpark Road, Wardpark South Industrial Estate, Cumbernauld for all monies and liabilities presently or in future due owing or incurred by Plant to the

Finance Parties under all or any of the Financing Documents both as defined in the Common Terms Agreement.

In this Declaration:

"Senior Facility" means the senior term loan and guarantee facility of £10,664,000 to be made available by the Bank (in various capacities) to the Parent pursuant to a senior facility agreement to be entered into on or about the date hereof between the Bank (in various capacities) (1) and the Parent (2);

"Mezzanine Facility" means the mezzanine loan facility of £4,200,000 to be made available by the Bank (in various capacities) to the Parent pursuant to a mezzanine facility agreement to be entered into on or about the date hereof between the Bank (in various capacities) (1) and the Parent (2);

"Junior Facility" means the junior loan facility of £4,200,000 to be made available by the Bank (in various capacities) to the Parent pursuant to a junior facility agreement to be entered into on or about the date hereof between the Bank (in various capacities) (1) and the Parent (2);

"Guarantee Facility" means the guarantee facility of £8,289,218 to be made available to Heavy Machinery Group Subsidiary Limited ("**Subsidiary**") pursuant to a guarantee facility agreement to be entered into on or about the date hereof between the Bank (1) and Subsidiary (2);

"Debenture Secured Liabilities" means all monies, costs, charges, expenses, liabilities and obligations whether certain or contingent which now or hereafter may be or become due and owing by Plant to the Finance Parties under all or any of the Finance Documents whether solely or jointly with one or more persons and whether as principal debtor or guarantor or surety together with all costs, charges and expenses properly incurred by any of the Finance Parties in connection with the protection, preservation or

enforcement of its respective rights under the Finance Documents or any other document evidencing or securing such liabilities;

"Finance Documents" means the Common Terms Agreement, the Senior Documents, the Mezzanine Documents, the Junior Documents, the Security Documents and the Fee Letters all as defined in the Common Terms Agreement.

"Finance Parties" means the Senior Facility Agent, the Senior Banks, the Working Capital Bank, the Issuing Bank, the Mezzanine Facility Agent, the Mezzanine Banks, the Junior Facility Agent and the Junior Banks; and

"Secured Liabilities" means all monies, costs, charges, expenses, liabilities and obligations whether certain or contingent which now or hereafter may be or become due and owing by the Parent or any of its subsidiaries from time to time to the Finance Parties under all or any of the Finance Documents whether solely or jointly with one or more persons and whether as principal debtor or guarantor or surety together with all costs, charges and expenses properly incurred by any of the Finance Parties in connection with the protection, preservation or enforcement of its respective rights under the Finance Documents or any other document evidencing or securing such liabilities.



KPMG Transaction Services

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The Directors
HM Plant Limited
38 Castlefields Industrial Estate
Bridgwater
Somerset
TA6 4DH

Your ref

Our ref db/sb/526

Contact Dan Burgess
0117 905 4077

24 April 2001

Dear Sirs

Auditors' report to the directors of HM Plant Limited ("the Company") pursuant to Section 156(4) of the Companies Act 1985

We have examined the attached statutory declaration of the directors dated 24 April 2001 in connection with the proposal that the Company should give financial assistance for the purchase of all of the ordinary shares of its ultimate holding company, Heavy Machinery Group Holdings Limited. We have enquired into the state of the Company's affairs in order to review the bases for the statutory declaration.

We are not aware of anything to indicate that the opinion expressed by the directors in their declaration as to any of the matters mentioned in Section 156(2) of the Companies Act 1985 is unreasonable in all the circumstances.

Yours faithfully

KPMG
Registered Auditors



KPMG, a partnership established under English law, is a member of KPMG International, a Swiss association

KPMG is registered to carry on audit work and authorised to carry on investment business

by the Institute of Chartered Accountants in England and Wales. The principal place of

business is 8 Salisbury Square, London EC4Y 8BB where a list of partners' names is open to inspection